

Board Office Use: Legislative File Info.	
File ID Number	23-0419
Introduction Date	3/22/23
Enactment Number	23-0527
Enactment Date	3/22/2023 er



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Josh Daniels, Chief Governance Officer

Meeting Date March 22, 2023

Subject Services Agreement – GeoKinetics, LP – Legal Department

Ask of the Board Ratification by the Board of Education of a Services Agreement 2022-2023 by and between the District and GeoKinetics, LP, Irvine, CA, for the latter to provide: contractor will provide general environmental consultation, contract management and project management support associated with the Oakland Unified School District’s VI Initiative, via the Legal Department, for the period of February 1, 2023 through December 31, 2023, in an amount not to exceed \$70,000.

Background The District needs to assess the possibility of ground water contamination at its facilities. The expertise of a professional environmental consultant is necessary to support the District in its efforts to assess potential vapor intrusion risk at its facilities as they relate to potential human health risk and to assess financial liability and cost expenditures.

Discussion GeoKinetics will provide technical expertise and professional opinions as they relate to information generated as part of the VI Initiative. They will also provide general environmental consultation, contract management and project management support.

Fiscal Impact General Purpose

Attachment(s)

- Services Agreement 2022-23

SERVICES AGREEMENT

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”): **Applied GeoKinetics, LP**

The PARTIES hereby agree as follows:

1. **Term.**

a. This Agreement shall start on the below date (“Start Date”):
February 1, 2023

b. The work shall be completed no later than the below date (“End Date”):
December 31, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment and Evaluation.**

a. VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.

b. OUSD may evaluate VENDOR in any manner which is permissible under the law. OUSD’s evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR’s employees, and each of VENDOR’s subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR’s employee(s), and VENDOR’s subcontractor(s).

4. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. In accordance with Paragraph 8 (Compensation), the Services performed by VENDOR must meet the approval of OUSD, and OUSD reserves the right to direct VENDOR to redo the Services, in whole or in part, if OUSD, in its sole discretion,

determines that the Services were not performed in accordance with this Agreement.

5. **Data and Information Requests.** VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. VENDOR shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD's determination that the Services are not related to community school outcomes. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.
6. **Confidentiality and Data Privacy.**
 - a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.
 - b. VENDOR understands that student data is confidential. If VENDOR will access or receive identifiable student data, other than directory information, in connection with this Agreement, VENDOR agrees to do so only after VENDOR and OUSD execute a separate data sharing agreement.
 - (i) If VENDOR is a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E (available here).
 - (ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).
 - (iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
 - c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.
7. **Copyright/Trademark/Patent/Ownership.** VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other

documents prepared by VENDOR, its employees, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR's prior written consent, use VENDOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

8. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily performing Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A**.

- a. The compensation under this Agreement shall not exceed:
\$70,000

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.

- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
- c. Payment for Services shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the liability of VENDOR to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR's performance does not conform to the requirements of this Agreement, VENDOR agrees to correct its performance without delay.
- d. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the performance of such services.
- e. VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement.

9. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.
 - a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were performed, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
 - b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
 - c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. OUSD reserves the right to refuse to pay untimely invoices.
 - d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory upon receipt by VENDOR of such notice.
 - e. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.
 - f. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

11. **Termination and Suspension.**
 - a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to VENDOR. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
 - b. Due to Unforeseen Emergency or Acts of God. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement

- would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
- c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
 - d. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.
 - e. If OUSD, at its sole discretion, develops health and safety concerns related to the VENDOR's provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend the Agreement, in which case VENDOR shall stop providing Services under the Agreement until further notice from OUSD. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of suspension.
12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent: (i) via email to the email address set forth below, (ii) personally delivered during normal business hours or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 440
City, ST Zip: Oakland, CA 94607
Phone: 510-879-5060
Email: ousdlegal@ousd.org

VENDOR

Name: Glenn Tofani
Title: President
Address: 77 Bunsen
City, ST Zip: Irvine, CA 92618
Phone: (949)413-1113
Email: glenn@geokinetics.org

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

13. Status.

- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.
- b. If VENDOR is a natural person, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
 - (ii) VENDOR's work is outside the usual course of OUSD's business; and
 - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If VENDOR is a business entity, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing;
 - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) VENDOR provides its own tools, vehicles, and equipment to perform the Services;
 - (x) VENDOR can negotiate its own rates;
 - (xi) VENDOR can set its own hours and location of work; and
 - (xii) VENDOR is not performing the type of work for which a license from the

Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. **Qualifications and Training.**

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will perform the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warranties.

15. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. **Insurance.**

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance

of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD.
Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.
- c. VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services.
- d. VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18. **Incident/Accident/Mandated Reporting.**

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of Services. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of

VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. **Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. To the extent that VENDOR provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), VENDOR agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent VENDOR from providing Services in person.
- c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.
- d. In addition to the requirements of subparagraph (c), VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
- e. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

20. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and

Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor(s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

22. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
23. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
25. **Conflict of Interest.**
 - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
 - b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.
26. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

27. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
28. **Indemnification.**
- a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this Agreement that results from VENDOR's negligent acts, errors, or omissions. The Standard of Care applicable to VENDOR's implementation of this this Agreement will be the degree of skill and diligence ordinarily employed by engineers performing the same or similar services, under the same or similar circumstances, in the project area. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.
 - b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("VENDOR Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.
29. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise

consents.

30. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
31. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
32. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
33. **Severability.** If any term, condition or provision of 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 and effect, and shall not be affected, impaired or invalidated in any way.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
36. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.
37. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered

electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

38. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
39. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
40. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
 - a. Notwithstanding Paragraph 11, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.
41. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

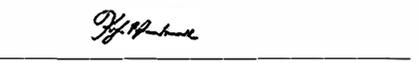
VENDOR

Name: Glenn Tofani Signature: 
Position: President Date: 2-8-23

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Joshua R. Daniels Signature: 
Position: Chief Governance Officer Date: 2/13/2023
 Board President
 Superintendent
 Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: 
Position: Secretary, Board of Education Date: 3/23/2023

Approved as to form by OUSD Legal Department

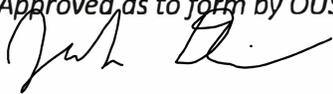


EXHIBIT A

- 1A. **General Description of Services to be Provided:** *Provide a description of the service(s) VENDOR will provide.*
See attached.
- 1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*
- No, services would not be able to continue.
 Yes, services would be able to continue as described in 1A.
 Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.
Click or tap here to enter text.
- 1C. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*
- Hourly Rate: **See attached**
 Daily Rate: \$Click or tap here to enter text. per day
 Weekly Rate: \$Click or tap here to enter text. per week
 Monthly Rate: \$Click or tap here to enter text. per month
 Per Student Served Rate: \$Click or tap here to enter text. per student served
 Performance/Deliverable Payments: Describe the performance and/or deliverable(s) as well as the associated rate(s) below: **See attached for other project-related expenses.**
2. **Specific Outcomes:** *(A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..." C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."*
See attached.
3. **Alignment with School Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the appropriate option below:*
- N/A Action Item included in Board Approved SPSA (no additional documentation required) – Item Number:
Click or tap here to enter text.
- N/A Action Item added as modification to Board Approved SPSA – School site must

submit the following documents to the Strategic Resource Planning for approval through the Escape workflow process:

- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

4. **Waivers:** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

Commercial General Liability Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)

Corporal Punishment Insurance Coverage. (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person or virtual) with OUSD students.)

Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)

Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)

Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students.)

December 6, 2022

**Oakland Unified School District
Attn: Joshua Daniels
1000 Broadway, Suite 440
Oakland, California 94607**

RE: Proposal for Environmental Consulting Services

**OUSD VI Initiative
Oakland, California**

Dear Joshua Daniels:

Applied GeoKinetics LP (GeoKinetics) is pleased to present this proposal for engineering and consulting services to Oakland Unified School District (OUSD, the "District") for the following services:

- Construction Quality Assurance
- General Environmental Consulting
- Geotechnical Services
- Litigation Support
- Long-Term Stewardship
- Vapor Mitigation Design

These services are being offered in association with District's efforts to assess potential vapor intrusion risk at facilities owned or operated by the District, specifically as they relate to potential human health risk and to financial liability and cost expenditures (the "VI Initiative").

GeoKinetics is being retained to support the District in the management of the VI Initiative and to provide technical expertise and professional opinions as they relate to information generated as part of the Vi Initiative. Examples of GeoKinetics responsibilities will include:

- (1) Providing District staff with technical/expert advice and interpretation of environmental data.
- (2) Drafting, reviewing, and assisting in the circulation of one or more Request for Proposals (RFPs) or Request for Qualifications (RFQs) to identify contractors to perform tasks necessary to evaluate potential or realized soil-gas vapor intrusion risk at facilities owner or operated by the District.

