

PROFESSIONAL INSPECTION SERVICES AGREEMENT

Between

EAST SIDE UNION HIGH SCHOOL DISTRICT

And

Dated: _____

EAST SIDE UNION HIGH SCHOOL DISTRICT

AGREEMENT BETWEEN THE East Side UNION HIGH SCHOOL DISTRICT AND

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is dated this _____ day of _____ in the City of San Jose, State of California, by and between _____, hereinafter referred to as (“**Inspection Company**”) and the East Side Union High School District, a political subdivision of the State of California, hereinafter referred to as (“**District**”).

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, the parties agree as follows:

1. Scope of Professional Services. The **Inspection Company** shall perform all services described in Appendix A (“**Services**”), for the compensation set forth in Appendix B (“**Compensation**”), at the project sites (“**Project Site**”) and projects (“**Project**”) described on Appendix D which appendixes are attached and made a part of this Agreement.

2. Term. This Agreement shall become effective upon its execution by the **Inspection Company** and by District. All Services whenever performed shall be deemed performed under this Agreement, and all compensation paid to the **Inspection Company** on account of the Services performed shall be deemed as payments of the Compensation.

3. Standard of Performance. The **Inspection Company** represents that all personnel employed or subcontracted, possess all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of like nature and complexity of the Services.

4. Subconsultants. The **Inspection Company** shall perform the Services using the personnel and subconsultants approved by the District; provided, however, that nothing herein shall create any obligations by or between District and any such subconsultant, or otherwise relieve, or diminish **Inspection Company’s** obligation to perform and provide the Services required hereunder. The **Inspection Company** shall hire only qualified persons or firms who are experienced in performing work of like nature and complexity to the Services, and who agree to be bound to the terms of the Agreement to the extent of this scope of Services. The **Inspection Company** may substitute personnel or subconsultants prior to any such subconsultants commencing work only upon District’s written consent, which may be withheld or delayed in District’s sole and absolute discretion.

5. Representatives for Both Parties. Both parties shall designate in writing a representative, authorized to act on the parties’ behalf with respect to this Agreement. The parties or such authorized representatives shall render required decisions promptly, to avoid unreasonable delay in the progress of the **Inspection Company’s** services. The parties may delegate all or some of the representatives’ role and function to some other representative.

6. Indemnification and Liability.

6.1 To the extent of the **Inspection Company’s** proportionate fault, **Inspection Company** shall defend (with legal counsel reasonably acceptable to District), indemnify and hold harmless the District and its officers, agents, trustees, Board of Education, officials, representatives and employees (collectively “**Indemnitees**”)

from and against any and all claims, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee), expense and liability that arise from or relate to: (1) The **Inspection Company's** negligent performance of the Services under this Agreement, or any part thereof, (2) any negligent act or omission of the **Inspection Company**, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control, (3) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by District, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement, (4) any claim of any kind made by any subconsultant against District arising from or in connection with each subconsultant's performance of any Services on behalf of **Inspection Company**, or (5) any breach of this Agreement (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities. The **Inspection Company** shall place in its subconsulting agreements and cause its subconsultants to agree to indemnities and insurance obligations in favor of District and other Indemnitees in the exact form and substance of those contained in this Agreement.

6.2 District acknowledges that the discovery, presence, handling or removal of asbestos products polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of the **Inspection Company's** expertise and is not included in the scope of the **Inspection Company** is to perform nor included in the **Inspection Company's** insurance. District shall hire an expert consultant in this field if the Project involves such materials. The **Inspection Company** shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. The **Inspection Company** shall be responsible to coordinate with District's expert consultant as required by Appendix A.

7. **Notices.** District and **Inspection Company** shall provide written notices via certified U.S. mail return receipt requested, or by overnight courier or delivery service with signature required, as follows:

East Side Union High School District _____
 830 North Capitol Avenue _____
 San Jose, California 95133 _____
Attn: Assoc. Superintendent for Business Services _____

or to such other place as either party may similarly in writing designate to the other. Notices shall be effective three business days after mailing by certified mail or upon receipt if delivered by overnight courier or delivery service.

8. **Insurance.** **Inspection Company** shall comply with all requirements of Appendix C, which is attached and made a part of this Agreement.

