



**CUPERTINO UNION SCHOOL DISTRICT**  
10301 Vista Drive, Cupertino, CA 95014

**Request for Proposals  
for  
Asbestos Inspection and  
Asbestos Awareness Training Services**

**RFP NUMBER: 25-B09-01**

**DATE DUE: November 22, 2024**

By: Dana Ino  
Director, Business Operations

Date released: October 25, 2024

**CUPERTINO UNION SCHOOL DISTRICT  
REQUEST FOR PROPOSALS  
RFP 25-B09-01**

**ASBESTOS INSPECTION AND ASBESTOS AWARENESS TRAINING SERVICES**

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Cupertino Union School District  
**REQUEST FOR PROPOSALS**  
**RFP 25-B09-01**  
**ASBESTOS INSPECTION AND AWARENESS TRAINING SERVICES**

NOTICE IS HEREBY GIVEN that the Cupertino Union School District, hereinafter referred to as the District, will receive up to, but not later than **2:00 p.m.** on **November 22, 2024**, sealed proposals for the award of a contract to an accredited asbestos inspection Agency for the above-referenced project for the period January 1, 2025 through December 31, 2029.

All proposals shall be submitted in the format specified by the District. Proposals shall be delivered and addressed to the Cupertino Union School District, Director, Business Operations, Facility Modernization (Door 10), 10301 Vista Drive, Cupertino, California 95014, and shall be labeled "**Asbestos Inspection and Asbestos Awareness Training, RFP #25-B09-01.**"

Any accredited asbestos inspection Consultant who wishes their proposal to be considered is responsible for making certain that their proposal is received by the Purchasing Manager by the proper time. No oral, electronic, facsimile, or telephonic proposals or modifications will be considered unless specified. Proposals must bear original signatures and figures. Proposals received after the scheduled submittal deadline will be returned unopened.

Contract documents may be viewed at the following web address:  
<https://www.cusdk8.org/departments/purchasing/bid-opportunities>

Please call (408) 252-3000, ext. 61493, or email [ino\\_dana@cusdk8.org](mailto:ino_dana@cusdk8.org) for any questions regarding this matter.

Dana Ino  
Director, Business Operations

Published: 10/25/2024, 11/1/2024

## SECTION 1 — GENERAL INVITATION

### 1. Purpose

The Cupertino Union School District (hereafter the District) is accepting proposals from qualified and accredited individuals, firms, partnerships, and corporations (hereafter Consultant) having specific experience in the area(s) identified in this Request for Proposals.

### 2. Objective

The objective is to enter into a five-year contract with the selected accredited asbestos inspection Consultant to provide asbestos inspection and reporting services for each of the District's designated 26 sites and to provide annual asbestos awareness training for District maintenance and custodial staff.

### 3. Existing Environment

All work considered under this Request for Proposal will be performed on active school, lease, and other sites in the District.

### 4. Representations

No representations or guarantees of any kind, made orally, expressed or implied, are made regarding the matters contained in this document, including any attachments, letters of transmittal, or any other related documents.

Consultants must rely solely on its own independent assessment as the basis for the submission of any offer made.

### 5. Venue

Any contract resulting from this solicitation shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any litigation arising out of the contract will be vested in Santa Clara County, California.

### 6. Incurring Costs

The Cupertino Union School District is not liable for any cost incurred by vendors in responding to this Request for Proposals.

### 7. Submission Requirements

Proposals must be received by **2:00 p.m.** on **November 22, 2024**. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person or mailed to:

Dana Ino  
Director, Business Operations  
Facility Modernization (Door 10)  
Cupertino Union School District  
10301 Vista Drive  
Cupertino, CA 95014  
Reference: RFP# 25-B09-01 – Asbestos Testing and Awareness Training Services

Proposers shall submit one original, one unbound copy, and one electronic copy of the proposal, which must be individually bound with pages numbered accordingly on or before the submittal deadline. The original proposal must clearly be marked "MASTER" all required identical copies marked as "Copy."

Each proposal will be screened to ensure that the information required in this RFP is included. Partial or complete omission of any of these items may disqualify proposals from further consideration.

**8. Projected Time Table**

Issue Request for Proposals	October 25, 2024
Advertise RFP	October 25, November 1, 2024
Last Day for Questions	November 15, 2024
Amendment/Addendum Deadline	November 18, 2024
Proposals due	November 22, 2024
Evaluation of Proposals	November 25-26, 2024
Award	December 13, 2024

The District must obtain approval from the Cupertino Union School District Board of Education to enter into a contract or agreement with the vendor for this project. The anticipated contract award date is on December 13, 2024.