- (3) Review and make selection recommendations related to Statements of Qualification (SOQs) and proposals submitted by contractors to conduct work associated with the VI Initiative. The review and associated recommendations will include an evaluation of the technical merits, logistics, cost, and benefits associated with each submittal.
- (4) Assist the District in project and contract management for tasks associated with implementation of the VI Initiative.
- (5) Support the District in communications and coordination efforts associated with the VI Initiative, including but not limited to the following:
 - a. Engagement with regulatory oversight agencies
 - b. Preparation of fact sheets, presentations, or other communications documents for stakeholders
 - c. Engagement and communication with potentially affected communities.

1. FEE ESTIMATE

Services provided by GeoKinetics will be conducted on a time and material basis in accordance with GeoKinetics 2022 Northern California Professional Fee Schedule which is included as Attachment A. This proposal is valid for work being completed in 2023 and the total fee will not exceed \$70,000 (the NTE CAP). If the NTE CAP is met during the 2023 fiscal year, GeoKinetics will notify the Client in writing and will cease further work until a new contract is in place. Contracting associated with this proposal must be renewed on a per-annum basis.

2. CLOSING

GeoKinetics is pleased to have the opportunity to submit this proposal and we look forward to working with you on this assignment. If you are in agreement with the scope of work and fee estimate, please execute the work authorization form included as **Attachment A**. Please call the undersigned at (925) 791-0865 if you have any questions.

Very truly yours,



Jonathan Sanders, P.E.
(CA Lic No 91063)
Principal Engineer

Attachment A

Work Authorization Form & Fee Schedule

Work Authorization Form

DATE: Dec. 6, 22

PROJECT NO: 22013-001

1. CLIENT: Oakland Unified School District
Attn: Joshua Daniels TELEPHONE: (510)879-5060
ADDRESS: 1000 Broadway, Suite 440
Oakland, California 94607 FACSIMILE: _____
2. PROJECT NAME: OUSD VI Initiative
3. PROJECT LOCATION: n/a
4. PROJECT DESCRIPTION: General environmental consulting, contract management, and project management support associated with the OUSD VI Initiative
5. SCOPE OF WORK: See Proposal for Environmental Consulting Services prepared by Applied GeoKinetics, LP (GeoKinetics) dated December 6, 2022
6. COST ESTIMATE/FEE: 70,000
Detailed invoices are to be generated monthly on a time and materials basis in accordance with the attached fee schedule.
7. PORTION OF FEE IN ADVANCE OF WORK: \$0
8. INVOICE TO BE SENT TO: CLIENT
9. REPORT DISTRIBUTION: Digital
10. TERMS AND CONDITIONS: CLIENT has read the terms and conditions, understands each condition and term of this Agreement and GeoKinetics fee schedule, and agrees to be bound thereby.
11. **INSURANCE:** GeoKinetics shall obtain and maintain during the course of its contract with Client worker's compensation and employer's liability insurance as required by law, comprehensive general liability insurance coverage with limits of not less than two million dollars (\$2,000,000.00), and comprehensive professional liability insurance coverage with limits not less than two million dollars (\$2,000,000.00). Client shall be named as an additional insured where possible. Upon request, GeoKinetics shall provide Client with a Certificate of Insurance evidencing said insurance before any work commences. Client will be provided with a thirty (30) day notification of any cancellation, alteration or termination of any referenced insurance coverage.
12. **TERM AND TERMINATION:** The term of this Agreement between Client and GeoKinetics is for one (1) year unless otherwise extended in writing by the parties. This agreement may be terminated by either party with or without cause and without penalty charge upon fifteen (15) working days notice to the other party.
13. **ATTORNEYS' FEES:** If any action or proceeding is initiated by any person to enforce or interpret the provisions hereof, the prevailing party in such action or proceeding shall be entitled to recover from the other party, or parties, its costs and expenses incurred in connection therewith, including without limitation, reasonable attorneys' fees and the costs and expenses of litigation or arbitration.
14. **STANDARD OF CARE:** GeoKinetics agrees to provide technical and professional advice regarding geotechnical and environmental conditions and to use its professional judgment and perform its services using that degree of care and skill ordinarily exercised in the geotechnical and environmental consulting profession, under similar circumstances, by reputable geotechnical and environmental consultants practicing in California. CLIENT acknowledges that the identification of geotechnical and environmental conditions and the prediction of future or concealed conditions is an inexact scientific endeavor. No warranty, express or implied, of merchantability or fitness is made or intended in connection with the work to be performed or by the furnishing of any oral or written reports by consultant.
15. **PAYMENT FOR SERVICES:** CLIENT agrees to pay all fees as rendered on monthly invoices within 14 days of receipt thereof. All past due invoices shall bear interest at the maximum legal rate provided by law. CLIENT agrees that GeoKinetics may suspend services pending receipt of any past due payment for fees. Should any invoice remain outstanding for 60 days or more, GeoKinetics may discontinue services and/or demand prepayment of fees, at GeoKinetics's option. In the event it becomes necessary for GeoKinetics to commence action to enforce payment of invoices, GeoKinetics shall be entitled to reasonable collection costs.
- (continued on next page)
16. **SITE CONDITIONS:** CLIENT shall grant or obtain free access to the site for all personnel and equipment required for GeoKinetics to perform the work. While GeoKinetics will take reasonable precautions to minimize damage to site, CLIENT is responsible for identifying underground

