

DAVIS JOINT UNIFIED SCHOOL DISTRICT

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into as of February 4, 2021 (the “Effective Date”) by and between the Davis Joint Unified School District, a public school district of the State of California (the “District”), and Wallace Kuhl & Associates (“Provider”). The District and the Provider are collectively referred to in this Agreement individually as “Party” and collectively as the “Parties.” This Agreement is made with reference to the following facts:

WHEREAS, the District requires services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters and such services and advice are not available within the District and cannot be performed satisfactorily by District employees; and

WHEREAS, Provider possesses the necessary expert knowledge, experience, and ability to perform services not available through District personnel, and Provider is specially experienced and competent to provide to the District certain specialized services and/or advice in one or more of the foregoing areas; and

WHEREAS, the District desires to engage Provider pursuant to Government Code Section 53060 because of Provider’s special expertise and experience, and Provider desires to be engaged by the District; and

WHEREAS, the District and Provider desire to reduce to writing the terms and conditions of the District’s engagement of Provider; and

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

ARTICLE 1. SERVICES TO BE PERFORMED BY PROVIDER

Section 1.1 Performance Of Services.

Provider agrees to perform services for the District as described in Appendix A to this Agreement (the “Services”) and shall provide other services as may be requested by the District from time to time.

Section 1.2 Method Of Performance And General Supervision.

Provider will determine the methods, details, and means of performing the Services required by this Agreement. Subject to the foregoing, the District retains the right to inspect, to stop work, to prescribe alterations and generally to monitor Provider’s work to ensure its conformity with the terms of this Agreement.

Section 1.3 Employment Of Assistants.

Provider may, at Provider's own expense, employ such assistants as Provider deems necessary to perform the services required of Provider by this Agreement. District may not control, direct, or supervise Provider's assistants or Providers in the performance of those services.

Section 1.4 Provider's Certifications, Representations and Warranties

Provider makes the following certifications, representations and warranties for the benefit of the District. Provider acknowledges and agrees that the District, in deciding to engage Provider pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representation and warranties and their effectiveness throughout the term of this Agreement and the course of Provider's engagement hereunder.

(a) Provider is qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable law, Provider has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

(b) Provider, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

(c) Provider will perform their services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Provider will furnish, at their expense, those services that are set forth in this Agreement and represents that such services are within the technical and professional areas of expertise of the Provider or any sub-Provider the Provider has engaged or will engage to perform the service(s).

ARTICLE 2. TERM AND TERMINATION

Section 2.1 Term.

(a) This Agreement shall become effective on the Effective Date and shall continue through February 4, 2023 (the "Term"), unless the Agreement is earlier terminated by either Party in accordance with Section 2.2, below. Pursuant to Education Code Section 17596, the Agreement Term including all renewals shall not exceed five (5) years.

Section 2.2 Termination.

(a) This Agreement may be terminated by either Party upon fourteen (14) days written notice to the other Party in the event of a substantial failure of performance by such other Party, including insolvency of Provider or if the District should decide to abandon or indefinitely postpone the Project.

(b) In the event of a termination based upon abandonment or postponement by District, the District shall pay the Provider for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due to the Provider for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Provider. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased Provider and replacement Provider costs, shall be deducted from payments to the Provider.

(c) In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 2.2 (d) below, and Provider shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Provider.

(d) This Agreement may be terminated for convenience by District without cause, upon twenty (20) days written notice to the Provider. In the event of a termination without cause, the District shall pay to the Provider for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination, plus any sums due the Provider for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to other documents, whether delivered to the District or in the possession of the Provider.

(e) In the event of a dispute between the Parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of this dispute, Provider agrees to continue the work diligently to completion. If the dispute is not resolved, Provider agrees it will neither rescind the Agreement nor stop the progress of the work, but Provider's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before. The Parties may agree in writing to submit any dispute between the Parties to arbitration. The District agrees to pay the Provider the undisputed amounts due under this Agreement.

(f) The Parties understand and agree that this Termination Article shall govern all termination rights and procedures between the Parties. Any termination provision that is attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

ARTICLE 3. COMPENSATION

Section 3.1 Terms Of Payment.

In consideration for all Services to be performed by Provider, the District agrees to pay Provider One Hundred Seventeen Thousand Seven Hundred Twenty Dollars (\$117,720.) as specified in Appendix A. Provider shall submit to the District a statement of Services rendered with each invoice. The District agrees to pay the amount due to Provider for the Services within 30 calendar days from receipt of the invoice.

Section 3.2 No Payroll or Employment Taxes.

No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Provider. The payroll or employment taxes that are the subject of this Section include, but are not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax.

Section 3.3 [Reserved]

Section 3.4 Accounting Records of The Provider.

Records of the Provider's direct personnel and authorized reimbursable expenses and records of accounts between the District and Provider shall be kept on a generally recognized accounting basis, and shall be available for inspection by the District at mutually convenient times.

ARTICLE 4. OTHER OBLIGATIONS OF PROVIDER

Section 4.1 Nonexclusive Services.

Provider may represent, perform services for, and/or be employed by such additional companies, persons, or clients as Provider, in Provider's sole discretion, chooses.

Section 4.2 Workers Compensation and Unemployment Insurance And Licenses.