**SECTION 2 — OVERVIEW AND SCOPE OF WORK**

The Cupertino Union School District (hereafter the District) seeks to enter into a contract with a qualified and accredited Consultant for asbestos testing and awareness training Services.

**1. Background**

The District is seeking a qualified and accredited asbestos inspection Consultant to provide triennial and six-month inspection and reporting services as mandated by the 1986 Asbestos Hazard Emergency Response Act (AHERA) and its regulations. The qualified Consultant would also provide asbestos awareness training to District maintenance and custodial staff.

Cupertino Union School District (CUSD) educates more than 13,500 students in the City of Cupertino and portions of five surrounding communities in California’s Silicon Valley. Our student population is extremely diverse, coming from families speaking over 46 different languages. The mission of CUSD is to provide a child-centered environment that cultivates character, fosters academic excellence, and embraces diversity. District families, community, and staff join as partners to develop creative, exemplary learners with the skills and enthusiasm to contribute to a constantly changing global society.

**2. Scope of Work**

The accredited Consultant selected shall work in connection with District’s designated person to implement and carry out District’s Asbestos Management Plan and shall conduct the required Asbestos Hazard Emergency Response Act (AHERA) triennial surveillance inspections and reports per site, conduct six-month surveillance inspections and reports per site, and provide annual asbestos awareness training for maintenance and custodial staff. The contemplated services shall include the following:

1. Perform the necessary triennial surveillance inspections required by AHERA and provide required updated reports (one paper copy and one electronic copy) by June 30, 2025, and June 30, 2029.
2. Perform the necessary six-month surveillance inspections required by AHERA and provide required updated reports (one paper copy and one electronic copy) starting in January 2025 through December 31, 2029, a total of eight (8) six-month surveillance inspections.

3. Provide asbestos awareness training for custodial and maintenance employees annually during the term of the contract.
4. Assist the District in providing notification to short-term workers who may come in contact with asbestos on District's sites regarding the location of any asbestos-containing building materials (ACBM).
5. Provide appropriate warning labels regarding ACBM, if needed, and remove when no longer required.
6. Communicate with appropriate District personnel, including District's designated person, of any necessary response actions necessary to maintain compliance with AHERA and other regulatory agencies with regard to asbestos and lead.
7. Assist District in maintaining appropriate asbestos management records, if needed.

Schools

Blue Hills Elementary	12300 De Sanka Avenue, Saratoga, CA 95070
De Vargas Elementary	5050 Moorpark Avenue, San Jose, CA 95129
Dilworth Elementary	1101 Strayer Drive, San Jose, CA 95129
Eaton Elementary	20220 Suisun Drive, Cupertino, CA 95014
Eisenhower Elementary	277 Rodonovan Drive, Santa Clara, CA 95051
Faria Elementary	10155 Barbara Lane, Cupertino, CA 95014
Garden Gate Elementary	10500 Ann Arbor Avenue, Cupertino, CA 95014
Lincoln Elementary	21710 McClellan Road, Cupertino, CA 95014
McAuliffe Elementary	12211 Titus Avenue, Saratoga, CA 95070
Meyerholz Elementary	6990 Melvin Drive, San Jose, CA 95129
Montclair Elementary	1160 St. Joseph Avenue, Los Altos, CA 94024
Muir Elementary	6560 Hanover Drive, San Jose, CA 95129
Nimitz Elementary	545 E. Cheyenne Drive, Sunnyvale, CA 94087
Stevens Creek Elementary	10300 Ainsworth Drive, Cupertino, CA 95014
Stockmeir Elementary (Pod C only)	592 Dunholme Way, Sunnyvale, CA 94087
West Valley Elementary	1635 Belleville Way, Sunnyvale, CA 94087
Cupertino Middle	1650 S. Bernardo Avenue, Sunnyvale, CA 94087
Hyde Middle	19325 Bollinger Road, Cupertino, CA 94087
Kennedy Middle	821 Bubb Road, Cupertino, CA 95014
Lawson Middle	10401 Vista Drive, Cupertino, CA 95014
Miller Middle	6151 Rainbow Drive, San Jose, CA 95129

Lease sites:

Luther school lease site	220 Blake Avenue, Santa Clara, CA 95051
Serra school lease site	1510 Lewiston Drive, Sunnyvale, CA 94087
Nan Allan school lease site	10253 N. Portal Avenue, Cupertino, CA 95014
Regnart school lease site	1170 Yorkshire Drive, Cupertino, CA 95014

Other site:

Operations Center 10301 Vista Drive, Cupertino, CA 95014

The following school sites will not be tested (asbestos free):

Collins Elementary	10300 Blaney Avenue, Cupertino, CA 95014
Murdock-Portal Elementary	1188 Wunderlich Drive, San Jose, CA 95129
Sedgwick Elementary	19200 Phil Lane, Cupertino, CA 95014
Stocklmeir Elementary (except Pod C)	592 Dunholme Way, Sunnyvale, CA 94087
Teacher Resource Center/Kit Stop	10255 N. Portal Avenue, Cupertino, CA 95014

Prior inspection reports are available and can be provided to the selected asbestos inspection Consultant.

### SECTION 3 — PROPOSAL FORMAT AND CONTENT

#### 3.1 Economy of Preparation

The submission of proposals will consist of information provided in the format defined in Section 3.2 through 3.9. They should be prepared simply and economically, providing a straightforward and concise explanation of capabilities that will satisfy the requirements of the Request for Proposals (RFP). Emphasis in the submission of the RFP should be placed on completeness and clarity of content. Submission of the RFP should be prepared on standard 8-1/2 x 11 paper and placed in binders with tabs separating major sections.

#### 3.2 Project Understanding, Approach, and Methodology

Describe your approach to performing this contract. This should include but not be limited to the following:

- Define what services Consultant proposes to best serve the District's needs. State your project plan, Consultant's interpretation of the scope, and method of approach.
- Describe Consultant's experience with K-12 school districts.
- Identify any task that Consultant is expecting the District to perform.
- Identify how many accredited asbestos inspectors Consultant has locally available to serve the project for the scope identified. Photocopies of such certificates and/or licenses must be submitted with Consultant's response.
- Identify which LEA-approved laboratory sites will be utilized to perform the required tests.
- Provide the hourly rate for Consultant's staff and state whether Consultant has a minimum hourly call (i.e., two-hour minimum, four-hour minimum, etc.)
- Describe your asbestos awareness training course.

#### 3.3 Cover Letter

- Identify core team.
- Provide name of contact person, phone number, fax number, and e-mail address.
- Summarize Consultant's history and experience in following AHERA regulations.

#### 3.4 Table of Contents

Provide sections and page numbers for requested information.

### **3.5 Executive Summary**

Responses shall demonstrate how they summarize the asbestos inspection Consultant's overview of the project and indicate the project's complexity and the asbestos inspection Consultant's ability to resolve inherent project problems.

### **3.6 References**

Submit information regarding comparable K-12 or similar projects that the vendor has completed within the last five (5) years. The projects shall indicate the start and completion dates, and services provided. Provide the District's name, address, telephone number, and contact person for each reference.

### **3.7 Other Information**

Asbestos inspection Consultants are invited to submit other information believed to be relevant to the selection process.

### **3.8 Addendum to the RFP**

If it becomes necessary to revise any part of this RFP, an addendum to the RFP will be provided in writing to all asbestos inspection Consultants through the District's website at:

<https://www.cusdk8.org/departments/purchasing/bid-opportunities>

### **3.9 Proposal Price Requirements**

Proposed Cost for services shall be performed on a lump sum basis not to exceed the total contract amount. Consultant shall provide a price proposal for each year beginning 2025 to 2029. The total amount calculated for all five years will be the total lump sum bid amount. Consultant shall provide a breakdown of cost by task including category of job classification, description of work, hourly rate and total cost for AHERA triennial surveillance inspection and reporting, AHERA six-month surveillance inspection and reporting, and asbestos awareness training.

## **SECTION 4 — SELECTION PROCESS**

### **4.1 Award Selection Process**

Selection of qualified Proposers will be based on the following:

- a. quality and completeness of submitted proposal;
- b. understanding of project objectives;
- c. project approach;
- d. experience and expertise with public agencies and similar types of efforts; and
- e. references.

Additional questions may be asked of Consultants and interviews may be conducted. Proposers will be notified of any additional required information or interviews after the written proposals have been evaluated.

Interviews may be held with the most qualified respondents. The recommended proposals will be submitted to the CUSD Board of Education for contract approval. The Consultant selected will enter into a contract with the CUSD.

The CUSD may cancel this solicitation at any time.



