

Alvord Unified School District  
Riverside, California

Date: April 14, 2016

To: Sid Salazar, Ed.D., Superintendent of Schools

From: Kevin Emenaker, Executive Director, Administrative Services

Subject: Item 7.p.: Approve Professional Services Agreement – Lynn Capouya, Inc. Landscape Architects – Various Sites

**STAFF RECOMMENDATION:** Approve professional services agreement between Lynn Capouya, Inc. and Alvord Unified School District to provide site assessment and analysis of existing drainage concerns, irrigation, planting conditions and provide proposed solutions to existing issues encountered at Myra Linn and Orrenmaa elementary schools, Villegas Middle School and La Sierra High School effective April 15 through June 30, 2016.

**BACKGROUND INFORMATION:** In order to comply with Riverside County's water conservation requirements, Alvord Unified School District has commissioned Lynn Capouya, Inc. Landscape Architects to perform landscape observations and analysis. This will allow Alvord to determine what improvements can be made and the best possible solutions to rectify drainage issues and to conserve water. This will then be implemented at other school sites and will serve as a universal model for improvements.

**CURRENT CONSIDERATION:** Board approval of this item will allow Lynn Capouya, Inc. Landscape Architects to proceed with services.

**REVIEW BY OTHERS:** Cabinet; Executive Director, Administrative Services

**ATTACHMENTS:** Proposal, Agreement

**FISCAL IMPACT:** Not to Exceed \$37,023.00 (Deferred Maintenance)

**CONSENT ITEM**

**AGREEMENT BETWEEN  
ALVORD UNIFIED SCHOOL DISTRICT &  
GO ARCHITECTS  
FOR ARCHITECTURAL AND ENGINEERING SERVICES**

This Agreement is made and entered into this 15<sup>th</sup> day of April, 2016, in the State of California, by and between the Alvord Unified School District, the "District", and Lynn Capouya, Inc. Landscape Architects, the "Consultant", collectively the "Parties".

**RECITALS:**

**WHEREAS**, the DISTRICT requires specialized services and/or advice in connection with certain instructional, financial, economic, accounting, administrative, entertainment, recreational or amusement matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies; and

**WHEREAS**, the Consultant 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**, District desires Consultant to provide these services, and Consultant is willing to provide these specialized services, in accordance with the terms and conditions contained herein.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. DESCRIPTION OF SERVICES ("Services")**

Consultant shall provide to the District under the terms herein set forth in your proposal dated March 21, 2016. LCI's efforts will be directed towards site assessment and analysis of existing irrigation and planting conditions at five (5) Alvord USD school sites. LCI will provide proposed solutions to existing issues encountered at each site after review with Alvord Unified School District scheduled between April 15, 2016 through December 31, 2016.

**II. COMPENSATION**

District agrees to compensate Consultant for services satisfactorily rendered pursuant to this Agreement in an amount **not to exceed thirty-seven thousand twenty three dollars and (\$37,023.00). Total payments under this contract not to exceed \$37,023.00** – which includes the cost of all services, meals, mileage, copying and materials to be provided pursuant to this Agreement. Invoices must reflect all costs incurred in sufficient detail, and Consultant shall submit to District any documentation necessary to substantiate the full and satisfactory performance of the services of which payment is requested. Such invoices shall reflect the Purchase Order Number provided by District and be submitted to **Accounts Payable, Alvord Unified School District 9 KPC Parkway, 2<sup>nd</sup> Floor, Corona, CA 92879**. Payment is due to Consultant within thirty (30) days of receipt of Consultant's properly prepared invoice, but no sooner than the conclusion of satisfactory rendered services.

The District's standard payment terms are payment following provision of services and approval of a properly prepared invoice, which may not be fulfilled until after services are satisfactory rendered. If Consultant requires payment on the date of service, Consultant shall submit an invoice to the District pursuant to the requirements of this Article in sufficient time to ensure that District receives the invoice at least thirty (30) days prior to the date of service. Consultant's invoice shall state that payment at the date of service is requested.

### **III. TERM AND TERMINATION**

A. The term of the Agreement is for the period from April 15, 2016 through and including December 31, 2016. All services shall be performed by Consultant in a manner consistent with the orderly progress and sequence of the work leading to satisfactory completion. All services and materials must be rendered and received by the District by the end of the term.