Provider shall be responsible for providing, at Provider's own expense, disability, unemployment and other insurance, workers' compensation, training, permits and licenses for Provider and for Provider's employees, agents and independent Providers, as may be required by law.

Section 4.3 Materials and Equipment.

Provider shall supply all materials and equipment required to perform the Services under this Agreement, except as may be otherwise specified in Appendix A.

Section 4.4 Licenses, Permits, Fees and Assessments.

Provider shall obtain at Provider's sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Provider shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Provider's performance of the Services required by this Agreement.

Section 4.5 Fingerprinting.

For any work performed by Provider at District facilities, if and when requested by the District, Provider's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any District site pursuant to Education Code section 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in Penal Code sections 667.5(c) and 1192.7(c), respectively. Provider shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. Provider shall provide District with a list of names of employees who may come into contact with students and must certify in writing to the District that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code section 45125.1. District may request the removal of an employee from a District site at any time. Failure to comply with any of the provisions of this Section may result in termination of this Agreement.

Section 4.6 Confidentiality.

Provider acknowledges that, during the term of this Agreement, Provider may have access to privileged and confidential materials and information in the custody of clients of the District. Provider covenants and agrees to keep such information confidential and not to disclose such information directly or indirectly during, or subsequent to, the term of this Agreement. Provider further acknowledges that, during the term of this Agreement, Provider may obtain and have access to certain proprietary or confidential information, knowledge, technology, data, methods, files, records, and client lists relating to the District's business (collectively, the "Confidential Information"), which the District and Provider agree are proprietary or confidential in nature.

Provider acknowledges that:

- (a) The Confidential Information will be developed and acquired by the District at great expense, is of great significance and value to the District, and constitutes trade secrets;
- (b) The Confidential Information will be made known to the Provider in full reliance on this Agreement;
- (c) The Confidential Information is material and critically important to the effective and successful conduct of the District's business operations and activities; and
- (d) Any use of the Confidential Information by Provider other than for the District's benefit in connection with the business relationship between Provider and the District

established by this Agreement will constitute a wrongful usurpation of the Confidential Information by Provider. The Provider hereby agrees to forever hold the Confidential Information in strict confidence and secret; provided, however, that Provider may disclose any or all of the Confidential Information to any corporation, partnership, trust, firm or other business entity not affiliated with the District if prior written consent of the District is obtained by Provider.

Section 4.7 [Reserved]

Section 4.8 Insurance.

Provider shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Provider and District from claims which may arise out of or result from Provider's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

(b) Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLAR (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- (i) owned, non-owned and hired vehicles;
- (ii) blanket contractual;
- (iii) broad form property damage;
- (iv) products/completed operations; and
- (v) personal injury.

Section 4.9 Indemnification.

To the fullest extent permitted by law, Provider shall fully indemnify, defend and hold harmless the District, its employees, agents and independent Providers from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Provider's services performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force.

Section 4.10 Return of District Property.

On the termination of this Agreement or whenever requested by the District, Provider shall immediately deliver to the District all property in Provider's possession or under Provider's control belonging to the District in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Provider excepted.

ARTICLE 5. PROVIDER'S WORK PRODUCT

Section 5.1 Ownership of Provider's Work Product.

(a) Provider agrees that any and all intellectual properties, including, but not limited to, all ideas, concepts, themes, computer programs or parts thereof, documentation or other literature, or illustrations, or any components thereof, conceived, developed, written, or contributed by Provider, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District.

(b) Provider agrees that all rights in all works prepared or performed by Provider pursuant to this Agreement, including patent rights and copyrights applicable to any of the intellectual properties described in Subsection (a) above, shall belong exclusively to District and shall constitute "works made for hire."

(c) The provisions of this Section shall not apply to any of Provider's rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Provider's own time, and which:

(i) Does not relate, at the time of conception or reduction to practice of the invention, to District's business or to District's actual or demonstrably anticipated research or development; or

(ii) Does not result from any work performed by Provider for District.

Section 5.2 Use of Copyrighted Materials.

Provider warrants that any materials provided by Provider for use by District pursuant to this Agreement shall not contain any material that is protected under the Copyright Act or any other similar law, except to the extent of "fair use," as that concept is defined in the Copyright Act, and except to the extent that Provider has obtained permission to use such work from the copyright holder. Provider shall be solely responsible for ensuring that any materials provided by Provider for use by District pursuant to this Agreement satisfy this requirement. Provider agrees to hold District harmless from all liability or loss, including debt or exercise for attorneys' fees to which District is exposed on account of Provider's failure to perform this duty.

ARTICLE 6. GENERAL PROVISIONS

Section 6.1 Disputes Resolution.

In the event of any disputes or disagreement between the District and Provider with respect to the interpretation of any provision of this Agreement, or to the performance of the Parties under this Agreement, each Party shall appoint a designated representative to meet in good faith, to resolve the dispute or to negotiate an adjustment to any provision of this Agreement. Such negotiations shall be conducted in a timely manner to avoid undue delay in resolving the dispute. No formal proceeding for judicial resolution of any dispute or disagreement shall be commenced

until a Party concludes in good faith and provides written notice to the other Party that an amicable resolution of the matter at issue through continued negotiation does not appear likely.

Section 6.2 Default.

A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

Section 6.3 Amendments.