All proposals shall comply with current federal, state, and other laws relative thereto.

## SECTION 5 — EVALUATION

### 5.1 Evaluation of Proposals

Selection of the successful proposal shall be generally based on the information provided by the Consultant in response to the Request for Proposals and any subsequent interviews that may be conducted.

*Consultant interviews will be held solely at the option and discretion of the Cupertino Union School District. If interviews are scheduled by the District, consultants will be required to attend at the scheduled times.*

The process for selection shall occur in the following sequence:

- A District committee will evaluate vendor proposals, qualifications, and service.
- Establish a “short list” of qualified Consultants (optional).
- Interview “short-listed” Consultants (at the option and discretion of the Cupertino Union School District).
- Interviews may be held, and Consultants are required to attend.
- Identify the best qualified Consultant.
- Award contract.

The Cupertino Union School District does not guarantee that an interview or an opportunity to demonstrate product will take place. Cupertino Union School District reserves the right to select a contractor based solely on the information provided in the proposals received in response to the RFP.

### 5.2 Evaluation Criteria

Criteria	Weight	Score
Price Proposals	25	
Experience with K-12 and /or other similar projects	25	
References	20	
Project Team	15	
Scope of Work	15	
<b>Total Weighted Evaluation Ranking</b>		

The above weights show the relative importance of individual criterion. The evaluation committee will use these criteria to score the proposals.

### 5.3 Asbestos Inspection Consultant Agreement

Prior to the award of contract, the Cupertino Union School District must be assured that the bidder selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with the skills required, equipment/materials and financial resources sufficient to provide services called for under this contract.

If, during the evaluation process, the Cupertino Union School District is unable to assure itself of the bidder's ability to perform under the contract, if awarded, the Cupertino Union School District has the option of requesting from the bidder any information that the Cupertino Union School District deems necessary to determine the bidder's capabilities. If such information is required, the bidder will be notified and will be permitted seven (7) working days to submit the requested information.

#### **5.4 Terms of the Offer**

The District expects to contract with an accredited asbestos inspection Consultant for a period of five years beginning January 1, 2025 through December 31, 2029. The selected Consultant will be required to sign an agreement based on the District's form of agreement for independent consulting services attached hereto as Attachment A.

Cupertino Union School District reserves the right to negotiate final contract terms with any Proposer selected. The contract between the parties will consist of the RFP together with any modifications thereto, the awarded Proposer's proposal, and all modifications and clarifications that are submitted at the request of the District during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Proposer's proposal, and the awarded Proposer's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

Proposer understands and acknowledges that the representations above are material and important and will be relied on by the District in evaluation of the proposal. Proposer misrepresentation shall be treated as fraudulent concealment from the District of the facts relating to the proposal.

## PROPOSAL DOCUMENTS TO BE RETURNED

The following forms **must** be completed and submitted on or before the submittal deadline.

- a. Addendum Form
- b. Consultant Representation and Certification

Failure to complete, sign (where required), and return the above proposal documents with your proposal may render it nonresponsive.

**ADDENDUM FORM**

The Consultant (s) shall acknowledge all addenda to the solicitation and complete the following information with the submission of the proposal.

Acknowledgment of Addenda:

Addendum number: \_\_\_\_\_

Date and time received: \_\_\_\_\_

Addendum number: \_\_\_\_\_

Date and time received: \_\_\_\_\_

Addendum number: \_\_\_\_\_

Date and time received: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Manual Signature of Agent(s)

**CONSULTANT REPRESENTATION AND CERTIFICATON**

The undersigned hereby affirms that:

1. He/she is a duly authorized agent of the Consultant (corporate or other authorization confirmation may be requested prior to final contract execution).
2. The offer is being offered independently of any other Consultant's and is in full compliance with the collusive prohibitions of this state. The Consultant certifies that no employee of its firm has discussed, or compared the proposal with any other Consultant or District employee, and has not colluded with any other Consultant or District employee.
3. The Consultant will accept any awards made to it as a result of this solicitation if the acceptance is made within 90 calendar days after the proposal due date.

I hereby certify that I am submitting the following offer as my firm's proposal. I understand that by virtue of executing and returning with this proposal this required response form, I further certify full, complete and unconditional acceptance of the contents of this Solicitation (except as may be noted in the offer). I also agree to be bound by any and all specifications, terms and conditions, contract document, accepted offer and other documents of the Solicitation.

