

**INDEPENDENT CONSULTANT AGREEMENT FOR
HVAC EQUIPMENT ASSESSMENT**

This Independent Consultant Agreement for HVAC Equipment Assessment ("Agreement") is made and entered into as of the 21st day of September, 2021, by and between the Morgan Hill Unified School District ("District") and Cypress Engineering Group ("Consultant"), (individually a "Party" or collectively the "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

Mechanical engineering services covering Morgan Hill Unified School District Schools HVAC Equipment C-19 Recommendations Support Services

Engineering services include:

- HVAC Equipment Operation Checks
- Oversee Outside Air Adjustments by Alpha Air Balancing Agency, Inc
- Merv-13 Filter Replacement
- Site Certifications (Letter format)

- 1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

Barrett Elementary School	Lewis H. Britton Middle School
El Toro Health Science Academy	Martin Murphy Middle School
Los Paseos Elementary School	Ann Sobrato High School
Nordstrom Elementary School	Live Oak High School
PA Walsh Steam Academy	Central High School
Paradise Valley Engineering	Community Adult School
Jackson Academy of Math & Music	District Office
San Martin/Gwinn Environmental Science Academy	Transportation Building
Charter School of Morgan Hill	

- 1.2. The Consultant's Services at any one of the sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Consultant's Services at other site(s). The provisions of this Agreement shall apply to the Consultant's Services at each site, without regard to the status of the remaining Project component(s). Consultant shall invoice for each inspection and test separately and for each site separately and District shall compensate Consultant for each site separately on a proportionate basis based on the level and scope of Services completed for each site.

2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the following:

The duration of the services provided under this Agreement

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification

<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	Bonds (as required or requested by District)

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on a Time and Material basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Four Hundred, Sixty-Eight Thousand Dollars (\$468,000.00). District shall pay Consultant according to the following terms and conditions:
 - 4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
 - 4.2. Consultant shall prepare a separate Time and Material Tag for each site, if Consultant performs Services at more than one site. The itemized Time and Material Tag shall reflect the hours spent by the Consultant/Contractor in performing its Services pursuant to this Agreement.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Services for District, except as authorized by prior written approval of the District.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and 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 Compensation or Worker's Compensation. Consultant 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 Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's Work, District being interested only in the results obtained.
7. **Consultant and Subconsultant Registration and Compliance.**
 - 7.1. Consultant acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Consultant shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subconsultants. Consultant represents that all of its subconsultants are registered pursuant to Labor Code section 1725.5.
 - 7.2. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
 - 7.3. Consultant shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
 - 7.4. Consultant shall post job site notices, as required by law, including without limitation Labor Code section

1771.4.

7.5. Consultant shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

8. **Designated Representatives.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.

9. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

8.1 Materials shall require prior approval by District

10. **Performance of Services.**

10.1. **Standard of Care.**

10.1.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

10.1.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

10.1.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.

10.1.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

10.2. **Meetings.** In addition to all public hearings and meetings, Consultant agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

10.3. **District Approval.**

10.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

10.3.2. Prior to any documents being made public, Consultant shall provide in draft form to District staff and District legal counsel, all documents that it or its subconsultants prepare.

10.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

11. **Information.**

- 11.1. **Furnished by District.** Upon request by Consultant, District shall furnish Consultant any information and documents readily available to District that the Consultant determines may be of use to the Consultant in the performance of the Services. District shall rely upon Consultant to determine which information and documents may be of use to the Consultant in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Consultant shall determine if it is appropriate to rely on the District furnished information or documents. Consultant shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.
- 11.2. **Furnished by Others.** Consultant is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Consultant shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Consultant shall determine if clarification, additional information, or additional data is needed.
12. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
13. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
14. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, 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 the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.
15. **Termination.**
- 15.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice was mailed, whichever is sooner.
- 15.2. **Without Cause by Consultant.** Consultant may, upon thirty (30) day notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for Services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of Services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 15.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to

terminate for cause. Cause shall include:

- 15.3.1. material violation of this Agreement by the Consultant; or
- 15.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 15.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 15.4. **With Cause by Consultant.** Consultant may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

- 15.4.1. Material violation of this Agreement by the District, or
- 15.4.2. Failure of the District to timely pay undisputed Consultant invoices.