This Agreement may not be altered or modified, except by a writing signed by the Parties.

Section 6.4 Status of Provider.

Provider enters into this Agreement, and will remain throughout the term of the Agreement, an independent Provider. Neither Provider nor its employees, agents or independent Providers shall become an employee, joint venturer, partner, agent or principal of the District while this Agreement is in effect. Provider's employees, agents and independent Providers shall not be entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit.

Section 6.5 Governing Law.

This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all Parties were residents of California and the Agreement was made and performed in California.

Section 6.6 Notices.

All notices and demands between the Parties hereto shall be in writing and shall be served either personally or by registered or certified mail. Such notices or demands shall be deemed given when personally delivered or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the Party to whom such notice or demand is to be given or made. Such notices and demands may also be sent by telex, telegraph, telecopier or other similar electronic transmission device providing for a permanent record of the notice or demand, and, if so served, such notice or demand shall be deemed given and made at the time the device confirms to the sender delivery thereof to the addressee.

All notices and demands shall be given as follows:

To the District:

Attn: Amari Watkins
Associate Superintendent of
Business Services

Davis Joint Unified School District
526 B Street
Davis, CA 95616-3811

To the Provider:

Attn: Tom DeSimone
Senior Engineer Geologist

Wallace Kuhl & Associates
3050 Industrial Boulevard
West Sacramento, CA 95691

Each Party may designate in writing such other place or places that notices and demands may be given.

Section 6.7 Assignment.

This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

Section 6.8 Order of Precedence.

In the event of any conflict or inconsistency in the interpretation of this Agreement (including Attachments), such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement, then to the Attachments.

Section 6.9 Agreement Interpretation.

This Agreement is the result of arm's length negotiations between the Parties, and shall be construed as drafted by all Parties such that any ambiguities shall not be construed against either Party.

Section 6.10 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all signatories hereto have signed a counterpart of this Agreement.

Section 6.11 Entire Agreement.

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all other prior and contemporary agreements, understanding, and commitments between the Parties with respect to the subject matter of the Agreement.

Section 6.12 Severability.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 6.13 Effect of Recitals.

The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

Section 6.14 Force Majeure.

Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, pandemics, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date of this Agreement.

DISTRICT:

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By: _____

Amari Watkins
Associate Superintendent of Business Services

PROVIDER:

WALLACE KUHL & ASSOCIATES

By:  _____

Tom DeSimone, Senior Engineer Geologist

APPENDIX A
SCOPE OF SERVICES

See attached Scope of Work.

January 20, 2021

DSA File No. 57-11
DSA App. No. 02-118523
LEA No. 116

Mr. David Burke
Davis Joint Unified School District
1919 5th Street
Davis, California 95616

Cost Proposal - Testing and Inspection Services

BIRCH LANE ELEMENTARY SCHOOL – MULTIPURPOSE BUILDING

1600 Birch Lane
Davis, CA 95616
WKA Proposal No. 45PR2102

Wallace-Kuhl and Associates is pleased to submit this proposal to provide testing and inspection services during construction of the new Multipurpose Building at Birch Lane Elementary School in Davis, California. The project consists of construction of installation of a new 9,620 square foot building and canopy, new fire lane and pavements, and relatively minor modernization work at the existing campus. Our firm previously prepared a *Geotechnical Engineering and Geologic Hazards Report* for the project, (WKA No. 12753.01P, dated May 28, 2020).

Our budget estimate is based on review of the project plans and specifications prepared by HMC Architects, (dated November 16, 2020), preliminary construction schedule (dated January 14, 2021), and discussions with project personnel. We understand our scope of work would include inspection and testing of earthwork; structural concrete and rebar; post-installed concrete anchors; structural steel welding; and high strength bolting as required by the project documents, as well as preparation of the DSA required documentation.

Based on our experience, we estimate that our fee for the special inspection and testing services required for this project would be approximately **\$117,720**. Billing would be only for work performed and determined based on the attached 2021P Schedules of Fees. Please be aware that we bill for our hourly services on a portal-to-portal basis from our nearest office. Also, the construction schedule and the contractor's efficiency affect the number of site visits - and the cost - required for our services. Our representatives would work with the Project Inspector to perform our work in a timely and efficient manner.

In order to provide the most efficient and responsive service, scheduling for inspections must be made at least 24 hours in advance of the work.

BIRCH LANE ELEMENTARY SCHOOL – MULTIPURPOSE BUILDING

January 20, 2021

WKA Proposal No. 45PR2102

In addition, it is considered essential that the contractor be notified well in advance of your intention to have special inspection and testing performed, so that they are prepared for the required inspections. Please notify us immediately if the inspection is canceled so that you do not incur a trip charge.

To assure that all parties fully understand the limitations of our role in your project, we emphasize that our representative will not act as supervisor of construction, nor will they direct construction operations. The various sub-contractors should be informed that neither the presence of our representative nor the testing by our firm shall excuse them from defects discovered in their work. Job and site safety of the contractor's personnel will be the sole responsibility of the contractor.

Our agreement for this work is attached to this proposal. If this proposal is acceptable, please sign the agreement and return it to us as our written authorization to proceed. We will return a fully executed copy of the agreement to you for your files. Please inform us if wet signed copies of the agreement are required. If that is the case, please print sign and return two copies of the agreement to our office. We will then return a fully executed copy by US mail for your files.

