

CONTRACT NAME: AGREEMENT BETWEEN BUSINESS PROTECTION SPECIALISTS INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: Consultant services agreement to review prior DJUSD Safety Assessment from 2015 and to provide input and safety recommendations for the Facilities Master Plan for potential safety improvements and upgrades.

FISCAL IMPACT: Cost for these services to be paid from restricted facilities project funds. No General Fund impact.

CONSULTANT'S AGREEMENT

This AGREEMENT is made as of April 17, 2018 by and between

Business Protection Specialists Inc.

with principal place of business at:

1296 E. Victor Rd. Suite B,
Victor, New York 14564

hereinafter referred to as CONSULTANT, and

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

hereinafter referred to as CLIENT, and

Witnessed:

1. CLIENT desires to engage CONSULTANT and CONSULTANT hereby agree to perform the following services, on the basis stated herein. Such services are hereinafter referred to as the WORK and are specifically defined in APPENDIX A hereto which is made a part of hereof. Subsequent additional WORK assignments may be added to this AGREEMENT from time to time during the term thereof by the execution by the parties hereto of additional appendices covering such assignments, which shall also be deemed parts hereof.
2. The term of this AGREEMENT shall commence as of April 15, 2018 and continue until and including April 14, 2020, unless previously terminated in accordance with section 14.
3. During the term of this AGREEMENT, CONSULTANT shall impart to CLIENT knowledge, information, ideas, suggestions and advice in furtherance of and relating to the WORK and CLIENT shall have the right to make use of the same in its business (including that of CLIENT and/or its subsidiaries and/or affiliates) at any time as it may desire without additional consideration to CONSULTANT other than that specifically stated herein. All reports, drawings and other documents furnished by CONSULTANT in the course of or as the result of performing the WORK shall be the property of CLIENT and may be used by CLIENT for any purpose whatsoever and without restriction.

4. During the term of this AGREEMENT, CONSULTANT shall be available for consultation at such times and at such location or locations as CLIENT and CONSULTANT agree. CONSULTANT shall be available during the hours normally worked by CLIENT's employees unless otherwise agreed upon between CLIENT and CONSULTANT, as set forth in APPENDIX A.
5. In their performance of the WORK, CONSULTANT may acquire confidential and proprietary information of CLIENT. CONSULTANT shall not disclose to anyone not employed or designated by CLIENT nor use, except on behalf of CLIENT, any such confidential and proprietary information acquired in the performance of the WORK except as authorized by CLIENT in writing and, regardless of the term of this AGREEMENT, CONSULTANT shall be bound by this obligation until such time as said confidential and proprietary information shall lawfully become part of the public domain. Information regarding all aspects of CLIENT's business and information concerning the WORK (either directly or indirectly acquired by CONSULTANT, its agents or employees or developed by CONSULTANT, its agents or employees in the performance of the WORK) shall be presumed to be confidential and proprietary except to the extent that the same shall have been lawfully published without restriction. CONSULTANT also agrees not to disclose to CLIENT or any of its agents any information CONSULTANT holds subject to an obligation of confidence to any third person or persons, whether natural or judicial.
6. CONSULTANT agrees that all tangible as well as intangible forms of the previously mentioned confidential and proprietary information which CONSULTANT acquires pursuant to this AGREEMENT (i) shall be safeguarded with same degree of control and care as a reasonable prudent person would exercise with respect to his or her own similar property under similar circumstances and (ii) shall be returned to CLIENT immediately upon termination of the work or sooner upon oral and/or written request therefore.
 - a. CONSULTANT further agrees to obligate in writing CONSULTANT's employees or other agents to observe and to be bound by the same confidentiality requirements by which CONSULTANT is bound hereunder by CLIENT. The form requirements by which CONSULTANT shall use for this purpose is attached hereto and made a part as APPENDIX B which is hereby incorporated into and made a part of the AGREEMENT.
7. CONSULTANT shall be paid for their performance of the WORK an amount consisting of:
 - a. A fee as specified in APPENDIX C to this AGREEMENT or any amendments or additions to APPENDIX C to which the parties to this AGREEMENT may subsequently agree in writing.
 - b. Either the actual cost of CONSULTANT's reasonable travel and living expenses or an agreed-to amount for such travel and living expenses, other than normal commutation travel, which CONSULTANT's employees are away from their

places of residence solely for their performance of the WORK at the request of CLIENT.