Submitted by:

Title:

Company Name:

Address:

Phone:

Fax:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Manual Signature of Agent(s)

**ATTACHMENT A**

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR SPECIAL SERVICES**

**Contract #**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of \_\_\_\_\_, between the Cupertino Union School District ("District") and \_\_\_\_\_ ("Consultant") (together, "Parties").

1. **Services.** The Consultant shall furnish to the District the services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Term.** The term of this Contract shall be for a period of \_\_\_\_\_ beginning in \_\_\_\_\_ through \_\_\_\_\_ (estimated time period).
3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract 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:

- \_\_\_\_\_ Signed Agreement
- \_\_\_\_\_ Workers' Compensation Certificate
- \_\_\_\_\_ Criminal Background Investigation Certification
- \_\_\_\_\_ Insurance Certificates and Endorsements
- \_\_\_\_\_ W-9 Form (if not on file at CUSD)
- \_\_\_\_\_ DIR Certification (not applicable)
  
- \_\_\_\_\_ \_\_\_\_\_

4. **Compensation.** District compensation to the Consultant shall be as set forth in Exhibit "B" as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), without the express approval of the Board.
5. **Taxes.** The Consultant shall pay all federal, state and local taxes, levies, duties and assessments of every nature due in connection with any work under the contract and shall indemnify and hold harmless the District from any liability on account of any and all such taxes, levies, duties, assessments and deductions. Consultant's proposal prices shall include allowance for said taxes.
6. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, other than as provided in Exhibit "B."
7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her 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.

8. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
9. **Standard of Care.** Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
10. **Originality of Services.** 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.
11. **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.
12. **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 three (3) 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.
13. **Termination.**
  - 13.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement with thirty (30) days' written notice, and compensate Consultant only for 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 days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this

section, District shall compensate Consultant for work completed to date as a pro-rata amount of the full fees, costs, and expenses.

13.2. **Without Cause by Consultant.** Consultant may, upon thirty (30) days' 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.

13.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

13.3.1. material violation of this Agreement by the Consultant; or

13.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

13.3.3. 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 required services from another Consultant. If the expense, fees, and costs to the District exceeds the cost of providing the service 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.

12.4 Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants and/or attorneys fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Consultant under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.



## 15. Insurance.

15.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

15.1.1. **General Liability.** Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

15.1.2. **Automobile Liability Insurance.** One Million (\$1,000,000) per accident for bodily and property damage Automobile Liability Insurance, Occurrence Form, that shall protect the Consultant the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Consultant.

15.1.3. **Workers' Compensation and Employers' Liability Insurance.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

15.1.4. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

14.1.4.1. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of Service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

14.1.4.2. For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.

14.1.4.3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

15.1.5. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.1.6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

15.1.7. Consultant shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

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

16. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

17. **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 Contract 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 Contract shall be appropriately amended in writing, or this Contract 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.

18. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

19. **Safety and Security:** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

20. **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.

21. **Antidiscrimination.** 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.

22. **Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 23.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
  - 23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
24. **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.
25. **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. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

26. **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 deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**District:**

**Cupertino Union School District**  
10301 Vista Drive  
Cupertino, CA95014  
FAX: (408) 865-0326  
ATTN: Brian Slaughter

**Consultant:**

[NAME]  
\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_  
[FAX]  
ATTN: \_\_\_\_\_

Any notice personally given or sent by facsimile transmission 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. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

27. **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.
28. **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.
29. **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. This agreement is not valid until approved/ratified by Cupertino Union School District Board of Education. Services shall not be rendered until Agreement is approved.
30. **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 Santa Clara County, California.
31. **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.
32. **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.
33. **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.

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Cupertino Union School District**

**[Consultant]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: Director, Maintenance, Operations  
& Transportation

Print Title: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: Chief Business Officer

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**Information regarding Consultant:**

License No.: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:  
\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
\_\_\_\_ Corporation, State: \_\_\_\_\_  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Consultant to furnish the information requested in this section.**

**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 satisfactory proof 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 Contract.

Date:

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(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 Contract.)

**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"):

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: \_\_\_\_\_

District Representative's 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.

Date: \_\_\_\_\_

District Representative's Name and Title: \_\_\_\_\_

District Representative's Signature: \_\_\_\_\_

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: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

SAMPLE



**Exhibit "A"**

*Consultant's entire Proposal, if included, is not made part of this Agreement. Consultant's Proposal is made part of this Agreement for scope of services and billing rates only, as prepared for Cupertino Union School District.*

SAMPLE