Wallace - Kuhl & Associates



Tom C. DeSimone

Senior Engineering Geologist

Attachments: Budget Estimate
Construction Testing Agreement
2021P Fee Schedules



Budget Estimate
BIRCH LANE ELEMENTARY SCHOOL MULTIPURPOSE BUILDING
Davis, California
Page 1

	Unit	Cost (\$) Per Unit	Estimated Days	Estimated Quantity	Total
SOILS TESTING AND INSPECTION					
Rough Grading Inspection/Testing	hour	\$ 120.00	8	8	\$ 7,680.00
Building Pad Special Inspection/Testing	hour	\$ 120.00	2	8	\$ 1,920.00
Shallow Foundation Inspection	hour	\$ 120.00	3	4	\$ 1,440.00
Utility Trench Backfill Testing	hour	\$ 120.00	25	8	\$ 24,000.00
Flatwork Subgrade Inspection/Testing	hour	\$ 120.00	3	4	\$ 1,440.00
Flatwork Aggregate Base Inspection/Testing	hour	\$ 120.00	3	4	\$ 1,440.00
Pavement Subgrade Inspection/Testing	hour	\$ 120.00	3	4	\$ 1,440.00
Pavement Aggregate Base Inspection/Testing	hour	\$ 120.00	3	4	\$ 1,440.00
Laboratory Testing					
ASTM D1557 Curve	each	\$ 270.00		5	\$ 1,350.00
PROJECT ADMINISTRATION, REVIEW & REPORTS					
Project Related Meetings	hour	\$ 120.00	2	4	\$ 960.00
Supervising Technician	hour	\$ 120.00	2	4	\$ 960.00
Senior Engineer	hour	\$ 195.00	25	2	\$ 9,750.00
Mileage	Mile	\$ 0.75	53	25	\$ 993.75
SOILS TOTAL					\$ 54,813.75
CONCRETE TESTING AND INSPECTION					
Concrete Mix Design Review by Senior Engineer	hour	\$ 195.00	2	1	\$ 390.00
Reinforcing Steel Sampling and Tagging	hour	\$ 115.00	4	4	\$ 1,840.00
Batch Plant Inspection	hour	\$ 115.00	14	2	\$ 3,220.00
Concrete Placement T&I					
Continuous and Spread Footings	hour	\$ 115.00	4	4	\$ 1,840.00
Slab-on-Grade	hour	\$ 115.00	2	6	\$ 1,380.00
Walls	hour	\$ 115.00	1	6	\$ 690.00
Slab-on-Deck (Platform Slab)	hour	\$ 115.00	1	4	\$ 460.00
Miscellaneous	hour	\$ 115.00	6	4	\$ 2,760.00
Retrieve Test Samples	hour	\$ 115.00	14	1	\$ 1,610.00
Laboratory Testing					
Concrete Test Cylinders - 20 sets of 5	each	\$ 30.00		100	\$ 3,000.00
Reinforcing Steel Tensile Testing	each	\$ 95.00		12	\$ 1,140.00
Reinforcing Steel Bend Testing	each	\$ 50.00		12	\$ 600.00
CONCRETE TOTAL					\$ 18,930.00
POST-INSTALLED CONCRETE ANCHORS TESTING AND INSPECTION					
Concrete Anchor Installation Inspection	hour	\$ 115.00	4	3	\$ 1,380.00
Concrete Anchor Proof Load Testing	hour	\$ 145.00	4	3	\$ 1,740.00
Concrete Anchor Torque Testing	hour	\$ 120.00	4	3	\$ 1,440.00
ANCHOR TOTAL					\$ 4,560.00



Budget Estimate
BIRCH LANE ELEMENTARY SCHOOL MULTIPURPOSE BUILDING
 Davis, California
 Page 2

	Unit	Cost (\$) Per Unit	Estimated Days	Estimated Quantity	Total
STRUCTURAL STEEL TESTING AND INSPECTION					
Shop Welding Inspection - assuming local fabricator	hour	\$ 105.00	25	4	\$ 10,500.00
Field Welding Inspection	hour	\$ 120.00	35	4	\$ 16,800.00
Non-Destructive Testing - UT/MT/PT	hour	\$ 145.00	3	4	\$ 1,740.00
Laboratory Testing					
High Strength Bolt Testing - 8 sets	set	\$ 420.00		8	\$ 3,360.00
STRUCTURAL STEEL TOTAL					\$ 32,400.00
PROJECT ADMINISTRATION, REVIEW & REPORTS					
Project Administration	hour	\$ 120.00	20	1	\$ 2,400.00
Senior Engineer - Report Review / DSA Documentation	hour	\$ 195.00	12	1	\$ 2,340.00
Mileage	Mile	\$ 0.75	121	25	\$ 2,268.75
PROJECT ADMINISTRATION TOTAL					\$ 7,008.75
PROJECT TOTAL					\$ 117,712.50



**AGREEMENT FOR CONSTRUCTION
TESTING SERVICES**

THIS AGREEMENT, effective as of January 20, 2021, is by and between **Davis Joint Unified School District ("Client")** and **River City Geoprosessionals, Inc., dba Wallace-Kuhl and Associates ("WKA")**.