Written notice by Consultant shall contain the reasons for such intention to terminate and unless within seven (7) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the seven (7) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant.

16. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly, connected with, or resulting from the performance of the Services, the Project, or this Agreement.

17. **Insurance.**

- 17.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 17.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
- 17.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the

protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 17.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 17.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 17.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 17.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

- 17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

- 17.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law.
19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.
20. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required

by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
22. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
23. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant 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 District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
24. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
26. **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.
27. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 27.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 27.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
28. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District 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.
29. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.

30. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
31. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service, addressed as follows:

District:

Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037
ATTN: Kirsten Perez

Consultant:

Cypress Engineering Group
8 Harris Court, Suite A8
Monterey, CA 93940
ATTN: Metin Serttunc

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

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. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
34. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
35. **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.
36. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
37. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
38. **Captions and Interpretations.** 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.
39. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
40. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
41. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all

counterparts together shall be construed as one document.

42. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

43. 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 herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____, 20____

Dated: 9/ 16, 2021

By: _____

By: 

Print Name: Kirsten Perez

Print Name: Metin Serttunc, PE

Print Title: Deputy Superintendent and CFO

Print Title: Principal

Information regarding Consultant:

Consultant: Cypress Engineering Group

26-2612846;

License No.: _____

Employer Identification and/or Social Security Number

Address: 8 Harris Court, Suite A8
Monterey, CA 93940

Telephone: 408-510-0906 (C) / 831-218-1802

Facsimile: _____

E-Mail: metin@cypresseg.com

NOTE: Title 26, United States Code sections 6041 and IRS reporting rules require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. These rules also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Type of Business Entity:

☐ Individual
☐ Sole Proprietorship
☐ Partnership
☐ Limited Partnership
☐ Corporation, State: _____
☒ Limited Liability Company
☐ Other: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:


Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: 9/ 16/ 2021

Name of Consultant or Company: Cypress Engineering Group

Signature: 

Print Name and Title: Metin Serttunc, PE, Principal

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☐ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

Signature: _____

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.

_____ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

_____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

Date: _____ District Representative's Name and Title: _____

Signature: _____

Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____

Name of Consultant or Company: _____

Signature: _____

Print Name and Title: _____

EXHIBIT "A"

HVAC EQUIPMENT ASSESSMENT

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is not made part of this Agreement.

Consultant shall perform the following HVAC Equipment Assessment Services as indicated in the District's RFP, and shall include, without limitation:

SCOPE OF WORK

◆ **General**

1. Contractor team has 3 different companies
 - a. Mechanical Contractor (MC)- Val's Plumbing & Heating will work under Cypress Engineering Group
 - b. Testing, Adjusting and Balancing Contractor (MHUSD will hire TAB contractor directly)
 - c. Controls Contractor (MHUSD will hire the Controls Contractor directly)
 - d. Cypress Engineering Group (Commissioning, Verification and Engineering Support)
2. Schools covered under this proposal (District to provide priority to contractor team to start the investigation, adjustments and verifications) (850 Main Units and 72 Portable units approximate, units count based on the district provided lists)

ELEMENTARY SCHOOLS (206 units) + Portable Units (33)

1. Barrett Elementary School (56 Units)
2. El Toro Health Science Academy (36 Units)
3. Los Paseos Elementary School (28 Units) + Portable Units (6)
4. Nordstrom Elementary School (30) Units
5. P.A. Walsh Steam Academy (24 Units) + Portable Units (20)
6. Paradise Valley Engineering Academy (32 Units) + Portable Units (7)

K-8 (76 units) + Portable Units (11)

7. Jackson Academy of Math & Music (29 Units) + Portable Units (5)
8. San Martin/Gwinn Environmental Science Academy (47 Units) + Portable Units (6)