9. **Independent Contractor.** The **Inspection Company**, its employees and subcontractors and subconsultants shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture or partnership relationship between District and the **Inspection Company**, and no such relationship shall be implied from performance of this Agreement. Terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. **Inspection Company** shall pay all taxes (including California sales and use taxes) levied upon this Agreement, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. The **Inspection Company** represents that it will collect, report, and pay all sales and or use taxes to the State Board of Equalization. Upon full payment, the **Inspection Company** will issue District a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving District of all liability for any tax relating to the scope of this Agreement. The **Inspection Company** shall pay all other taxes including but not limited to any applicable City of San Jose business tax, not explicitly assumed in writing by District hereunder. The **Inspection Company** shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

10. Conflict of Interest

10.1 **Inspection Company** represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections. **Inspection Company** represents that it has completely disclosed to District all facts bearing upon any possible interests, direct or indirect, which **Inspection Company** believes any subconsultant, member of District, or other officer, agent or employee of District or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by District. **Inspection Company** agrees to comply with all conflict of interest codes and regulations adopted by East Side Union High School District and its reporting requirements.

10.2 **The Inspection Company** covenants that it and any subconsultant presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, **Inspection Company** represents to, and agrees with, District that **Inspection Company** and its subconsultants have no present, and will have no future, conflict of interest between providing District the Services hereunder and any interest **Inspection Company** may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to District, as determined in the reasonable judgment of District.

11. Confidentiality

11.1 **Inspection Company** acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, **Inspection Company** may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. **Inspection Company** agrees that all information disclosed by District to or discovered by **Inspection Company** shall be held in strict confidence and used only in performance of the Agreement. **Inspection Company** shall exercise the same standard of care to protect such information as a reasonably prudent **Inspection Company** would use to protect its own proprietary data, and shall not accept employment adverse to District's interests where such confidential information could be used adversely to District's interests. **Inspection Company** agrees to notify District immediately in writing if it is requested to disclose any information made known to or discovered by **Inspection Company** during the performance of or in connection with this Agreement.

11.2 Any publicity or press releases with respect to the Project or Services shall be under District's sole discretion and control. **Inspection Company** shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without District's prior written consent. **The Inspection Company** shall have the right, however, without District's further consent, to include representations of Services among **Inspection Company's** promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

11.3 The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement.

12. **Suspension and Termination of Services.** (i.) District may direct **Inspection Company** to suspend, delay or interrupt Services, in whole or in part, for such periods of time as District may determine in its sole discretion. District may issue such directives without cause. District will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii.) District may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should **Inspection Company** commit a breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of District's written notice to the **Inspection Company** demanding such cure. In the event District terminates this Agreement for default, **Inspection Company** shall be liable to District for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii.) **Inspection Company** acknowledges and agrees that the District's Board may, in its own discretion, cancel, planned Projects or modify Project Schedules. District may

terminate performance of the Services under this Agreement in whole or in part, for convenience, whenever District determines that such termination is in District's best interest, such termination become effective three (3) business days after written notice of termination is provided by District to **Inspection Company**. In the event District terminates this Agreement for convenience, **Inspection Company** shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

13. Ownership of Work Product. Any interest (including copyright interests) of the **Inspection Company** or its sub consultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by **Inspection Company** or its sub consultants at any time in connection with the Services, shall be, immediately upon its creation, the property of District and delivered to District within three (3) business days of District's written request. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of District. In the event that it is ever determined that any works and any former works created by **Inspection Company** or its sub consultants under this Agreement are not works for hire under U.S. law, **Inspection Company** hereby assigns to District all copyrights to such works when and as created. With District's prior written approval, **Inspection Company** may retain and use copies of such works for reference and as documentation of experience and capabilities.

14. Audit/Inspection of Records.

14.1 Inspection Company shall maintain all documents and records prepared by or furnished to **Inspection Company** during the course of performing the Services for at least three (3) years following completion of the Services, or until the Division of State Architect certifies the project as fully compliant to the approved drawings and constructed as such, whichever is later, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, meeting minutes, report logs, accounting records documenting its work under its Agreement, and invoices, time records, payrolls, records and all other data related to matters covered by this Agreement. **Inspection Company** shall permit District to audit, examine and make copies, excerpts and transcripts from such records within three (3) business days of District's written request. The State of California or any federal agency having an interest in the subject of Agreement shall have the same rights conferred to District by this section. Such rights shall be specifically enforceable.