THE PROJECT: **BIRCH LANE ELEMENTARY SCHOOL – MULTI PURPOSE BUILDING**

THE PROJECT is generally described as:

The project consists of construction of installation of a new 9,620 square foot building and canopy, new fire lane and pavements, and relatively minor modernization work at the existing campus IN Davis, California ("Project Site").

THIS AGREEMENT consists of the following documents which are incorporated herein by reference:

- General Conditions for Construction Testing Services;
- **WKA's** Scope of Services Letter and,
- **WKA's** Schedule of Fees (Exhibit A).

WKA agrees to perform the Services set forth in this Agreement and in accordance with its terms, including all attachments incorporated herein by reference. This Agreement may not be modified or altered, except in writing as specifically described in this Agreement.

	<u>CLIENT:</u>	<u>WKA:</u>
Signature:	_____	_____
Print Name:	_____	Tom C. Desimone
Title:	_____	Senior Engineering Geologist
Company:	Davis Joint Unified School District	River City Geoprosessionals, Inc., dba Wallace-Kuhl and Associates (WKA)
Address:	621 Galveston Street	3050 Industrial Boulevard
	West Sacramento, CA 95691	West Sacramento, CA 95691
Date:	_____	_____

GENERAL CONDITIONS FOR CONSTRUCTION TESTING SERVICES

1. DEFINITIONS

1.1. Contract Documents. Plans, specifications, and agreements between Client and Contractors, including addenda, amendments, supplementary instructions, and change orders.

1.2. Contractor. The contractor or contractors retained to construct the Project for which **Wallace-Kuhl and Associates (WKA)** is providing Services under this Agreement.

1.3. Day(s). Calendar day(s) unless otherwise stated.

1.4. Hazardous Materials. The term Hazardous Materials means any toxic substances, chemicals, radioactivity, pollutants or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated or listed in any federal, state or local law, regulation or ordinance concerning hazardous wastes, toxic substances or pollution.

1.5. Services. The Services provided by **WKA** as set forth in this Agreement, the SCOPE OF SERVICES and any written amendment to this Agreement.

1.6. Work. The labor, materials, equipment and services required to complete the work described in the Contract Documents.

2. SCOPE OF SERVICES

WKA will perform the Services set forth in the attached SCOPE OF SERVICES.

2.1. Changes in Scope. If **WKA** provides Client with a writing confirming a change in the SCOPE OF SERVICES, it will become an amendment to this Agreement unless Client objects in writing within 5 business days after receipt. All Services performed by **WKA** on the Project are subject to the terms and limitations of this Agreement. If Services are performed, but the parties do not reach agreement concerning modifications to the SCOPE OF SERVICES or compensation, then the terms and limitations of this Agreement apply to such Services, except for the payment terms. The parties agree to resolve disputes concerning modifications to scope or compensation pursuant to Section 19, "Disputes."

2.2. Licenses. **WKA** will procure and maintain business and professional licenses and registrations necessary to provide its Services.

2.3. Excluded Services. **WKA's** Services under this Agreement include only those Services specified in the SCOPE OF SERVICES.

2.3.1. General. Client expressly waives any claim against **WKA** resulting from its failure to perform recommended additional Services that Client has not authorized **WKA** to perform, and any claim that **WKA** failed to perform services that Client instructs **WKA** not to perform.

2.3.2. Biological Pollutants. **WKA's** SCOPE OF SERVICES specifically excludes the investigation, detection, prevention or assessment of the presence of Biological Pollutants. The term "Biological Pollutants" includes, but is not limited to, molds, fungi, spores, bacteria, viruses, and/or any of their byproducts. **WKA's** SCOPE OF SERVICES will not include any interpretations, recommendations, findings, or conclusions pertaining to Biological Pollutants. Client agrees that **WKA** has no liability for any claims alleging a failure to investigate, detect, prevent, assess, or make recommendations for preventing, controlling, or abating Biological Pollutants. Furthermore, Client agrees to defend, indemnify, and hold harmless **WKA** from all claims by any third party concerning Biological Pollutants, except for damages caused by **WKA's** sole negligence.

3. PAYMENTS TO WKA

3.1. Basic Services. **WKA** will perform all Services set forth in the attached SCOPE OF SERVICES AND SCHEDULE OF FEES for the amount(s) set forth therein.

3.2. Additional Services. Any Services performed under this Agreement, except those Services expressly identified in the attached SCOPE OF SERVICES, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. **WKA** will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by **WKA**. Client recognizes that changes in scope and schedule, and unforeseen circumstances can all influence the successful completion of Services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the Services will be completed for that amount; rather, it indicates that **WKA** shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

3.4. Rates. Client will pay **WKA** at the rates set forth in the attached SCHEDULE OF FEES.

3.4.1. Changes to Rates. Client and **WKA** agree that the SCHEDULE OF FEES is subject to periodic review and amendment, as appropriate to reflect **WKA's** then-current fee structure. **WKA** will give Client at least 30 days



advance notice of any changes. Unless Client objects in writing to the proposed amended fee structure within 30 days of notification, the amended fee structure will be incorporated into this Agreement and will then supersede any prior fee structure. If Client timely objects to the amended fee structure, and WKA and Client cannot agree upon a new fee structure within 30 days after notice, WKA may terminate this Agreement and be compensated as set forth under Section 18, "Termination."