structures and agrees to defend, indemnify, and hold GeoKinetics harmless from all loss and damage resulting from underground structures not properly located and marked.

17. **USE OF CONSULTING ADVICE:** CLIENT agrees that the consulting advice provided by GeoKinetics including reports and drawings, is only applicable for immediate use on this project. CLIENT shall not use consulting advice on other projects without prior written review by GeoKinetics
18. **DISCLOSURE:** CLIENT agrees to provide GeoKinetics all information in its possession that may be pertinent to the scope of work including any information concerning actual or possible presence of hazardous materials. CLIENT agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. CLIENT agrees to compensate GeoKinetics for all costs incident to the discovery of unanticipated hazardous materials. GeoKinetics will immediately inform CLIENT of the detection of unanticipated hazardous materials or any disclosure of these conditions as required by governing law or regulation. All hazardous materials, including samples taken for testing, will remain the property and responsibility of the CLIENT.
19. **THIRD PARTY INDEMNITY:** CLIENT agrees to indemnify and hold GeoKinetics harmless from any claims, demands, suits, charges, or allegations of responsibility by any and all third parties, including, but not limited to, contractors, subcontractors, agents, employees, assignees, transferees, successors, invitees, neighbors, and the public relating to conditions on or about the project, except as such may be the result of negligence of its employees, agents, representatives, and subcontractors.
20. **FEE SCHEDULE:** Where GeoKinetics services are quoted or estimated on the basis of the current fee schedule, should the project extend beyond the end of the calendar year, the fee schedule then in use shall apply.
21. **EXCUSABLE DELAY:** GeoKinetics shall not be liable for damages or delay in delivery or performance arising out of causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather.
22. **SAFETY EQUIPMENT AND SAMPLES:** If special safety equipment is required to protect personnel, such equipment will be purchased at the CLIENT's expense only after receipt of Client's written authority to do so. Upon completion of the work, all such equipment shall remain CLIENT's property and shall be returned to CLIENT for proper disposal. All samples taken, including contaminated materials and decontamination fluids, shall remain the property of the CLIENT. Unless special arrangements are made in advance, these samples and contaminated materials shall be returned to the CLIENT at the conclusion of the project for proper disposal by the CLIENT.
23. **CONTAMINATED MATERIALS AND GROUND WATER:** All materials removed from boreholes or trenches, and all ground water removed from monitoring wells will be placed in suitable storage containers, if necessary, and left onsite. Contaminated materials will be stored separately from non-contaminated materials, if this determination can be made with appropriate field equipment. A Safety Specialist (Stock No. HZW-1) or equivalent Hazardous Waste Label will be attached to each container identified as holding contaminated or possibly contaminated materials. Following chemical analysis of a sample from the monitoring well or container, GeoKinetics will notify the CLIENT of the contaminants, if any. Proper disposal of the containers and their contents is the sole responsibility of the CLIENT. GeoKinetics can act on CLIENT's behalf and coordinate disposal with proper authorization and documentation.
24. **GOVERNING LAW:** This Agreement shall be governed by and interpreted pursuant to the rules of the state where the services are to be performed or the goods are to be delivered.
25. **DISPUTES:** If a dispute arises out of or relates to this contract, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute the in an amicable manor by mediation through a mutually-agreed upon mediation service before having recourse to arbitration or a judicial forum.
26. **LIMITATION ON LIABILITY:** Unless otherwise agreed to in writing prior to the commencement of work, the Client agrees to limit GeoKinetics liability to the lesser of \$25,000 or GeoKinetics total fees on this project.
27. **AUTHORIZATIONS:**