15. Non-discrimination. **Inspection Company** shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract, based on of race, color, religion, age, sex, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, **Inspection Company** shall comply with all federal, state and local laws (including, without limitation, District policies, County and City ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. **Inspection Company** shall provide all information reasonably requested by District to verify compliance with such matters. **Inspection Company** stipulates, acknowledges and agrees that District has the right to monitor **Inspection Company's** compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.

16. Disputes. **Inspection Company** shall continue its work throughout the course of any dispute with District, and **Inspection Company's** failure to continue work during a dispute shall be a material breach of this Agreement.

17. Non-Judicial Administrative Claim Settlement Procedure For Inspection Company's Claims. It is the intent of **Inspection Company** and District to make concerted efforts to resolve informally any and all disputes that may arise between them during the performance of this Agreement. In the event such efforts prove unsuccessful and there remains a dispute between **Inspection Company** and District regarding any claim, demand or request by **Inspection Company** for time, money, or additional compensation for any reason whatsoever (including, without limitation, any alleged failure of District to make a decision), then **Inspection Company** shall

submit to the District a written and fully documented administrative claim that shall provide a narrative of the pertinent events, **Inspection Company's** theory of entitlement, pricing calculations and that attaches supporting documentation. District will then review **Inspection Company's** fully documented administrative claim; may conduct an administrative hearing, in which case **Inspection Company** shall attend, present documentation and information as requested; and District will then make a final administrative decision thereon. This non-judicial settlement procedure shall be a pre-requisite to any other claim or legal proceeding. Pursuant to Government Code section 930.2: (i.) **Inspection Company** shall initiate this non-judicial settlement procedure by presenting its administrative claim within 60 days of the first event giving rise to the claim or dispute, (ii.) **Inspection Company's** timely submittal of the administrative claim and District's decision thereon shall be an unwaivable condition precedent to **Inspection Company** thereafter filing a Government Code Claim under the California Government Code Section 901 *et seq.*, (iii.) any and all such Government Code Claims in connection with this Agreement shall be presented to the District no later than 120 days following substantial completion or termination of this Agreement or within the time periods otherwise specified in Government Code sections 900–935.9 (whichever first occurs); and (iv.) except as so modified, the Government Code claims presentation requirements remain unchanged.

18. No Special or Incidental Damages. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

19. California Law; Savings Clause. This Agreement shall be deemed to have been executed in the City of San Jose, Santa Clara County, California. Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of this Agreement to another venue. The exclusive venue for all litigation arising from or relating to this Agreement shall be in Santa Clara County, California. Should any clause, provision or aspect of this Agreement be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Agreement shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Agreement. In the event of litigation, the terms of this Agreement shall be enforced first, and only when an answer to a dispute is not found in the terms of the Agreement, then by reference to California law.

20. No Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.

21. Entire Agreement. This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement.

22. No Waiver. The granting of any payments, and any inspections, reviews, approvals or oral statements by any District representative, or certification by any governmental entity, shall in no way limit **Inspection Company's** obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by District's Governing Board and **Inspection Company**.

23. Statutes of limitation. As between the parties to this Agreement, and except as otherwise provided in section 17 above any applicable statute of limitations for any act or failure to act shall commence to run on the date of District's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is

earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

24. Severability. Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

25. Inspection Company’s Representations and Warranties. Inspection Company warrants and represents that its inspectors and authorized subconsultants possess and, during the term of this Agreement, shall maintain and possess at all times such licenses and certifications in good standing as are and may be required under State or federal law for the performance of all Services, including but not limited to inspection services, required under this Agreement.

26. Survival of Provisions. Except as otherwise separately and expressly provided by the parties in writing, the provisions of this Agreement shall to the greatest extent practicable, survive any expiration or termination of this Agreement, and any completion of the Services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first mentioned above.