3.4.2. Prevailing Wages. Unless Client specifically informs WKA in writing that prevailing wage regulations cover the Project and the SCOPE OF SERVICES identifies it as covered by such regulations, Client will reimburse, defend, indemnify and hold harmless WKA from and against any liability resulting from a subsequent determination that prevailing wage regulations cover the Project, including all costs, fines and attorneys' fees.

3.5. Payment Timing; Late Charge. All invoices are due upon receipt. All amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the invoice, at the rate of 1-1/2% per month or the highest rate permitted by law. If the Client is an LLC or LLP, the person signing this agreement shall be personally responsible for payment of all invoices and late fees.

4. STANDARD OF PERFORMANCE; DISCLAIMER OF WARRANTIES

4.1. Level of Service. WKA offers different levels of Geotechnical and Environmental Engineering and Construction Testing Services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive Services yield more information and reduce the probability of error, but at increased cost. Client must determine the level of Services adequate for its purposes. Client has reviewed the SCOPE OF SERVICES and has determined that it does not need or want a greater level of Services than that being provided.

4.2. Standard of Care. Subject to the limitations inherent in the agreed SCOPE OF SERVICES as to the degree of care, the amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, WKA will perform its Services consistent with that level of care and skill ordinarily exercised by other professional engineers practicing in the same locale and under similar circumstances at the time the Services are performed.

4.3. No Warranty. No warranty, either express or implied, is included or intended by this Agreement.

5. ESTIMATE OF CONSTRUCTION COSTS

Client acknowledges that construction and Project development are subject to many influences that are not subject to precise forecasting and are outside of WKA's

control. Client further acknowledges that actual costs incurred may vary substantially from the estimates prepared by WKA and that WKA does not warrant or guaranty the accuracy of construction or development cost estimates.

6. CONSTRUCTION PHASE SERVICES

If WKA's SCOPE OF SERVICES includes observation and/or testing during the course of construction, WKA may:

6.1. Construction Observation.

6.1.1. Site Meetings & Visits. WKA will participate in job site meetings as requested by Client or Client's designated representative, and, unless otherwise requested by Client, visit the site at times specified in the SCOPE OF SERVICES or, if not specified in the SCOPE OF SERVICES, at intervals as WKA deems appropriate to the various stages of construction to observe the geotechnical conditions encountered by Contractor and the progress and quality of the geotechnical aspects of the Work. Based on information obtained during such visits and on such observations, WKA may inform Client of the progress of the geotechnical aspects of the Work. Client understands that WKA may not be on site continuously; and, unless expressly agreed otherwise, WKA will not observe all of the Work.

6.1.2. Contractor's Performance. WKA does not, and cannot, warrant or guarantee that all of the geotechnical Work performed by Contractor meets the requirements of WKA's geotechnical recommendations or the plans and specifications for such geotechnical Work; nor can WKA be responsible for Contractor's failure to perform the Work in accordance with the plans, specifications or the recommendations of WKA.

6.1.3. Contractor's Responsibilities. WKA will not supervise, direct or have control over the Work nor will WKA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor for the geotechnical aspects of the Project; for safety precautions and programs incident to the Work; nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor furnishing and performing its Work.

6.1.4. Final Report. At the conclusion of Construction Phase Services, WKA will provide Client with a written report summarizing the tests and observations, if any, made by WKA.

6.2. Review of Contractor's Submittals. If included in the SCOPE OF WORK, WKA will review and take appropriate action on the Contractor's submittals, such as shop drawings, product data, samples, and other required submittals. WKA will review such submittals solely for general conformance with WKA's design, and will not include review for the following, all of which will remain the responsibility of the Contractor: accuracy or completeness



of details, quantities or dimensions; construction means, methods, sequences or procedures; coordination among trades; or construction safety.

6.3. Tests. Tests performed by **WKA** on finished Work or Work in progress are taken intermittently and indicate the general acceptability of the Work on a statistical basis. **WKA's** tests and observations of the Work are not a guarantee of the quality of Work and do not relieve other parties from their responsibility to perform their Work in accordance with applicable plans, specifications and requirements.

7. CLIENT'S RESPONSIBILITIES

In addition to payment for the Services performed under this Agreement, Client agrees to:

7.1. Cooperation. Assist and cooperate with **WKA** in any manner necessary and within its ability to facilitate **WKA's** performance under this Agreement.

7.2. Representative. Designate a representative with authority to receive all notices and information pertaining to this Agreement, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the Project and this Agreement. Client's representative will be subject to change by written notice.

7.3. Rights of Entry. Provide access to and/or obtain permission for **WKA** to enter upon all property, whether or not owned by Client, as required to perform and complete the Services. **WKA** will operate with reasonable care to minimize damage to the Project Site(s). However, Client recognizes that **WKA's** operations and the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). The cost of repairing such damage will be borne by Client and is not included in the fee unless otherwise stated.

7.4. Relevant Information. Supply **WKA** with all information and documents in Client's possession or knowledge which are relevant to **WKA's** Services. Client warrants the accuracy of any information supplied by it to **WKA** and acknowledges that **WKA** is entitled to rely upon such information without verifying its accuracy. Prior to the commencement of any Services in connection with a specific property, Client will notify **WKA** of any known potential or possible health or safety hazard existing on or near the Project Site, with particular reference to Hazardous Materials or conditions.