B. Time is of the essence with respect to all provisions of this Agreement.

C. This Agreement may be terminated by either party District without cause upon thirty (30) days' written notice. In the event of a termination without cause, the District shall pay Consultant for all Services performed and all expenses incurred under this Agreement supported by documentary evidence up until the date of the notice of termination.

D. This Agreement may be terminated by District immediately and without notice to Consultant in the event of a substantial failure of performance, including insolvency of Consultant, or upon District's discovery of a violation of any term, condition, or provision of this Agreement on the part of the Consultant. The District has the right, at its sole discretion, to define a substantial failure of performance.

E. This Agreement may be terminated by District upon thirty (30) days written notice to Consultant if the District should decide to abandon or indefinitely postpone the project which is the subject of the Scope of Services. In the event of a termination based upon abandonment or postponement by District, the District shall pay the Consultant for all Services performed and all expenses incurred under this Agreement supported by documentary evidence up until the date of the abandonment or postponement.

F. 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 documents whether delivered to the District or in the possession of the Consultant.

G. If, after the notice of termination for substantial failure of performance, it is determined that Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of District subject to Paragraph "C" of this Article.

H. Consultant shall not be entitled to anticipatory, lost profits or consequential damages as a result of any termination under this Article. Payment to the Consultant in accordance with this Article shall constitute the Consultant's exclusive remedy for any termination hereunder. The rights and remedies of District provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

I. 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 the dispute, Consultant agrees to continue the work diligently to completion. If the dispute is not resolved, Consultant agrees it will neither rescind the Agreement nor stop the progress of the work, but, Consultant's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the project which is the subject of the Consultant's Scope of Services has been completed, and not before. (Government Code Section 900, *et seq.*)

#### **IV. OWNERSHIP**

A. Nothing in this Agreement shall be construed as granting District any license, for any purpose, under any patent, copyright, or other intellectual property rights of Consultant.

B. District and Consultant will obtain prior written permission from each other before using the name, symbols, and/or marks of the other in any form of publicity in connection with the work performed under this Agreement. This shall not include legally required disclosure by the District that identifies the existence of the Agreement. Further, District's use of the name, symbols, and/or marks of Consultant or the names of Consultant's employees or independent contractors shall be limited to identification of Consultant as the purveyor of services under this Agreement.

C. This Agreement is for day-to-day operational support purposes and not for research purposes. The Consultant is prohibited from publishing any information, conclusions or developments resulting from its work under this Agreement.

#### **V. CERTIFICATIONS, REPRESENTATIONS and WARRANTIES**

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

A. Consultant 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 laws, Consultant 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. Consultant, 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, ordinances and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District.

C. Consultant shall abide by the District's tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the District.

D. Consultant, and Consultant's staff, shall at all times comply with the provisions and requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*).

E. Consultant shall at all times enforce appropriate discipline and good order itself and among its employees and shall not employ or work any unfit person or anyone not skilled in providing the Services required under this Agreement. Any person in the employ of the Consultant, or an agent thereof, whom District, in its sole discretion, may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this Agreement.

F. Consultant, and Consultant's staff, shall at all times follow the instructions and directions of District staff during a school campus emergency or during a school campus emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the campus. At any time it becomes necessary for the Consultant to request emergency services while on District property, such services shall be requested by calling 911. Consultant shall immediately notify the site administrator that 911 emergency services have been requested.

## **VI. NOTICES**

All notices, claims, correspondence, reports, and/or statements authorized or required by the Agreement shall be addressed as follows:

Consultant: Lynn Capouya, Inc. Landscape Architects  
Lynn Capouya  
17992 Mitchell South, Suite 110  
Irvine, CA 92614

District: Kevin Emenaker, Executive Director, Administrative Services  
Alvord Unified School District  
9 KPC Parkway  
Corona, CA 92879

All notices shall be deemed effective when they are made in writing, addressed as indicated above, and deposited in the United States mail. Any notices, correspondence, reports, and/or statements authorized or required by the Agreement addressed in any other fashion will not be acceptable, except invoices and other financial documents, which shall be addressed as indicated under the Section above entitled Compensation.