EAST SIDE UNION HIGH SCHOOL DISTRICT, a political subdivision of the State of California

By _____
Marcus Battle, Associate Superintendent of Business Services

By _____
(If Corporate: Chairman, President or Vice President)

By _____
(If Corporate: Chairman, President or Vice President)

[INSPECTION COMPANY MUST HAVE TWO (2) AUTHORIZING CORPORATE SIGNATURES]

District Board Ratification/Approval Date: _____

LIST OF APPENDICES AND SCHEDULES

Appendix A	Scope of Services
Appendix B	Payments to Inspection Company
Appendix C	Insurance
Appendix D	List of Projects/Project Sites

APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between the East Side Union High School District, a political subdivision of the State of California, hereinafter referred to as (“**District**”) and _____ (“**Inspection Company**”), for the provision of professional services (“**Services**”).

Inspection Company Services are inclusive, but not limited to California Department of General Services Division of State Architect Interpretation of Regulations Document A-8 (“IR A-8”), Project Inspector & Assistant Inspector Duties and Performance Rating by DSA, dated January 25, 2002, (Issued on 09-01-99 and revised 1--07-10 and as it may be revised in the future) and shall include, but are not limited to providing the following construction phase inspection services to District.

1. **Inspection Company Services Generally.** The **Inspection Company** shall perform specific Services in accordance with Title 24, Part I, of the California Code of Regulations (“CCR”) and California Education Code. The **Inspection Company** acts under the direction of the responsible design professional (“A/E”) and is subject to supervision by the Division of the State Architect (“DSA”).

- 1.1 Purpose of Services. Services under this Agreement are to provide for inspection of the construction of the Project in accordance with Title 24, Part 1 of the California Code of Regulations and the California Education Code and to enable the District in ensuring that the Project is built according to the approved construction documents.
- 1.2 **Project Inspector** shall attend all Project Meetings.
- 1.3 **Project Inspectors** Services shall also conform to the California Department of General Services Division of State Architect Interpretation of Regulations Document A-8 (“IR A-8”), Project Inspector & Assistant Inspector Duties and Performance Rating by DSA, and all other mandates and directives as issued by the California Division of State Architect.

2. **Inspection Company’s Job File and Library.** The Inspection Company, through its designated **Project Inspector**, must maintain approved, DSA-stamped, construction documents at the job-site in an organized, readily accessible manner. The **Project Inspector** must also maintain any other construction documents or directives received from the A/E. The following documents and codes must be maintained at the job-site during construction:

- 2.1 Approved plans and specifications.
- 2.2 Construction Contract
- 2.3 Test and Inspection List, per Form DSA-103-1.
- 2.4 Building Codes. The code edition must be as referenced on the approved plans and specifications:
 - 2.4.1 Title 24, Part 1 (Administrative Code);
 - 2.4.2 Title 24, Part 2, Volumes 1, 2, and 3 (Building Code);
 - 2.4.3 Title 24, Part 3 (Electrical Code);
 - 2.4.4 Title 24, Part 4 (Mechanical Code); and
 - 2.4.5 Title 24, Part 5 (Plumbing Code, and Title 24, Part 6 (Energy Code).
- 2.5 Approved addenda.
- 2.6 Approved deferred approval documents.

- 2.7 Approved preliminary change orders.
- 2.8 A copy of shop drawings, samples, submittals, and records.
- 2.9 Supplements
- 2.10 Field orders
- 2.11 Structural and utility records
- 2.12 Correspondence
- 2.13 All reports
- 2.14 Any other documents or directives received from the A/E.

3. Project Inspector Review of the Construction Documents. **Project Inspector** shall study the requirements of the construction documents in order to provide competent inspection of the work. **Project Inspector** shall raise issues and questions with the A/E as necessary to thoroughly understand the Construction Documents. The **Project Inspector** must:

- 3.1 Notify **Architect, Contractor, District, and DSA** immediately of any inconsistencies or errors.
- 3.2 Consult the A/E to resolve any uncertainties in the Inspector's comprehension of the plans and specifications prior to construction of that portion of the work.
- 3.3 Identify non-compliant work as the construction progresses, to assist in expeditiously facilitating prompt corrective action.
- 3.4 Verify code-compliant implementation of the materials testing and special inspection programs.