MIDDLE SCHOOLS (193 units)

9. Lewis H. Britton Middle School (98 Units)
10. Martin Murphy Middle School (95 Units)

HIGH SCHOOLS (298 Units) + Portable Units (2)

11. Ann Sobrato High School (148 Units) + Portable Units (2)
12. Live Oak High School (150 Units)

CONTINUATION SCHOOL (41 Units) + Portable Units (4)

13. Central High School (41 Units) + Portable Units (4)

ADULT SCHOOL (5 Units) + Portable Units (6)

14. Community Adult School (5 Units) + Portable Units (6)

CHARTER SCHOOL (13 Units) + Portable Units (16)

15. Carter School of Morgan Hill (13 Units) + Portable Units (16)

District Office (18 Units)

16. District Office (18 Units)

Transportation Building (3 Units)

17. District Office (3 Units)

3. Meet with district, Mechanical Contractor, TAB Contractor and Syserco (Controls Contractor) to explain the scope of work and coordinate housekeeping rules and regulations.
 - a. Contractor Operation hours and access to the sites
 - b. Covid-19 Rules for working at the sites and the buildings
 - c. Roles and Responsibilities of Cypress Engineering Group, Contractors, District support personnel and other support personnel
 - d. Access to buildings (some of the classrooms may be in operation by teachers and students for distance learning)
 - e. Buildings or spaces with Alarms
 - f. Roof Accesses (District to provide the roof access locations and open the locks or provide a key for the locks)
 - g. Access to District Building Management System (Alerton) and any other standalone thermostats.
 - h. District Point of contact person and HVAC technician
 - i. Equipment List to be included in the scope (District As Build Record Drawings may be necessary for some of the adjustments)
 - j. Intended occupancy in each occupied classroom
 - k. Explained the detailed scope of work and understating the expectations.
4. Scope of Work Expected Responsibility Matrix (Controls and balance contractor are excluded from our scope and T&M pricing. Cypress Engineering Group's assumption is that MHUSD will contract with those team members directly)

SCOPE	Responsible Party
Provide Preliminary Retro-commissioning plan includes the rules and regulations how to work in MHUSD sites safely and how contractor's team progress in assigned work. This plan also includes the sites and schedule of events. Schedules will be updated weekly in to see the progress.	Cypress Engineering Group (CEG)

Create a check list for what functions will be checked and adjusting the equipment	CEG
Create a summary list showing what is checked and adjusted for each school site	CEG
School Priority List List of the Schools and Building priority. Classrooms and Administration Units may require priority since they are occupied all the time.	MHUSD
Access to sites	MHUSD
Merv-13 Filter Inventory	MHUSD
Merv-13 Filter Verification and Replacement	Verification by Mechanical Contractor (MC) and replacement by MHUSD
Check and verify HVAC Equipment based on Check list provided by CEG. All repairs/equipment modifications excluded.	Val's Plumbing & Heating
Outside Air Measurement	Certified TAB* Contractor
Start checking the Equipment based on Check list. Start 2 Separate sites and 2 separate team (To be coordinated in first meeting).	MCs or TABs
Schedule Programming, check the EMS system operation and Thermostat programming	District/ District EMS contractor
Decide Outside Air Amounts (CFMs) per the guidelines and regulations per each space and provide these to Balancing Contractor	CEG
Adjust Outside Air amounts (CFMs) for each equipment	TAB Contractor
Verification of equipment operations in different mode and Ventilation (outside air CFMs) and provide Certifications for each space. Note that certifications will be done after the completing of all the repairs and replacements. If there are a couple of items are left for some reason, these items will be notified in the certification letters.	CEG

*TAB: Testing Adjusting and Balancing Contractor

5. Explain the scope of work and discuss "lessons learned" and district's expectation and time line if necessary.
6. Retro-commissioning provider (CEG) to support (answer the questions) the contractors doing the HVAC system fixes, and the district for questions related to HVAC systems.
1. (MCs in conjunction with TAB Contractor) MC will allocate average 75 to 90 min per equipment to check the mode of operations. If the equipment is not adjusted and fixed in allocated time note the diagnosis of the equipment and provide the list per site to District through Retro-commissioning