Signature
Client or Authorizing Agent

Date



Signature
GeoKinetics Representative

12/6/2022
Date

Print Name
Client or Authorizing Agent

Jonathan E. Sanders

Print Name
GeoKinetics Representative

2022 NORTHERN CALIFORNIA PROFESSIONAL FEE SCHEDULE

Applied GeoKinetics, LP ("GeoKinetics") charges our clients for professional, technical and support services for time directly related to a project. Personnel classifications are based on capabilities and level of work and are independent of role (e.g., Engineer, Technical Illustrator, Inspector, ect). Rates associated with each classification are summarized below:

<u>Personnel Classification</u>	<u>Rate (\$ /hour)</u>
Partner.....	\$320.00
Principal.....	265.00
Associate.....	230.00
Senior.....	190.00
Project Level.....	160.00
Staff.....	135.00
Junior.....	110.00
UAV Pilot.....	160.00

Overtime will be charged at 1.5 times the above listed rates for these personnel classifications. Overtime is defined as time charged to a project more than 8 hours per day, time worked on weekends, holidays, or night shifts.

Deposition and trial testimony will be charged at the rate of \$420.00 per hour.

PROJECT-RELATED EXPENSES

Expenses directly related to a project will be billed as follows:

Subcontractors (drilling, trenching, surveying, testing, etc.), and travel related expenses (hotels, meals, vehicle rentals, air travel, etc.) and other project expenses (e.g., aerial photographs, outside reprographics, equipment rental, overnight shipping, project-related expendable supplies, etc.) will be charged at cost plus 15 percent.

Field equipment and expendables will be charged in accordance with GeoKinetics' Standard Field Equipment Cost schedule.

Travel time to and from a project will be invoiced in accordance with the hourly rates listed above. Mileage for project related travel will be billed at \$0.68 per mile. Per diem will be billed in accordance with per diem rates specified by the federal government

In-house photocopy/reproduction will be billed at \$.05/page for Black & White 8 ½ x 11 Photocopies, \$.08/page for Black & White 11 x 17 Photocopies; \$.10/page for Color 8 ½ x 11 Photocopies; \$.12/page for Color 11 x 17 Photocopies; \$.15/page for Black & White 8 ½ x 11 Digital Prints; \$.18/page for Black & White 11 x 17 Digital Prints; \$.45/page for Color 8 ½ x 11 Digital Prints; \$.60/page for Color 11 x 17 Digital Prints; \$6.00/sheet for Digital Report Covers; Oversized, Digital Color 600-dpi prints will be billed at \$7.50 for 24x36; \$10.50 for 30x40; \$11.00 for 30x42 and \$15.50 for 36x50; Property Profiles will be billed at a rate of \$20.00 per address; High Resolution Aerial Photographs will be billed at a rate of \$80.00 per image.

Photograph development and printing will be billed at \$.50/photo.

CHANGES TO FEE SCHEDULE

This fee schedule applies to services rendered in the current year and/or until a new schedule is issued. GeoKinetics reviews and revises its fee schedule periodically. Unless other arrangements have been made, charges for services (including continuing projects initiated in the prior year) will be based on the most recently published fee schedule.

INVOICES

Invoices will be issued monthly, or at other specified intervals, and will be payable upon receipt, unless other arrangements have been previously agreed upon. Interest of 1 percent per month (but not exceeding the maximum rate allowed by law) will be payable on accounts not paid within 60 days. Any attorney's fees or other costs incurred in collecting delinquent accounts shall be paid by the client.

CONDITIONS

GeoKinetics warrants that its services are performed in accordance with generally accepted standards of care and diligence normally practiced by recognized consulting firms performing services of a similar nature. No other warranty, either expressed or implied, is included or intended in GeoKinetics proposals, contracts, or reports.

GeoKinetics will not be liable for any loss, damage or liability to persons or property arising out of performance of its services, other than for professional errors and omissions within the stated limits, coverage, or conditions of its insurance. For any damage resulting from any error, omission, or other professional negligence, our liability will be limited to \$25,000 or GeoKinetics total billing on the project in question, whichever is less. If higher limits are required, arrangement should be made with GeoKinetics prior to the initiation of the project. The client should discuss higher limits, and the charges involved, with GeoKinetics.