- c. Any special costs or expenses incurred by CONSULTANT shall be supported by original receipts only and such additional documentation as may be acceptable to CLIENT.
8. All receipts for reimbursement by CONSULTANT shall be supported by original receipts only and such additional documentation as may be acceptable to CLIENT.
9. CONSULTANT shall keep accurate and complete accounts and time records showing all actual costs, expenses and other charges incurred hereunder in accordance with generally accepted accounting principles and practices consistently applied. Such accounts and records shall be made a part of any invoice submitted by CONSULTANT.

Invoices shall be sent upon completion of assignment or on a calendar monthly basis. The number of hours worked, the hourly rate and the period covered should be included on the invoice.

Such invoices, if correct, shall be paid by CLIENT within thirty (30) calendar days after receipt. CONSULTANT shall during regular business hours afford CLIENT's designated auditors or other representatives access to CONSULTANT's books and records insofar as they relate to CONSULTANT's performance of the WORK hereunder to enable CLIENT to determine CONSULTANT's compliance with all of the provisions of this AGREEMENT.

10. CONSULTANT's relationship to CLIENT shall be that of an independent consultant and nothing herein shall be construed as creating, at any time or for any purpose, the relationship of employer and employee between the parties hereto. Accordingly, CONSULTANT and its agents and employees shall not be entitled, as a result or by reason of this AGREEMENT, to any of the benefits under any employee benefit plan CLIENT, its subsidiaries or affiliates presently have in effect or may put into effect in the future; nor shall CONSULTANT be considered an employee of CLIENT for purposes of any tax or contribution now or hereafter levied by and federal, state or municipal government.
 - a. Except as otherwise provided herein, CONSULTANT agrees that all of CONSULTANT's employees and/or other agents assigned to perform services for CLIENT under this AGREEMENT shall be for the duration of this AGREEMENT and for any relevant time thereafter, employees of CONSULTANT. CONSULTANT also agrees to be exclusively responsible to file all returns and reports, withhold and/or pay applicable federal, state, and local wage or employment related taxes, including but not limited to income taxes, gross receipts taxes, taxes measured by gross income, social security taxes and unemployment taxes for CONSULTANT or CONSULTANT's employees and/or other agents, to which CONSULTANT may ultimately be subject under this AGREEMENT.

- b. CONSULTANT hereby further agrees to reimburse CLIENT for any wage, employment related or any other taxes not so withheld and/or remitted and for any costs and expenses, including reasonable attorneys' fees, penalties and interest, which CLIENT may incur by reason of CONSULTANT's failure to do so.
 - c. CONSULTANT hereby agrees to join CLIENT, at CONSULTANT's sole expense, in contesting any wage, employment related or any other taxes, sought to be imposed by any federal, state or local authority on or under this AGREEMENT and/or any other related AGREEMENT and sought to be collected from CLIENT by reason of this AGREEMENT or the performance thereof by either CLIENT, CONSULTANT, CONSULTANT's employees, or the agent(s) of either CLIENT or CONSULTANT. CONSULTANT agrees to reimburse CLIENT for any wage, employment related or any other taxes, assessments, penalties and interest, fines, civil or criminal, reasonable attorneys' fees or any other costs or expenses which CLIENT may incur by reason of CONSULTANT's failure to comply with the above-mentioned clauses.
 - d. CONSULTANT understands that failure to provide CONSULTANT's complete and correct taxpayer identification number to CLIENT may require CLIENT to comply with withholding requirements under applicable federal law and has voluntarily provided CLIENT with that number as part of this AGREEMENT.
11. Any invention, discovery or development, whether patentable or unpatentable or subject to copyright protection, which is made, conceived or first actually or constructively reduced to practice by CONSULTANT during the term of this AGREEMENT either
- a. in response to a question by CLIENT on matters concerning the WORK; or
 - b. as the solution to any problem relating to the WORK which either is raised by CLIENT with CONSULTANT or is recognized by CONSULTANT as a result of or in connection with the performance of the WORK; or
 - c. in the furtherance of any research program of CLIENT relating to the WORK upon which CLIENT is utilizing CONSULTANT's services under this AGREEMENT; or
 - d. wholly or partially based on or derived from confidential or proprietary information received by CONSULTANT from CLIENT; shall be the property of CLIENT. CONSULTANT shall promptly disclose each such invention, discovery and development to CLIENT in writing. CONSULTANT shall execute an assignment to CLIENT, or to any other party designated by CLIENT, of CONSULTANT's entire right, title and interest in and to each such invention, in and to all patent or copyright applications therefore, in and to all priority rights as acquired under the International Convention for the Protection of Industrial Property by the filing of any such application and in and to all patents or

copyrights that may be granted thereon throughout the United States and the world.