7.5. Subsurface Structures. Correctly designate on plans to be furnished to **WKA**, the location of all subsurface structures, such as pipes, tanks, cables and utilities within the property lines of the Project Site(s) and be responsible for any damage inadvertently caused by **WKA** to any such structure or utility not so designated. **WKA** is not liable to Client for any losses, damages or claims arising from damage to subterranean structures or utilities that were not correctly shown on plans furnished by Client to **WKA**.

8. CHANGED CONDITIONS

If **WKA** discovers conditions or circumstances that it had not contemplated at the commencement of this Agreement ("Changed Conditions"), **WKA** will notify Client in writing of the Changed Conditions. Client and **WKA** agree to that they will then renegotiate in good faith the terms and conditions of this Agreement. If **WKA** and Client cannot agree upon amended terms and conditions within 30 days after notice, **WKA** may terminate this Agreement and be compensated as set forth in Section 18, "Termination."

9. HAZARDOUS MATERIALS

Client understands that **WKA's** Services under this Agreement are limited to geotechnical or environmental engineering and construction testing services and that **WKA** has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with Hazardous Materials. Client is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any Hazardous Materials located on or in the Project site, or located during the performance of this Agreement. The existence or discovery of Hazardous Materials constitutes a Changed Condition under this Agreement.

10. CERTIFICATIONS

Client agrees not to require that **WKA** execute any certification with regard to Services performed or Work tested and/or observed under this Agreement unless: 1) **WKA** believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) **WKA** believes that the Services performed or Work tested and/or observed meet the criteria of the certification; and 3) **WKA** has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by **WKA** is limited to an expression of professional opinion based upon the Services performed by **WKA**, and does not constitute a warranty or guaranty, either express or implied.

11. ALLOCATION OF RISK

11.1. Limitation of Liability. The total cumulative liability of **WKA**, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "**WKA Entities**"), to Client arising from Services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by **WKA** under this Agreement or \$50,000, whichever is greater; provided, however, that such liability is further limited as described below. This limitation applies to all lawsuits, claims or actions that allege errors or omissions in **WKA's** Services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written



request, **WKA** and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in **WKA's** fee, provided that they amend this Agreement in writing as provided in Section 20.

11.2. Indemnification.

11.2.1. Indemnification of Client. Subject to the provisions and limitations of this Agreement, **WKA** agrees to indemnify and hold harmless Client, its shareholders, officers, directors, and employees from and against any and all claims, suits, liabilities, damages, expenses (including reasonable attorney's fees and costs of defense), or other losses (collectively "Losses") to the extent caused by **WKA's** negligent performance of its Services under this Agreement and proportionate the degree of fault of **WKA**. Notwithstanding the foregoing, **WKA** has no immediate obligation to provide the defense of any indemnified party for claims, suits, liabilities, damages, expenses alleged to have been caused by the negligent performance of professional services performed by **WKA**. **WKA** agrees to reimburse indemnified parties their reasonable cost of defense ultimately determined by an arbiter or Court of competent jurisdiction to have been caused by **WKA's** negligent performance of professional services and proportionate to **WKA's** fault.

11.2.2. Indemnification of WKA. Client will indemnify and hold harmless **WKA Entities** from and against any and all Losses to the extent caused by the negligence of Client, its employees, agents and contractors. In addition, except to the extent caused by **WKA's** sole negligence, Client expressly agrees to defend, indemnify and hold harmless **WKA Entities** from and against any and all Losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of Hazardous Materials, or the exposure of any person to Hazardous Materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to Hazardous Material.

11.3. Consequential Damages. Neither Client nor **WKA** will be liable to the other for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

11.4. Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If **WKA** provides Services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations on liability established under this Agreement apply to such Services as if the parties had executed an amendment.

12. INSURANCE

12.1. WKA's Insurance. **WKA** will obtain, if reasonably available, the following coverages:

12.1.1. Statutory Workers' Compensation/Employer's Liability Insurance;

12.1.2. Commercial General Liability Insurance with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;

12.1.3. Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles with minimum limits of \$1,000,000 for bodily injury per person, \$1,000,000 property damage, and \$1,000,000 combined single limit per occurrence; and,

12.1.4. Professional Liability Insurance in amounts of \$2,000,000 per claim and annual aggregate.

12.2. Contractor's Insurance. Client shall require that all Contractors and subcontractors for the Project name **WKA** as an additional insured under their General Liability and Automobile Liability insurance policies. If Client is not the Project owner, Client will require the Project owner to require the owner's Contractor to purchase and maintain General Liability, Builder's Risk, Automobile Liability, Workers' Compensation, and Employer's Liability insurance with limits no less than as set forth above, and to name **WKA** and its subcontractors and subconsultants as additional insureds on the General Liability insurance.

12.3. Certificates of Insurance. Upon request, **WKA** and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required herein shall contain a waiver of subrogation.

13. OWNERSHIP AND USE OF DOCUMENTS

13.1. Client Documents. All documents provided by Client will remain the property of Client. **WKA** will return all such documents to Client upon request but may retain file copies of such documents.

