



PROFESSIONAL SERVICES AGREEMENT
CUPERTINO UNION SCHOOL DISTRICT

This Professional Services Agreement (“Agreement”) is made as of _____ between the Cupertino Union School District (“District”) and _____ (“Consultant”) (together, “Parties”).

1. **Scope of Professional Services.** The Consultant shall furnish to the District the services as described below or in Attachment A attached hereto and incorporated herein by this reference “Services” or “Work”:

Consultant will not commence work until the final execution of this Agreement by both parties.

2. **Term.** Consultant shall commence providing services under this Agreement upon execution of the Agreement by both parties and will diligently perform such services as required. The term for services and schedule to provide services shall be in accordance with the dates as indicated here or in Attachment A attached hereto and incorporated herein: _____.

3. **Compensation.** District compensation to the Consultant shall be as set forth in Attachment A as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed \$ _____ (_____) without the express approval of the District’s Board of Education.

4. **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 Attachment A. Consultant shall invoice the District for services rendered. Invoices must include invoice number, invoice date, dates of service, detailed description of service, Purchase Order number, payment rate, total payment due, remit to address, vendor name and contact information.

5. **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, partners, or joint ventures 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 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 employees.

6. **Materials.** Consultant shall furnish at his/her own expense all labor, materials, equipment, supplies and other items necessary to complete the Work to be provided pursuant to this Agreement.

7. **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.

8. **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.

9. **Copyright/Trademark/Patent.** Consultant 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 rights, 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.
10. **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.
11. **Termination.**
- 11.1 **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.
- 11.2 **Without Cause by Consultant.** Consultant may upon a 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 the Consultant shall be sufficient to stop further performance of services to the 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.
- 11.3 **With Cause by District.** District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include:
- 11.3.1 Material violation of this Agreement by the Consultant; or
- 11.3.2 Any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 11.3.3 Consultant is adjudged as bankrupt, 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 expenses, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expenses, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to the District.
- 11.3.4 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.
12. **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 consultant’s and/or attorney’s 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.

13. **Insurance.** The Consultant shall procure and maintain at all times while performing any portion of Services the following insurance.

13.1 **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.

13.2 **Sexual Abuse/Molestation.** May be included under General Liability, One Million Dollars (\$1,000,000) minimum limit per occurrence; Two Million Dollars (\$2,000,000) minimum general aggregate.

13.3 **Automobile Liability Insurance.**

13.3.1 Personal transportation vehicles that are driven onto and/or parked on school property are to be covered according to California State minimum requirements for private vehicles: \$15,000 injury/death to one person; \$30,000 injury/death to more than one person; and \$5,000 damage to property.

13.3.2 Commercial vehicles that are used to provide services, including food services: One Million Dollars (\$1,000,000) per accident for bodily and property damage Automobile Liability Insurance, Occurrence Form, that shall protect the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising from the performance of any portion of the Services by Consultant.

13.4 **Workers’ Compensation and Employers’ Liability Insurance.** Labor Code Section 3700 in relevant part provides every employer, except the State, shall secure the payment of compensation for an employee in one or more of the following ways: a) by being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in California; or b) 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 the ability to self-insure and to pay any compensation that may become due to its employees.

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 insurance policy or certificate of consent to self-insure. In regards to workers’ compensation insurance, Consultant 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 secure 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 (“Additional Insured”) or verification of consent to self-insure.

13.5 **Other Insurance Provisions.** The general liability, automobile liability, and workers’ compensation and employers’ liability insurance policies are to contain, or be endorsed to contain, the following provisions:

a) Endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

b) The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insured”) are to be covered as Additional Insured as respects to 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 Insured.

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

d) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insured. e) 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. f) 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.

g) Upon request, Consultant shall furnish the District Certificates of Insurance, prior to commencing Work, showing maintenance of the required insurance coverage and original endorsements affecting general liability, automobile liability, and worker's compensation and employers' liability insurance.

14. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
15. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the District's Board of Education and all federal, state, and local laws, ordinances, regulations and health orders. 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, ordinances, 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. Agreement shall be appropriately amended in writing or 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.
16. **COVID-19 Safety Requirements.** Consultant shall, at its cost, timely comply with all applicable federal, State, and local requirements relating to COVID-19 or other public health emergency/epidemic/pandemic. Further, except to the extent the Order provides otherwise, Contractor and Contractor's personnel, subcontractors and suppliers shall continue to comply with all applicable terms in the California Department of Public Health's State Officer Orders.
17. **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.
18. **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.
19. **Anti-Discrimination.** It is the policy of the District that there is 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. Therefore, 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.
20. **Fingerprinting/Criminal Background Investigation.** Consultant must complete and sign the Fingerprinting/Criminal Background Investigation Certification (Attachment B) incorporated herein. If

Consultant or an employee, subcontractor, agent, and employee or agent of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant (together, “Employees”) 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 Employees to have any contact with District pupils until such time as the Consultant has verified to the District that the Employee has not been convicted of a felony, as defined in Education Code section 45122.1.

21. **Compliance with Mandatory Reporting Requirements.** Consultant understands and acknowledges that under the Child Abuse and Neglect Reporting Act (“CANRA”) and per Penal Code section 11165.7, a wide variety of individuals whose duties require direct contact and supervision of children are considered “mandated reporters” of suspected child abuse or neglect. Consultant agrees that to the extent Consultant’s scope of services under this Agreement include direct contact and supervision of children, Consultant and its employees, volunteers and/or agents shall: (1) be deemed mandated reporters; and (2) comply with the requirements of the CANRA.