CONSULTANT undertakes to sign all lawful papers and, at CLIENT's sole expense, to assist CLIENT its designees, successors and assigns in every lawful way to obtain and sustain patents and/or copyrights as and when requested by CLIENT.

12. All copyrightable materials prepared by CONSULTANT, for use by CLIENT, its parent company and such parent company's subsidiaries and affiliates or in connection with services performed under this AGREEMENT, whether tangible or intangible and whether in written form, pictorial or other documentary or reproducible form, and in any medium whatsoever, shall be considered works made for hire and any and all copyrights in and to such materials are and shall be the sole property of CLIENT or its designee, property identified to CONSULTANT in writing.

CONSULTANT agrees to execute all documents reasonably requested by CLIENT and to render, at CLIENT's sole expense, whatever reasonable assistance CLIENT may request to enable CLIENT to perfect its interest in and to such copyrights whether in the United States of America, its territories and possessions or elsewhere in the world. In the event such copyright materials cannot be considered WORKS made for hire under applicable laws, then CONSULTANT shall assign all copyrights (including copyright renewal rights) in and to such materials to CLIENT or to CLIENT's designee.

13. CLIENT reserves and shall have the right to assign this AGREEMENT to any other company controlled directly or indirectly by CLIENT upon reasonable prior written notice to CONSULTANT.
 - a. CONSULTANT shall not subcontract or assign this AGREEMENT or all or any part of the WORK or any claims which may arise under this AGREEMENT without the prior written consent of CLIENT, which consent may not be unreasonably withheld by CLIENT. Any subconsultant engaged by CONSULTANT to perform any part of the WORK hereunder shall agree to be bound by all the terms and conditions of this AGREEMENT to the same extent as CONSULTANT.
14. CLIENT or CONSULTANT may terminate this AGREEMENT at any time for any or no reason by giving thirty (30) calendar days prior written notice to the other party. Upon such termination, CONSULTANT agrees to stop the WORK and to forward to CLIENT all completed or uncompleted reports, drawings and other documents relating to the WORK. In the event of such termination, CLIENT shall be liable only for such costs and expenses as have accrued prior to the effective date of such termination plus such additional costs and expenses as are determined by CLIENT and CONSULTANT to be essential for terminating said WORK. Termination shall not affect CONSULTANT's obligation with respect to Sections 5, 10, 11 and 12 hereof relating to confidential and proprietary information and inventions, respectively.

15. It is expressly understood and agreed that neither party shall during the term of this AGREEMENT and for a period of two years from the termination of this AGREEMENT, attempt to employ, or employ persons in the employ of the other party.
16. CONSULTANT and CONSULTANT's employees or other agents under this AGREEMENT shall not be authorized to use CLIENT's computer facilities for any purpose other than those of the WORK designated hereunder and, in no event, for any personal use, business or projects not connected with the WORK to be performed hereunder.
 - a. CONSULTANT shall not access CLIENT computer facilities without the prior written approval of the CLIENT.
 - b. Upon completion of the WORK by CONSULTANT, CONSULTANT's employees or agents, under this AGREEMENT, CONSULTANT and/or CONSULTANT's employees or agents shall return to CLIENT all hardware, software or other documentation provided by CLIENT intended or used for purposes of the WORK to be performed by CONSULTANT under this AGREEMENT.
17. This AGREEMENT contains the sole and entire AGREEMENT between the parties hereto with respect to the consulting services to be provided by or on behalf of CONSULTANT as specified herein. Either party except those that are expressly set forth herein has made no warranties, representations, inducements or understandings, orally or in writing.

This AGREEMENT may not be amended or waived, in whole or in part, except by a written instrument signed by the duly authorized representatives of both parties hereto which specifically refers to the provision or provisions of this AGREEMENT which are amended or waived thereby and for what period of time, if any.

Any failure of either party to insist at any time on strict performance of any obligation or obligations of the other party on such party's part to be performed hereunder shall not be deemed a course of conduct or dealing on the part of the former party which would preclude such party from subsequently insisting on strict and complete performance by the other party of any such obligation or obligations or of any other obligation hereunder.

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its rules on the conflict of laws.