## **VII. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed to by both Parties that the Consultant, in the performance of this Agreement, is an independent contractor and is not an officer, agent, or employee of the District. Consultant and all of Consultant's employees are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Insurance Compensation or Workers' Compensation.

## **VIII. FINGERPRINTING**

For purposes of this Agreement and because the District will provide a qualified employee for the supervision of District's students at all times that Consultant is present and

Contract #

performing services at an active school site, Consultant shall be relieved of the requirements to provide a criminal background check pursuant to California Education Code 45125.1.

## **IX. INSURANCE**

Consultant, at its sole cost and expense, shall secure and maintain in full force and effect throughout the term of this Agreement policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

A. Workers' Compensation. Workers' Compensation as required under California State law (if applicable).

B. Commercial General Liability, Employer's Liability, Auto Liability Insurance and Professional Liability Insurance. Consultant shall secure and maintain appropriate insurance coverage as may be needed to protect the District against any liability arising out of this Agreement.

## **X. HOLD HARMLESS**

Consultant agrees to indemnify and hold District, its Officers, agents, and employees harmless from any and all claims, losses, actions, damages, expenses or liabilities arising out of the negligent acts or omissions of Consultant, its officers, agents, or employees by reason of the operation of this Agreement. Consultant shall assume full responsibility for payments of Federal, State, and local taxes or contributions imposed or required under the Social Security, Workers' Compensation and/or income tax laws, or any disability or unemployment law, or retirement contributions of any sort whatsoever, concerning Consultant or any employee or agent thereof, and shall further indemnify and hold harmless District from any such payment or liability arising out of or in any manner connected with Consultant's performance under this Agreement.

## **XI. CONFLICT OF INTEREST**

Consultant covenants that it presently has no interest, including but not limited to, other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which are, or which the Consultant believes to be, incompatible in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement. Consultant agrees to inform District of all of the Consultant's interests, if any, which are or which the Consultant believes to be, incompatible with any interests of District.

## **XII. THIRD PARTY BENEFICIARY**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Consultant.

### **XIII. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction and venue shall be agreed upon in the appropriate courts in the County of Riverside, State of California.

### **XIV. NON-WAIVER**

The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

### **XV. AUTHORITY**

The individuals executing this Agreement on behalf of the parties each represent and warrant that they have the legal right and actual authority to bind the parties to the terms and conditions hereof.

### **XVI. ASSIGNMENT**

The District and Consultant, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Consultant shall not assign the whole or any part of this Agreement without the written consent of the District.

### **XVII. ENTIRE AGREEMENT/MODIFICATIONS**

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations and understandings, either written or oral. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof. This Agreement may only be modified by written agreement signed by both Parties. Any purchase order issued by District in connection with this Agreement is deemed to be issued for District's administrative or billing identification purposes only. The terms and conditions contained herein shall exclusively govern the Services to be provided hereunder.

### **XVIII. COUNTERPARTS**

The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties further agree that signatures sent by electronic mail, in .pdf format, shall be treated as original signatures to this Agreement.

## **XIX. SURVIVAL**

Articles III, V, VI, VII, XI, XIV and this Article XX shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties hereto on the day and year written below have executed this Agreement.

\_\_\_\_\_  
**Lynn Capouya, President**

**Lynn Capouya, Inc. Landscape Architects**

Date\_\_\_\_\_

Tax I.D. Number\_\_\_\_\_

\_\_\_\_\_  
**Kevin Emenaker, Executive Director, Admin. Services**

**ALVORD UNIFIED SCHOOL DISTRICT**

Date\_\_\_\_\_

\_\_\_\_\_  
**Ami Shackelford, Chief Financial Officer**

**ALVORD UNIFIED SCHOOL DISTRICT**

Date\_\_\_\_\_





March 21, 2016

Kevin Emenaker  
Alvord Unified School District  
9 KPC Parkway  
Corona, CA 92879

Re: **Alvord Unified School District – Irrigation / Planting Assessment and Analysis**

Dear Kevin,

We are pleased that you have chosen to consider us for this project. Based on our conversation, past experiences on similar projects with school districts and their requirements, we have identified the following areas to be included in our Scope of Services:

1. Existing Alvord USD School Campus Sites (5 Total)

Our efforts will be directed towards site assessment and analysis of existing irrigation and planting conditions at five (5) Alvord USD school sites – school locations to be determined by the Client. LCI will provide proposed solutions to existing issues encountered at each site after review with Client. Grading and drainage will be reviewed and assessed during site walks but any design request to correct conditions shall be prepared by others, per Alvord USD direction. We have identified the following tasks to include in our Scope of Services.