4. Continuous Inspection of the Work. Continuous inspection means complete and timely inspection of every part of the work. **Inspection Company** shall:

- 4.1 Promptly inspect the work as it progresses, and promptly verbally notify the contractor of any deviation, so that the deviation can be immediately corrected.
- 4.2 Be constantly present at work that can be inspected only as it is placed, such as concrete work or masonry work. Certain types of work which can be completely inspected after the work is installed may be carried out while the **Project Inspector** is not present, provided that the **Project Inspector** promptly identifies and reports all deviations.
- 4.3 Obtain personal knowledge of the construction through **Project Inspector's** own physical inspection of the work in all stages of progress. When special inspectors or approved assistant inspectors are required on a project, the Project Inspector's personal knowledge may include that knowledge obtained from these individuals. Inspection Company acknowledges that DSA requires that the Project Inspector be on site while the assistant inspector is working on site.
- 4.4 Verify that the General Contractor maintains a set of prints of the Construction Documents that are annotated daily by the General Contractor to become the "As Built" Drawings. Verify that the General Contractor reviews these annotated Construction Documents weekly. Verify that the General Contractor does a final review of these annotated Construction Documents, and approves and signs them as the "As Built" Drawings prior to forwarding them to District for archival storage at the end of the job.

- 4.5 Verify that the General Contractor maintains a current set of Plans and Specifications, which incorporate all changes, revisions, and clarifications received from the District and the District's Architect. Verify that the General Contractor prepares a set of reproducible record prints of the Plans and Specifications, showing "As Built" conditions, significant changes in the work made during construction, and the locations of utilities, based on marked up prints, plans and other data furnished by the General Contractor to District.
- 4.6 Verify that the General Contractor provides a Punchlist of items to be adjusted, corrected or completed at Substantial Completion. Verify that the General Contractor confirms that the electrical grounding tests, mechanical air balance tests, fire alarm tests, security system tests and communication system tests have been successfully completed. Verify that the General Contractor provides District with all training, manuals, guarantees, and extra stock items pursuant to the Agreement. Verify that the General Contractor resolves all items on the Punchlist before recommending that District release funds held in retention to the General Contractor.
- 4.7 Complete all other related inspection tasks specified in the Agreement and as directed by District.

5. Records of Inspections. Maintain a detailed record of all inspections. **Project Inspectors** records must provide a comprehensive and timely documentation of the inspected work, promptly identifying all compliant and non-complaint construction. The records of inspections must be readily accessible and maintained in an organized manner. The following inspection records must be maintained at the job site (District to provide adequate and accessible space at the job site for such materials):

- 5.1 Records of Inspections systematically maintained, including inspections of all work required by the construction documents. The Project Inspector must also record the resolution of reported deviations.
- 5.2 Construction Procedure Records per Title 24, Part 1, Section 4-342(6), including, but not limited to concrete placement operations, welding operations, pile penetration blow counts, and other procedural records specified on the approved construction documents.
- 5.3 Photographic Record Log of activities and conditions at the Project Site. As determined to be necessary and critical to address a particular issue or concern, the project inspector shall take photographic record logs of activities and conditions on site. The log should record the date, time, and location where each photograph was taken, along with a brief description of what each photograph shows.
- 5.4 Time Logs of **Inspection Company's** and Assistant Inspector's time spent at the job-site during all phases of the work.
- 5.5 Record Set of Documents, which the Contractor shall update and review with the A/E prior to submittal of Payment Requests. Project Inspector's role is to assist the district to make sure that these record sets are in fact updated and provided to the architect of record.
- 5.6 All other related records specified in the Agreement and as directed by District.

6. Communications Required of the Project Inspector. The Project Inspector must, during the course of construction, provide specific code-prescribed notices and reports to the A/E, DSA, District, and contractor. The **Project Inspector** must maintain records of all communications. These records must be readily accessible and maintained in an organized manner. The date and recipients of all communications must be clearly indicated. The Project Inspector is required to provide the following communications during the course of a construction project:

- 6.1 **Notifications to DSA.** Per Title 24, Part 1, notifications to DSA must be made at the following times:
- 6.1.1 The start of work;
 - 6.1.2 A minimum of 48 hours prior to completion of foundation trenches;
 - 6.1.3 A minimum of 48 hours prior to first concrete placement; and
 - 6.1.4 When work is suspended for more than two weeks.
- 6.2 **Daily Reports.** The **Project Inspector** shall keep daily reports of all activities that take place on the site subject to the **Project Inspector's** own personal observation. These reports shall be kept on site and are for the **Project Inspector's** personal use in preparing the required Semi-Monthly Reports. A copy of these daily reports shall be filed at the **Project Inspector's** office and kept as a permanent record.
- 6.3 **Weekly Project Meetings.** Project Meetings shall be held weekly. The **Project Inspector** shall attend all Project Meetings. The **Project Inspector** shall meet with the District, A/E, and Contractor, and shall keep a running log of Corrective items for review. Upon written notice from the Contractor that work is substantially complete, the **Project Inspector** shall compile a written Punch List of all construction items that are, in his opinion not in conformance with the construction documents. **Project Inspector** shall review corrective measures with the Contractor made pursuant to the Punch List and report findings to the District.
- 6.4 **Semi-Monthly Reports.** The **Project Inspector** must make Semi-Monthly Reports on the 1st and 15th of every month reporting on the progress of construction, per Title 24, Part 1, Section 4-337. Semi-Monthly Reports must be submitted to the A/E in general responsible charge and structural engineer, and a copy must be submitted to the DSA and District. Semi-Monthly Reports must be prepared in accordance with DSA's *Guideline for Inspector's Semi-Monthly Report*. (The guideline is available on-line at <http://www.dgs.ca.gov/dsa> – click on “Forms” – or at DSA regional office.).
- 6.4.1 **Single-Story Relocatable Building Projects.** At the discretion of the A/E, and subject to applicable State law and regulations, the **Project Inspector** may submit the DSA standard form *Checklist for Site Inspection of Relocatable Buildings* in lieu of Semi-Monthly Reports. (The *Checklist for Site Inspection of Relocatable Buildings* is available on-line at <http://www.dgs.ca.gov/dsa>, click on “Forms” or at the DSA regional offices.)
- 6.5 **Unit-Cost or Cost-Plus Type Work.** Draft report for submittal to District detailing labor performed, and equipment and materials used in any unit-cost or cost-plus type of work. The project inspector's role in this particular article is solely to provide the necessary information and assistance when necessary.
- 6.6 **Deviation / Correction Notices.** Per Title 24, Part 1, Section 4-342(b)7, when the **Project Inspector** identifies deviations from the approved plans and specifications, the **Project Inspector** must notify the contractor in writing. If the deviation is not immediately corrected, the **Project Inspector** is required to promptly issue a written Notice of Correction to the contractor with a copy sent to the A/E and DSA. The resolution of reported deviations must be documented by the **Project Inspector**.
- 6.7 **Record of Communications to the A/E.** All uncertainties in the **Project Inspector's** or contractor's comprehension of the documents must be reported in writing to the A/E.

- 6.8 **Verified Reports.** Verified reports (Form DSA-6) (refer to Title 24, Part 1, Section 4-336) shall clearly describe all non-compliant work including work done in accordance with change orders that are pending DSA approval. The report shall state that the **Project Inspector** knows of his or her own personal knowledge that the construction has, in every material respect, been performed in compliance with the DSA approved documents. The **Project Inspector** shall declare under penalty of perjury that all information presented on the report is true. The **Project Inspector** shall submit verified reports directly to DSA within seven days of any of the following:
- 6.8.1 Suspension of work on a project for a period of more than one month.
 - 6.8.2 Termination of services of the **Inspection Company** for any reason.
 - 6.8.3 DSA request of a verified report.
 - 6.8.4 Occupancy of any building or project.
 - 6.8.5 Completion of the entire project.
- 6.9 Compare General Contractor's monthly Requests for Payment with the Schedule of Values originally prepared by General Contractor and approved by District to determine whether the Requests for Payment are consistent with the work completed. Certify that the Requests for Payment are accurate in conjunction with the Construction Manager.
- 6.10 **Project Inspector** shall provide all other related communication specified in the Agreement and as directed by District.

7. Project Inspector's monitoring of the Materials Testing & Special Inspection Program. The **Project Inspector** is responsible, under the direction of the A/E, for monitoring the work of any special inspectors and materials testing laboratories to ensure that the Materials Testing & Special Inspection Program for the project is satisfactorily completed. The **Project Inspector** must monitor the following aspects of the Materials Testing & Special Inspection Program:

- 7.1 Inspect all materials upon delivery and verify Special Inspections when applicable. Verify that materials are stored in such a manner that they will neither interfere with other work nor incur damage from the weather or other causes. Reject materials not in conformance with the terms of the contract immediately.
- 7.2 Notify District and A/E in writing if **Project Inspector** does not feel qualified in making a judgment about questionable materials or workmanship. After **Project Inspector** has notified District, District will take necessary action to provide additional information and/or inspection.
- 7.3 Coordinate, keep on file, and insure proper distribution of copies as required of all special inspections, and materials lab testing reports. The cost of any actual special inspections and / or lab testing is paid directly to the Test Lab by the District.
- 7.4 Monitor the testing of materials or systems.
- 7.5 Identify and report any special inspectors on the job-site that are not DSA approved, when DSA approval for special inspectors is required.
- 7.6 Verify that the testing / engineering laboratories are qualified to do the specific tests that they are hired to perform.
- 7.7 Verify that the materials testing lab has received sufficient advance notification to perform the required material sampling or special inspection.

- 7.8 Verify that all required material sampling and special inspections have been performed. Observe any special inspector's on-site presence and performance of duties, the special inspector's documentation of complying and non-complying work, and issuance of Correction Notices.
- 7.9 Review all materials test and special inspection reports. Review successful test results reported by any materials testing lab or special inspector and report any deviations from the requirements to District and A/E before installation. Once the A/E initiates a course of action for the resolution of deviations, **Project Inspector** must verify that the course of action was followed and the deviations resolved.
- 7.10 Assure that where materials are required to be tested and that when shop drawings are required, that all necessary tests and approvals are in place before installation.

8. Monitoring of Assistant Inspector(s). The **Project Inspector** must provide technical guidance to assistant inspector(s) and must verify the assistant inspector's comprehension of the construction documents. The **Project Inspector** must also monitor the assistant inspector's performance, verifying that the assistant inspector is properly checking the construction, recording inspections, and performing other assigned duties. The **Project Inspector** must ensure that any assistant inspector is performing the duties included on the assistant inspector's approval Form DSA-5A.

9. Personnel and Subconsultants. **Project Inspector** shall perform the Services using the personnel and subconsultants listed in the attached schedules. Such personnel and subconsultants shall not be replaced except upon District's written consent, which shall not be unreasonably withheld if **Inspection Company** (i.) shows good cause, and (ii.) proposes comparable substitute personnel and/or subconsultants.

END OF APPENDIX A

SCHEDULE OF APPROVED PERSONNEL/SUBCONSULTANTS

APPENDIX B - PAYMENTS TO INSPECTION COMPANY

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between the East Side Union High School District, a political subdivision of the State of California, hereinafter referred to as (“**District**”), and _____, hereinafter referred to as (“**Inspection Company**”) for the provision of professional services (“**Services**”).

1. Amount of Compensation for Services of **Inspection Company**

All Inspection services will be billed at a rate of \$_____ regular time, \$_____ per hour overtime, and \$_____ per hour for Sunday and Holiday time, for a Guaranteed Maximum Price (“GMP”) of _____ Dollars and _____ cents (\$_____). Inspection Company will submit a worksheet for each project, which shall include the GMP amount plus an itemization of requested reimbursable expenses (the “GMP worksheet”). Upon acceptance of the GMP worksheet, District will provide written notification to **Inspection Company**.

- 1.1 **Inspection Company** shall be paid for its Services (and for services of its Subconsultants) rendered based upon the hourly “**Billing Rates**” as agreed upon between district and **Inspection Company**.
- 1.2 The Billing Rates used as a basis for payment apply to all of **Inspection Company’s** and subconsultants’ principals, professional personnel and others engaged directly in inspection services on the Project. The Billing Rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.
- 1.3 **Inspection Company** may not invoice or receive payment for the GMP greater than **Inspection Company’s** percentage completion of the Services, as determined by District based on Services performed. In no event shall **Inspection Company** invoice or receive (including Subconsultants services) payment for fees exceeding the GMP or for reimbursement for expenses other than “Reimbursable Expenses Related to Additional Services” or “Reimbursable Expenses” as defined in Section 3 below.
- 1.4 The final three percent (3%) of the GMP for inspection services on any Project shall not be released by District to **Inspection Company** unless and until the Inspection Company has submitted all required verified reports to the Division of State Architect as required under Title 24, Part 1, Section 4-336 of the California Code of Regulations as now existing or as it may be amended or modified.