18. The CONSULTANT shall purchase and maintain policies of insurance with an insurer or insurers qualified to do business in the State of California and acceptable to CLIENT which will protect CONSULTANT and CLIENT from claims which may arise out of or result from CONSULTANT'S actions or inactions relating to this

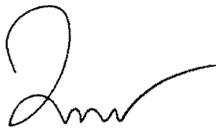
AGREEMENT, whether such actions or inactions by CONSULTANT, its agents, employees, consultants or subconsultants, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts or omissions any of them may be liable. The aforementioned insurance shall include the following:

- a. CONSULTANT shall carry Worker's Compensation and Employers Liability Insurance in accordance with the laws of the State of California.
 - b. Comprehensive general and auto liability insurance with limits not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, and \$2,000,000 in aggregate, including:
 - 1) owned, non-owned and hired vehicles;
 - 2) Broad form property damage;
 - 3) Products/completed operations; and
 - 4) Personal injury.
19. CONSULTANT shall indemnify, defend and hold CLIENT harmless from all claims, liabilities, damages or judgments involving a third party, including CLIENT'S costs and attorneys' fees, which arise as a result of CONSULTANT'S failure to meet any of its obligations under this Article.

IN WITNESS WHEREOF both parties hereto have caused this AGREEMENT to be executed as of the day and year first written above. The parties hereby affirm that this AGREEMENT accurately and completely reflects all of their understandings and agreements.

B.P.S. Inc.

Davis Joint Unified School District

By: 
Frank Pisciotta

By: _____

Title: President
Date: April 15, 2018

Title: _____
Date: _____

APPENDIX A
SCOPE OF WORK

Provide security design consultation to the CLIENT and the CLIENT's architect as directed.

APPENDIX B

CONSULTANT's AGREEMENT between *Business Protection Specialists Inc.* and Davis Joint Unified School District dated April 16, 2018.

PROPRIETARY INFORMATION AGREEMENT
AGREEMENT OF

Business Protection Specialists Inc. (hereinafter referred to as CONSULTANT), AND CLIENT, have entered into an AGREEMENT, Whereby CONSULTANT will provide CLIENT with Security Consultants to work at CLIENT's facilities more specifically identified in the AGREEMENT of which this APPENDIX is a part.

The undersigned employee of CONSULTANT hereby agrees that it, he or she will not disclose to any third person any proprietary or confidential information of CLIENT except to fellow employees of CONSULTANT, who have been authorized for receipt or such disclosure by CLIENT, either orally or in writing. The undersigned also hereby agrees that it, he or she will use such proprietary or confidential information solely for the purpose of carryout services for CLIENT under said AGREEMENT.

Any questions as to whether particular information is proprietary or confidential and subject to these commitments shall be referred to CLIENT's Counsel for a determination binding on all parties affected thereby.

The undersigned employee has read and agrees to be bound by all of the obligations of the Consulting Services Agreement including but not limited to Section 3, 5, 9, 10, 11, 15, and 16 thereof.

The undersigned, having read the foregoing, has affixed its, his or her signature hereto as of April 15, 2018 in accordance without reservation(s) of the obligations stated above.

By: Frank Pisciotta



Title President

Date: April 16, 2018

APPENDIX C

Business Protection Specialists Inc. (hereinafter referred to as CONSULTANT), AND CLIENT, have entered into an AGREEMENT, Whereby CONSULTANT will provide CLIENT with Security Consultants to work at CLIENT's facilities more specifically identified in the AGREEMENT as APPENDIX A.

CONSULTANT will perform these services at the discretion and direction of the CLIENT for either;

Option 1 – a fixed fee to be negotiated on a task order basis based on the Task Order structure provided in Contract Appendix D; or

Option 2 – on a time and materials basis at the rates below:

Principal Consultant - \$1,600 per day or \$200 per hour when less than a full eight hour day is worked

Technical Security Advisor - \$1,360 per day or \$175.00 per hour when less than a full eight hour day is worked

Risk Analyst - \$1,150 per day or \$143.75 per hour when less than a full eight hour day is worked

AutoCAD Drafter - \$600 per day or \$75 per hour when less than a full eight hour day is worked

APPENDIX D
Model Task Order

Proposal for Security Consulting Services

BPS has outlined the project scope, assumptions and deliverables below:

SCOPE OF SERVICES

Task One –

1. BPS will:

a.

2.

a.

Assumptions:

- The due date for the work is
-

Deliverables:

- Insert required work products

Cost:

Task 1	\$
Task 2	\$
Travel expenses	At cost
Total	\$