- Provider. Retro-commissioning provider and district to assess the conditions and approve the selected proposed fixes and amounts for contractor to start fixing the equipment. These scopes shall include the estimated cost (ROM or lumpsum).
7. MHUSD staff will replace all existing HVAC filters with MERV13 filters provided by MHUSD at each site location. MHUSD staff will remove from roof and dispose of all used filters.
 8. District to assess the conditions and approve the selected proposed fixes and cost amounts if the fixes and costs are reasonable. These costs will be additive to this proposal and will be approved either by ROM cost estimates for smaller repair items, or fixed fee lump sum prices provided for approval. Additive work will not progress unless approved by District. District will work directly with the contractor to do these fixes.
 9. Contractor will use separate team to these fixes, original teams will continue checking the rest of the equipment and sites.
 10. Sampling: Verify the operation of one or two of sample of each major type of HVAC systems (Furnace, Roof Top Package Units, Wall Heat Pump, etc.) and controls in each site.
 11. All field observations will be limited to those parts of the HVAC and plumbing system that are readily accessible (including components behind access panels) and can be visually confirmed.
 12. Work with contractors directly and keep and district in the communication
- ◆ **Cypress Engineering Group's Provider Deliverables**
1. Provide scope of work and performance specifications to contractors
 2. Compile and provide existing information district have to contractors
 3. Provide site plans to show the existing room numbers. (Site Plans shall be provided by District)
 4. Overview of Contractors report and comment.
 5. Provide Brief recommendation for repairs or replacement of systems.
 6. The report will be school, building and room specific as appropriate
 7. Organize the reports as specific format as needed.
 8. Verify as sampling and Certify each Site

Exhibit "B"
Prices for Services

The proposed fee for this work will be charged with our standard **HOURLY RATES NOT TO EXCEED FOUR HUNDRED SIXTY-EIGHT THOUSAND DOLLARS (NTE \$468,000).**

This number is a budget number (NTE) all the billing will be T&M basis with 10% mark-up with outsourced services (subconsultants and subcontractors)

CEG HOURLY RATES
2021 RATE SHEET

PRINCIPAL (PE)	\$	185.00
SENIOR PROJECT MANAGER (PE)	\$	180.00
COMMISSIONING AGENT (PE)	\$	156.00
APPLICATION ENGINEER	\$	135.00
DESIGNER	\$	125.00
CADD	\$	115.00
ADMINISTRATION	\$	80.00

EXPIRES JUNE 30, 2022

MECHANICAL CONTRACTOR'S (VAL'S PLUMBING AND HEATING) HOURLY RATES

T&M RATES FOR ANY ADDITIVE WORK M-F, REGULAR HOURS (through 6-30-2022):

PROJECT MANAGER / FOREMAN (ON- OR OFF-SITE)	\$204.00/hr JOURNEYMAN
SERVICE TECHNICIAN (ON- OR OFF SITE)	\$195.00/hr APPRENTICE
SERVICE TECHNICIAN (ON- OF OFF-SITE)	\$152.00/hr
OFFICE ASSISTANT/ADMIN (OFF SITE ONLY)	\$90.00/hr
MATERIALS	\$MC's Standard retail pricing
EQUIPMENT – CRANES, FORKLIFT, SCISSOR LIFTS, ETC.	\$Cost + 15%
SUBCONTRACTOR, INVOICED THROUGH MC'S	\$Cost + 10%
FREIGHT	\$Cost + 10%

* MC's Hourly rates above will increase +4% from July 1st, 2022 – December 30th, 2022.

*Overtime or Saturday labor rates = 1.4x above. Double time or Holiday rates = 1.8x above rates. (schedule of after-hours work only by mutual agreement).

Cypress Engineering Group (CEG)'s Invoices to MHUSD will include the mark-ups for the Mechanical Contractors Invoice to CEG.