**TASK 1 – Field Investigation / Research / Needs Assessment and Analysis**

- 1.01 **Kickoff Meeting** – Initial review with Client of project needs, scope, and goals. **COMPLETED**
- 1.02 **Site Issues/Field Investigation (five locations)** – Investigate/evaluate existing site conditions/elements including existing planting and existing irrigation equipment. Develop initial existing conditions matrix for items to review during site walks.
- 1.03 **Site Assessment and Analysis** – Review/evaluate encountered issues and assess needs based on existing conditions, maintenance needs, and Client goals. Identify reoccurring issues so consistent solutions can be provided across campuses. Prepare plan diagram (before and after) and matrix of analysis on Google Map or Client provided plans (CAD or PDF).
- 1.04 **Water Cost Analysis** – Comparison to be prepared based on existing water bill information (or estimated current water use) and proposed solutions. May be integrated into assessment and analysis.
- 1.05 **Irrigation / Planting Standards** – Proposed irrigation components and plant material list – based on needs assessment and maintenance. May be integrated into assessment and analysis.
- 1.06 **Review Meeting** – Attend one (1) meeting to review draft assessment / analysis package with Client and key personnel.
- 1.07 **Quality Control Review** – In-house review of package.
- 1.08 **Consultant Coordination** – Preliminary coordination as required with civil engineers.
- 1.09 **Revisions** – Allow for one (1) revision per Client/City comments.

1.10 **USD Board Meeting Presentation** – prepare presentation and attend maximum of 1 meeting

**Deliverable Documents Summary:**

- |        |  |
|--------|--|
| Item 1 | <b>Issues / Needs Assessment and Analysis Matrix</b> – list of existing conditions & maintenance needs with proposed solutions   |
| Item 2 | <b>Site Analysis Diagram</b> – overlay on existing site (Google map or client provide plans) delineating areas of need and proposed solution – connected or keyed to Matrix                  |
| Item 3 | <b>Irrigation / Plant Standards</b> – list of proposed standard equipment and plant palette  |
| Item 4 | <b>Water Cost Analysis</b> – comparison between existing sites and proposed solutions<br><br>* irrigation / plant menu and cost comparison may be integrated into Analysis Diagram or Matrix |

**Schedule                      \*6 weeks for document delivery**

- |               |   |
|---------------|---|
| Allow 1 week  | Upon receipt of contract authorization and existing base information from Client, LCI will prepare for and schedule field meetings with client. |
| Allow 3 weeks | Synthesis of information into needs assessment and analysis package   |
| Allow 1 week  | Client Review   |
| Allow 1 week  | Revisions   |

**Client Provided Information**

1. Client shall provide survey / as-built plans in electronic format (AutoCAD ver. 2014 or earlier) showing existing improvements including property lines, topography, easements, curbs, utilities, structures, light poles, paving, tree trunk locations and sizes (diameter at 4' high), planting areas and irrigation systems.
2. Client shall provide existing water billing formation for dedicated irrigation meters where available.

**Assumptions:**

1. LCI makes no acknowledgement to the serviceability of the existing irrigation system.
2. The project deliverables will be prepared in one continuous effort and not separated into multiple phases.
3. No subconsultants are anticipated at this time. Any necessary subconsultants that are in addition to the contract will be billed at a factor of 1.10.
4. Verbal request to commence each task constitutes approval of prior work. Changes in subsequent work will be considered additional services, documented and billed on an hourly basis.
5. The Client will provide all water and electrical points of connections
6. Assumes LCI to submit electronic files, plus one set of final documents to the Client for each submittal.
7. All civil engineering shall be by others
8. No DSA submittals are anticipated for this scope of work and are therefore not included in the scope

**FEES:**

We propose to undertake Task 1 of work for a lump sum fee as follows:

Task 1	Field Investigation / Research / Needs Assessment and Analysis	<u>\$36,023.00</u>
	SUB-TOTAL:	\$36,023.00
	Estimated Expenses (Allow):	<u>\$1,000</u>
	<b>TOTAL:</b>	<b>\$37,023.00</b>

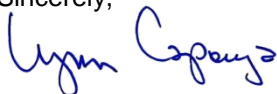
Fees for the project will be billed as work progresses.

