

PERRIS UNION HIGH SCHOOL DISTRICT

AGREEMENT FOR DSA INSPECTOR OF RECORD SERVICES

THIS AGREEMENT, made and entered into this 2nd day of August, 2017, by and between the Perris Union High School District of Riverside County, California hereinafter referred to as "District," and TYR, Inc. hereinafter referred to as "Inspector".

WITNESSETH:

WHEREAS, it is the desire of the Governing Board of the District to contract with Inspector to provide Division of State Architect (DSA) Inspector of Record (IOR) services as needed for the Perris Union High School District Solar Project.

WHEREAS, in consideration of the mutual promises of the parties hereto, the District hereby retains the Inspector upon the terms and conditions set forth, and the Inspector hereby accepts said retention and agrees to render the services upon said terms and conditions.

1. **TERM:** The term of this Agreement shall be for a period of One Year commencing August 2, 2017, and terminating Enter August 1, 2018, unless terminated earlier pursuant to Section 15.

2. **INCORPORATED DOCUMENTS:** The following documents are attached to and incorporated into this agreement;

- Exhibit B: TYR, Inc. quote dated August 1, 2017.

3. **SCOPE OF WORK:** As directed by the District, the Inspector agrees to the following:

A. Inspector shall provide the following services:

Division of State Architect (DSA) Inspector of Record (IOR) services as needed for the Perris Union High School District Solar Project.

4. **DISTRICT DESIGNEE:** Inspector shall provide its Services and Products to Hector Gonzalez, who is the District's designee in this matter ("District's Designee"). All Services and Products shall be subject to the approval of District's Designee.

5. **EXPENSES:** Inspector agrees and understands that some travel may be required, at Inspector's expense, to District school sites and/or to other locations. These travel expenses are not reimbursable and shall be considered to be an ordinary expense of this Agreement. Inspector shall not invoice the District for travel time from home office to a District location.

The Inspector shall assume all ordinary expenses incurred in the performance of this Agreement. Such ordinary expenses shall include, without limitation, document reproduction expenses, travel expenses, and telephone charges. Services and expenses that are above the ordinary and may be required shall not be reimbursable unless authorized in writing by the District's Designee, and shall be covered by addendum to this Agreement.

6. **SUBCONTRACTORS:** Inspector shall hire any subcontractors needed to provide the Services and/or the Products, which subcontractors shall be subject to approval by the District. Any subcontractor(s) shall be at no additional expense to the District, and shall be paid from the Inspector's own resources and billings.

7. **INDEPENDENT CONTRACTOR:** It is expressly understood and agreed to by both parties hereto that the Inspector, and any of its employees or subcontractors while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an officer, agent or employee of the District. Inspector shall determine the means, method and details of providing the Services and/or the Products. Subject to this Agreement, Inspector retains the right to provide similar or different Services or Products for others during the term of this Agreement. Inspector shall pay all wages, salaries, benefits and other amounts due its employees and sub-Inspectors, and shall be responsible for all reports and obligations respecting its employees and sub-Inspectors.

8. **ASSIGNMENT:** Inspector shall not assign this Agreement or any interests therein without the prior written approval of the District. Any such attempt to assign or sublet this Agreement without District approval shall be invalid.

9. **CONFIDENTIALITY:** Inspector and all personnel designated by Inspector to perform under this Agreement shall maintain the confidentiality of all information received while providing the Services and/or the Products. This requirement shall extend beyond the effective termination or expiration date of this Agreement.
10. **EXECUTION OF CONTRACT:** Inspector shall not commence providing Services and/or the Products under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under Exhibit "A". In addition, Inspector shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this section and Exhibit "A".
11. **INDEMNIFICATION:** Inspector shall defend, indemnify and hold the District, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Inspector, its officials, officers, employees, agents, Inspectors and contractors arising out of or in connection with the performance of the Services and/or the Products or this Agreement, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Inspector shall defend, at Inspector's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District, its directors, officials, officers, employees, agents or volunteers. Inspector shall pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Inspector shall reimburse District and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Inspector's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, its directors, officials, officers, employees, agents or volunteers.
12. The Services and/or Products required for the performance of the Services under this Agreement must be provided to the District's Designee no later than ten (10) days before the expiration of the term of the Agreement or at intermediate dates as requested by District's Designee. Failure to do so will result in the District withholding payment of progress or final invoice of Inspector until said Services and/or the Products are received by the District's Designee.
13. **FEE:** For Services and Products provided under the Agreement, the District will pay Inspector \$89 per Hour at a total cost not-to-exceed \$300,000.
14. **CONDUCT:** Inspector shall provide all Services and Products under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by others in the same profession in California. Inspector represents and warrants that all employees and subcontractors have sufficient skill and experience to perform the Services and/or the Products assigned to them.
15. **TERMINATION:** This Agreement may be terminated by District, for any reason, during the life of this Agreement, by giving thirty (30) days' notice to Inspector. Said notice shall be in writing and shall be delivered to the addresses listed for the Inspector. Inspector may terminate this Agreement only if District breaches this Agreement and shall give 30 days' written notice to District of its termination. Such notice shall be delivered to the District's Designee and shall set forth reasons for the termination.
16. **FISCAL YEAR:** Inspector understands and agrees that this Agreement may involve services to be performed in different school fiscal years. While it is the intent of the District to utilize the Inspector continuously throughout the term irrespective of fiscal year, Inspector and District agree and acknowledge that all services in fiscal years subsequent to the fiscal year of Agreement execution is contingent upon availability of continued funding.
17. **AUTHORITY:** In accordance with California Education Code Section 17604, this Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the Governing Board duly passed and adopted.
18. **ENTIRE AGREEMENT:** It is understood and agreed that this Agreement sets forth the entire understanding of the parties regarding the subject matter thereof, and no modification or amendment to this Agreement shall be binding unless said modification or amendment is in writing and duly executed with the same formality as this Agreement itself. This Agreement shall be binding on the successors and assigns of the parties.
19. **PERMITS & LICENSES:** Inspector shall, during the term of this Agreement, obtain and maintain all licenses, certificates, permits and approvals of whatever nature that are legally required to provide the Services and/or Products.

20. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California.
21. **COMPLIANCE:** Inspector shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the provision of the Services and/or the Products, including all Cal/OSHA requirements, and shall give all notices required by law. Inspector shall be liable for all violations of such laws and regulations in connection with providing the Services and/or the Products. If the Inspector performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the District, Inspector shall be solely responsible for all costs arising therefrom. Inspector shall defend, indemnify and hold District, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.
22. **RECORDS:** Inspector shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Inspector shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Inspector shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.
23. **FINGERPRINTING:** This contract is subject to the provisions of Education Code Section 45125.1. Inspectors' employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any site. 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 they are defined in Penal Code Sections 667.5c and 1192.7c respectively. Inspector shall not permit an employee to come in 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 45122.1. Inspector shall certify in writing to the District that none of its employees who may come in contact with students have been convicted of a felony as defined in Education Code Section 45122.2. District may request the removal of an employee from a site at any time. Failure to comply with this provision may result in termination of the Contract.
24. **NONDISCRIMINATION:** It is the policy of the District that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. Each Contractor agrees to comply with applicable Federal and California laws including, but not limited to, The California Fair Employment Practice Act, beginning with Government Code Section 12900, Labor Code Section 1735, and Title 5, Division 1, Chapter 1, Subchapter 4 of the California Code of Regulations. In addition, each Contractor agrees to require like compliance by any subcontractors employed on the work by him.
25. **WORKERS' COMPENSATION:** In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to his employees.
26. **WAIVER:** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

Inspector has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date written above:

Inspector:

Type or Print Inspector's Name

Inspector's Signature

Date

Inspector's Address

City State Zip

Phone Fax

Inspector's Email Address

DISTRICT:

Type or Print District Approver's Name

District Approver's Signature

District Approver's Title

Date

EXHIBIT "A" - Insurance Requirements

A. Minimum Requirements. Inspector shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Inspector, its agents, representatives, employees or subcontractors. Inspector shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

B. Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (A) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (B) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (C) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

C. Minimum Limits of Insurance. Inspector shall maintain limits no less than: (A) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (B) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (C) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

D. Professional Liability.[INCLUDE IF APPLICABLE] Inspector shall procure and maintain, and require its sub-Inspectors to procure and maintain errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

E. Insurance Endorsements. The insurance policies shall contain the following provisions, or Inspector shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

(1) General Liability. The general liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Services and/or the Products or operations performed by or on behalf of the Inspector, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Inspector's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Inspector's insurance and shall not be called upon to contribute with it.

(2) Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Inspector or for which the Inspector is responsible; and (B) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Inspector's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Inspector's insurance and shall not be called upon to contribute with it.

(3) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Inspector.

(4) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

F. Other Requirements. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers. Any deductibles or self-insured retentions must be declared to and approved by the District. Inspector shall guarantee that, at the option of the District, either: (A) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents and volunteers; or (B) the Inspector shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the District. Inspector shall furnish District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

EXHIBIT B:

TYR, Inc. quote dated August 1, 2017



August 1, 2017

Perris Union High School District
Attn: Hector Gonzalez
155 East 4th Street
Perris, CA 92570

[REFERENCE: 2017 SOLAR PROJECTS – 8 SITES](#)

Dear Mr. Gonzalez,

TYR, Inc. is honored to submit a price quote to Perris Union High School District for Inspection Services for the above-mentioned project.

The following hourly rate is for the above referenced project. It is based upon the estimated duration of August 1, 2017 thru January 31, 2018. With a Class II Inspector our hourly rate for this service will be \$89.00. Additionally, a 4% administrative fee will apply. (this estimate excludes overtime, off hours and legal holidays).

If there is any additional information you may need, please do not hesitate to call.

Best Regards,

A handwritten signature in blue ink that reads 'Youssef Sobhi'.

Youssef Sobhi
President and Senior Inspector