13.2. WKA's Documents. Unless otherwise agreed in writing, all documents and information prepared by **WKA** or obtained by **WKA** from any third party in connection with the performance of Services, including, but not limited to, **WKA's** reports, boring logs, maps, field data, field notes, drawings and specifications, laboratory test data and other similar documents (collectively "Documents") are the property of **WKA**. **WKA** has the right, in its sole discretion, to dispose of or retain the Documents.

13.3. Use of Documents. All Documents prepared by **WKA** are solely for use by Client and will not be provided by either party to any other person or entity without **WKA's** prior written consent.



13.3.1. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with the Project for which the Services are provided, including without limitation design and licensing requirements of the Project.

13.3.2. Use by WKA. WKA retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from its Services and the right to use the Documents for any purpose.

13.4. Electronic Media. WKA may agree at Client's request to provide Documents and information in an electronic format. Client recognizes that Documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration due to (among other causes) transmission, conversion, media degradation, software error, or human alteration. Accordingly, all Documents and information provided by WKA in electronic media are for informational purposes only and not as final documentation. Unless otherwise defined in the Scope of Services, WKA's electronic Documents and media will conform to WKA's standards. WKA will provide any requested electronic Documents for a 30-day acceptance period, and WKA will correct any defects reported by Client to WKA and provide one round of reasonable editorial revisions during this period. WKA makes no warranties, either express or implied, regarding the fitness or suitability of any electronic Documents or media.

13.5. Unauthorized Reuse. No party other than Client may rely, and Client will not represent to any other party that it may rely on Documents without WKA's express prior written consent and receipt of additional compensation. Client will not permit disclosure, mention, or communication of, or reference to the Documents in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material without WKA's express prior written consent. Client waives any and all claims against WKA resulting in any way from the unauthorized reuse or alteration of Documents by itself or anyone obtaining them through Client. Client will defend, indemnify and hold harmless WKA from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained Documents provided to such person or entity, published, disclosed or referred to without WKA's prior written consent.

14. SAMPLES AND CUTTINGS

14.1. Sample Retention. If WKA provides laboratory testing or analytic Services, WKA will preserve such soil, rock, water, or other samples as it deems necessary for the Project, but no longer than 45 days after issuance of any Documents that include the data obtained from these samples. Client will promptly pay and be responsible for the removal and lawful disposal of all contaminated samples, cuttings, Hazardous Materials, and other hazardous substances.

14.2. Monitoring Wells. Client will take custody of all monitoring wells and probes installed during any investigation by WKA and will take any and all necessary steps for the proper maintenance, repair or closure of such wells or probes at Client's expense.

15. RELATIONSHIP OF THE PARTIES

WKA will perform Services under this Agreement as an independent contractor.

16. ASSIGNMENT AND SUBCONTRACTS

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. WKA may subcontract for the services of others without obtaining Client's consent if WKA deems it necessary or desirable for others to perform certain Services.

17. SUSPENSION AND DELAYS

17.1. Procedures. Client may, at any time by 10 days written notice suspend performance of all or any part of the Services by WKA. WKA may terminate this Agreement if Client suspends WKA's Services for more than 60 days and Client will pay WKA as set forth under Section 18, "Termination." If Client suspends WKA's Services, or if Client or others delay WKA's Services, Client and WKA agree to equitably adjust: (1) the time for completion of the Services; and (2) WKA's compensation in accordance with WKA's then current SCHEDULE OF FEES for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or charges incurred by WKA for demobilization and subsequent remobilization.

17.2. Liability. WKA is not liable to Client for any failure to perform or delay in performance due to circumstances beyond WKA's control, including but not limited to pollution, contamination, or release of hazardous substances, strikes, lockouts, riots, wars, fires, flood, explosion, pandemics, epidemics, adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market.

18. TERMINATION

18.1. Termination for Convenience. WKA and Client may terminate this Agreement for convenience upon 30 days written notice delivered or mailed to the other party.

18.2. Termination for Cause. In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party. The termination notice shall state the basis for the termination. The



Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

18.3. Payment on Termination. Following termination other than for **WKA's** material breach of this Agreement, Client will pay **WKA** for Services performed prior to the termination notice date, and for any necessary Services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with **WKA's** then current SCHEDULE OF FEES.

19. DISPUTES

19.1. Mediation. All disputes between **WKA** and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice.

19.2. Precondition to Other Action. No action or suit may be commenced unless the mediation did not occur within 45 days after service of notice; or the mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

19.3. Choice of Law; Venue. This Agreement will be construed in accordance with and governed by the laws of the State of California. Unless the parties agree otherwise, any mediation or other legal proceeding will occur in the state and county in which the Project is located.

19.4. Statutes of Limitations. Any applicable statute of limitations will be deemed to commence running on the

earlier of the date of substantial completion of **WKA's** Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

20. MISCELLANEOUS

20.1. Integration and Severability. This Agreement reflects the entire agreement of the parties with respect to its terms and supersedes all prior agreements, whether written or oral. If any portion of this Agreement is void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as the law allows.

20.2. Modification of this Agreement. This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

20.3. Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

20.4. Headings. The headings used in this Agreement are for convenience only and are not a part of this Agreement.

20.5. Waiver. The waiver of any term, conditions or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

End of General Conditions



EXHIBIT A
WKA Schedule of Fees