2. Methods of Payment to **Inspection Company**

- 2.1 For Basic Services on the Project. **Inspection Company** shall submit monthly invoices to the District. Each invoice shall include specific dates and hours per day of service for which payment is requested as well as receipts supporting any Reimbursable Expenses, and shall report on **Inspection Company’s** total billings and Reimbursable Expenses to date. Any subconsultant invoices for which Inspection Company is seeking reimbursement shall conform to the above standards. District shall pay uncontested billings and charges within forty-five (45) days, provided that District’s failure to contest any billings or charges within such 45 day period shall not waive or release District’s right to contest any such billings or charges thereafter.
- 2.2 For Additional Services. District shall pay **Inspection Company** for Additional Services, as defined below, as follows:
 - 2.2.1 General. For Additional Services of **Inspection Company’s** professional staff engaged directly on the Project, on the basis of a lump sum negotiated between the parties, or, at District’s option, at **Inspection Company’s** Billing Rates.

2.2.2 For Additional Services on an hourly basis, **Inspection Company** agrees that all Subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of District.

3. Definitions

3.1 “**Additional Services**” mean services beyond the scope of the Services defined in this Agreement.

3.2 The “**Billing Rates**” are the hourly rates indicated in this Agreement.

3.3 “**Reimbursable Expenses**” shall be limited to the specific expenses agreed upon in advance and in writing by the District. All other expenses are not reimbursable and are deemed included in the Billing Rate.

3.4 “**Reimbursable Expenses Related to Additional Services**” shall be limited to the specific expenses identified below. All other expenses are not reimbursable and are deemed included in the Billing Rate.

3.4.1 Travel Costs. The reasonable expense of travel costs (not to exceed mileage at the IRS rate then in effect) incurred by **Inspection Company** when requested by District to travel to a location more than 50 miles from the Project site or District’s office, incurred performing Additional Services.

3.4.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

3.4.3 Delivery Costs. Courier services and overnight delivery costs necessarily incurred performing Additional Services.

3.4.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Contract Documents, if any, incurred performing Additional Services.

END OF APPENDIX B

APPENDIX C - INSURANCE

This is an appendix attached to, and made a part of, the Professional Services Agreement dated _____ (“**Agreement**”) between the East Side Union High School District, a political subdivision of the State of California, hereinafter referred to as (“**District**”), and _____, hereinafter referred to as (“**Inspection Company**”) for the provision of professional services (“**Services**”).

1. Inspection Company’s Duty to Show Proof of Insurance. Prior to the execution of this Agreement, **Inspection Company** shall furnish to District satisfactory proof that **Inspection Company** has taken out for the entire period required by this Agreement, as further described below;

1.1 Commercial General Liability Insurance

Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than **\$3,000,000** general aggregate and **\$1,000,000** each occurrence, subject to a deductible payable by **Inspection Company**.

1.2 Business Automobile Liability Insurance

Inspection company shall ensure that all automobiles used by project inspector(s) shall have business automobile liability insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible payable by **Inspection Company** in an amount not to exceed \$25,000.00.

The insurance required by this Appendix C and the Agreement shall be maintained in effect during the term of the Agreement by **Inspection Company** and any authorized subcontractors.

2. Insurance policies shall contain an endorsement containing the following terms:

2.1 Status of East Side Union High School District as Additional Insured.

On **Inspection Company’s** Commercial General Liability policy and Automobile Liability Policy EAST SIDE UNION HIGH SCHOOL DISTRICT and its affiliates, directors, officers, officials, partners, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured and its approved subconsultant, and there shall be a waiver of subrogation as to each named and additional insured.

2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.

2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to District thirty (30) days in advance of the effective date thereof.

2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than that amount **Inspection Company** shall be called upon to contribute to a loss covered by insurance for the named insured.

- 2.5 Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Agreement, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subsection 2.3.
- 2.6 Nothing herein contained shall be construed as limiting in any way the extent to which **Inspection Company** or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.
- 2.7 If **Inspection Company or any subconsultant** fails to maintain any required insurance then such failure shall constitute a breach of the Agreement and be grounds for the immediate termination of this Agreement by District and which shall entitle District to all remedies provided under Section 12(ii) of the Agreement and as may otherwise be allowed by law. Alternatively, District may, but shall not be required to, take out such insurance for District's own benefit, and deduct and retain amount of premiums paid by District from any sums due **Inspection Company** under this Agreement. .

END OF APPENDIX C

APPENDIX D
List of Projects/Project Sites