Reimbursable expenses such as travel, reproduction, and overnight mail, will be billed to you at our cost plus ten percent (10%) net terms 30 days. All past due accounts are subject to 1 ½% interest charged monthly on overdue invoices. Collection costs/court fees to be paid by client. Additional 'Contract Terms and Conditions' are attached. Should payment be delinquent – over 60 days – LCI reserves the right to suspend work on this project. Our efforts in project coordination, meetings as notes and marked-up bond plots for civil and electrical engineering are included.

We plan to submit this package within six (6) working weeks for final presentation to and review by Alvord Unified School District. This proposal is valid for 120 days from the date on the first page.

We appreciate this opportunity to work with you and look forward to a successful project.

Sincerely,



Lynn Capouya, President  
LYNN CAPOUYA, INC.  
A California Corporation

\_\_\_\_\_  
Authorized by

\_\_\_\_\_  
Date

## **ADDITIONAL TERMS TO CONTRACT**

### ***Collection:***

In the event that LCI is not paid pursuant to the terms stated in the contract agreement attached hereto or if Contractor is delinquent in payment in an associated matter with LCI; Contractor hereby expressly agrees that LCI may cease and/or suspend the performance of its services called for in the agreement or associated agreement.

In the event that Contractor is delinquent in its payments to LCI pursuant to the attached agreement, Contractor hereby expressly authorizes LCI to request from the property owner or disbursing agent, that a joint check be issued jointly in the names of LCI and Contractor.

Upon receipt of any monies collected by Contractor for work performed by LCI, Contractor shall hold the same in trust and for the sole benefit of LCI until the same is actually paid by Contractor to LCI.

In the event that LCI is required to seek the advice or services of an attorney in connection with Contractor's anticipated, apparent or actual breach of any term of the attached agreement or enforcement and collection, LCI shall be entitled to its actual attorneys' fees and costs whether or not the same are adjudicated by a court.

In the event that LCI is required to bring an action for collection or enforcement of the attached contract, the parties hereby stipulate and agree that the contract is entered into in Orange County, California, that California is the proper state law to be applied and that Orange County is the proper venue for any legal action relating to the Agreement.

### ***Responsibilities:***

Contractor hereby understands and agrees that LCI is not responsible for nor does it make any representation as to, for or related to the existence or non-existence, identity, removal, treatment or remediation of any hazardous waste, materials or substances then existing or subsequently found on the property. Contractor furthermore hereby releases LCI of any liability related to the use, installation and subsequent clean up, if any, of substances or items in furtherance of the completion of the within agreement that may in the future be considered hazardous.

Contractor hereby understands and agrees that LCI is not responsible for and relies solely on Contractor, or, Contractor's subcontractors, for marking and designating the location and depth of any and all underground obstacles including, but not limited to, pipes, wires, conduits, cables or structures such as gas lines, fiber optics, irrigation or septic systems. As such, in the event such a structure is hit or damaged due to Contractor's failure to properly mark and identify obstacles, Contractor shall be solely responsible for any such repairs and hold LCI harmless.

Contractor acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of improper maintenance in areas such as, but not limited to, irrigation and landscape maintenance may result in damage to property or persons. Contractor further agrees that as between the parties to this agreement, Contractor and owner are solely responsible for the results and/or consequences of any lack of or improper maintenance.

Contractor hereby expressly indemnifies LCI from any unilateral changes, alterations, and/or substitutions made by Contractor to the plans and/or specifications called for in LCI's work product, which were done without the express written consent of LCI.

Contractor hereby agrees that the plans and work produce produced by LCI pursuant to the agreement may only be utilized for the specific property listed in the agreement and may not be copied or varied without the express consent of LCI. In the event that Contractor misappropriates LCI's work produce without LCI's consent, LCI shall be entitled to be fully compensated as if LCI had developed the work product specifically for the new project.