22. **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:
 20.1 Requesting that District employee(s) evaluate the performance of the Consultant and the Consultant’s employees and subcontractors.
 20.2 Announced and unannounced observance of Consultant, Consultant’s employee(s), and/or subcontractor(s).

23. **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 the services performed in this Agreement.

24. **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.

25. **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 E-mail or facsimile transmission, addressed as follows:

<p><u>District</u> Cupertino Union School District 10301 Vista Drive Cupertino, CA 95014 Tel: 408-252-3000 Fax: 408-749-1034 E-mail: _____ Please submit invoices to tech_ap@cusdk8.org</p>	<p><u>Consultant</u> _____ _____ _____ E-mail: _____</p>
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Any notice personally given or sent by E-mail or facsimile transmission to the District 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.

- 26. **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.
- 27. **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.
- 28. **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.
- 29. **Incorporation of Recitals and Addendums.** The Recitals and each Addendum attached hereto are hereby incorporated herein by reference.

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

Date: _____

Date: _____

By: _____
Consultant Signature

By: _____
District Signature-Department /Site Manager

Print Name: _____

Print Name: _____

Title: _____

Title: _____

By: _____
District Authorizing Signature
(Superintendent or Executive Cabinet Designee)

Information regarding Consultant

Name of Consultant: _____
Title: _____
License No.: _____
Address: _____

Telephone: _____
E-Mail: _____

- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation/State: _____
- Limited Liability Company
- Other: _____

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209, require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Consultant must provide District with the following tax forms:

- W-9 Form; and
- If Nonresident of California or California Resident with P. O. Box, please submit:
 - California Form 587 or 590 – Withholding Exemption Certificate; (or)
 - California Form 588 – Nonresident Withholding Waiver Request.

Please submit proof of California Franchise Tax Board Approval; (or)

- California Form 589 – Nonresident Reduced Withholding Request. Please submit proof of California Franchise Tax Board Approval.

FOR DISTRICT USE ONLY

Local Cost

Fund Site Resource Goal Function Object Program Year Center

Local Cost

Fund Site Resource Goal Function Object Program Year Center

Local Cost

Fund Site Resource Goal Function Object Program Year Center

CUSD Budget Analyst Approval Date

ATTACHMENT 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.

ATTACHMENT B

FINGERPRINT AND CRIMINAL BACKGROUND CHECK CERTIFICATION **(NON-CONSTRUCTION CONTRACTS)**

In accordance with the Department of Justice fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq.

With respect to the Professional Services Agreement ("Agreement") between the Cupertino Union School District ("District") and _____ ("Contracting Party"):

One of the boxes below must be checked with regard to Contracting Party and Contracting Party's personnel (officers, principals, paid or unpaid employees, volunteers, agents, subtenants and subcontractors of Contracting Party who will provide services under the Agreement) ("Contracting Party's Personnel") and the arrangements verified by an authorized representative of District prior to commencement of the Agreement.

Fingerprinting/Background Check requirements do not apply because Contracting Party/Contracting Party's Personnel will not have any interaction with District pupils based on the type of service being provided, the location at which services will be provided, or for other reason (Specify):

Contracting Party/Contracting Party's Personnel qualify for a waiver of fingerprint/criminal background check requirements on the following basis:

The services provided by Contracting Party/Contracting Party's Personnel are for an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable. [Ed. Code, §45125.1(b)]

Contracting Party/Contracting Party's Personnel will have no interaction with District pupils that is not under the immediate supervision and control of the pupil's parent/guardian. Enter details of parental supervision:

Contracting Party/Contracting Party's Personnel will have no interaction with pupils that is not under the immediate supervision and control of a District employee who has been properly fingerprinted and undergone background checks. Enter details of District employee supervision arrangements:

Contracting Party is a sole proprietor who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee, and in accordance with the fingerprinting requirements of Education Code section 45125.1(h), hereby agrees to the District's preparation and submission of fingerprints so that the California Department of Justice may determine (A) that Contracting Party has not been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work or action under the Agreement shall commence until the Department of Justice ascertains that Contracting Party has not been convicted of a felony as defined in Government Code Section 45122.1.

- Contracting Party is not a sole proprietor and has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contracting Party's Personnel who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee during the term of the Agreement, and the California Department of Justice has determined (A) that none of Contracting Party's Personnel has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contracting Party performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. A complete and accurate list of Contracting Party's Personnel who may come in contact with District pupils during the course and scope of the Agreement is attached hereto. No work or action under the Agreement shall commence until the Department of Justice ascertains that none of Contracting Party's Personnel has been convicted of a felony as defined in Government Code Section 45122.1. I understand that it is Contracting Party's sole responsibility to maintain, update, and provide the District with current "Fingerprint and Criminal Background Check Certification" information for all Contracting Party's Personnel throughout the duration of the Agreement. A list of Contracting Party's Personnel is attached hereto as Attachment C.

CONTRACTING PARTY CERTIFICATION

I am a representative of the Contracting Party 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 the Contracting Party. By signing below, I certify that the information contained on this certification form is accurate.

Date: _____

Contracting Party: _____

Signature: _____

Print Name: _____

Title: _____