

FORM OF CONSULTING AGREEMENT

MECHANICAL ENGINEERING SERVICES AGREEMENT

This Mechanical Engineering Services Agreement (this “**Agreement**”) is dated as of October 29, 2021 (the “**Effective Date**”) and is between San Mateo Union High School District (“**District**”) and Capital Engineering Consultants, Inc. (“**Consultant**”) (each, a “**Party**,” together “**Parties**”).

RECITALS

A. Pursuant to that Request for Qualification and Proposal (“**RFQ/P**”) issued by District on September 24, 2021, Consultant is the selected qualified mechanical engineering consultant to provide services for the **DISTRICT-WIDE HVAC CONTROLS SYSTEM REPLACEMENT PROJECT**.

B. District desires to implement the Measure L Bond Program (“**Project**”) and ensure that specific projects in the Project List have been reviewed by a Mechanical consultant when considered for approval by the Board of Trustees.

C. Consultant desires to provide professional Mechanical engineering services in connection with the Project in conformity with Consultant’s proposal to the RFQ/P.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

AGREEMENT

1. **Services and Scope of Work.** In connection with the Project, Consultant will provide Mechanical review and recommendations for the Project. The services (collectively, the “**Services**”), are described in detail in **Exhibit A** which is incorporated herein by this reference and together referred to as the “**SOW**”. The SOW includes Consultant’s preparation and delivery of the described in the SOW (the “**Deliverables**”). The SOW is intended to be a comprehensive description of Services to be performed by Consultant, it being understood that Consultant will perform the services necessary for the Project.
2. **Performance Standards.** Consultant will perform the Services in accordance with the terms of this Agreement. The Services to be performed by the Consultant will be performed in a timely, professional and workman-like manner in accordance with industry standards, and with a degree of care, skill and expertise as is required for the provision of services of a similar nature. The Deliverables (as defined below), will fully conform to the specifications, requirements, and other terms in this Agreement.
 - a) **Additional Services.** District may submit to Consultant a change proposal to amend the terms of the SOW to provide additional services not described in **Exhibit A** (a “**Change Proposal**”). Upon receipt of a Change Proposal, Consultant will promptly provide (i) any information requested by District, and (b) its written acceptance or rejection of the Change Proposal.
3. **Term.** This Agreement shall remain in full force and effect until the Project has been completed or earlier terminated under the provisions in this Agreement.
4. **Termination and Notice.** This Agreement may be terminated by District upon giving of seven (7) business days’ prior written notice to Consultant at any time and for any reason. If such termination is for convenience (as distinguished from cause resulting from Consultant’s default), Consultant shall be

compensated according to the terms of this Agreement for Services satisfactorily performed up to the date of such termination. If such termination is for cause (as distinguished from convenience) Consultant's right to compensation and District's rights to terminate shall be governed by the provisions of this Agreement. This Agreement may be terminated by Consultant for District's material breach upon seven (7) business days' prior written notice to District.

5. **Compensation.** Subject to the terms and conditions of this Agreement, District will pay Consultant the Services based on the fees specified in **Exhibit B** (the "Fees"). Consultant agrees that such Fees constitute the full and complete consideration for Consultant's performance of Services hereunder and that no other fees will be owed by District under this Agreement.
6. **Expenses.** If reimbursable expenses are set forth in the SOW, Consultant agrees that District will only reimburse Consultant for expenses to the extent that Consultant complies with District's written policies, which District may amend from time to time. District will provide to Consultant such written policies upon request.
7. **Invoices.** Payment to Consultant of undisputed Fees and undisputed expenses (if applicable) will be due thirty (30) days following District's receipt of the invoice for such Fees and expenses.
8. **Monitoring.** Consultant will cooperate with any requests by District to monitor the Services in order to verify that such Services are being performed in accordance with this Agreement and in a timely and satisfactory manner. Consultant will use its best efforts to facilitate any such requests, including providing access to Consultant staff and key personnel (as defined below).
9. **Staffing and Key Personnel.** The services to be provided by Consultant under this Agreement shall be performed or directed by the Key Personnel as identified in **Exhibit C**, attached hereto and incorporated herein by this reference. The furnishing of services by these individuals, and any individuals approved by District to replace them, is of the essence to this Agreement. Recognizing the necessity of a close working relationship with the District and the Contractor, Architect and other third persons under District's direction and control (the "**Project Team**"), Consultant's principals and employees shall furnish the skill, efforts and judgment of its organization in the performance of their duties and responsibilities under this Agreement, subject at all times to District's discretion, and provide their knowledge, ideas, experience and abilities relating to the efficient design and construction of the Project and to cooperate fully with all members of the Project Team.
10. **Subcontracting.** Other than as expressly agreed to in a SOW, Consultant will not subcontract or otherwise delegate ("**Subcontractor**" or "**Subconsultant**") any of its obligations under this Agreement without District's express prior written consent on a case-by-case basis. Consultant will be responsible for the direction and coordination of the services of each subcontractor and be liable for the performance and quality of any work performed by any and all subcontractors. Consultant represents and warrants that prior to engaging any subcontractor to perform services for District, Consultant will have entered into a written agreement with any such subcontractor such that District's interests are protected to at least the same degree as provided for in this Agreement. District will have no obligation to pay any subcontractor. In no event shall the existence of a subcontract operate to release or reduce the liability of Consultant to District for any breach in performance of Consultant's duties hereunder.
11. **District Policies.** While on the Property, Consultant agrees to comply and require its employees, officers, directors, representatives, affiliates, and agents (each, a "**Consultant Representative**") to comply with

District's applicable policies and procedures (as such may be provided to Consultant from time to time), including without limitation those procedures pertaining to access, safety, security and confidentiality.

12. **No Conflicts.** Consultant will refrain from any activity, and will not enter into any agreement or make any commitment that is inconsistent or incompatible with Consultant's obligations under this Agreement, including Consultant's ability to perform the Services. Consultant represents and warrants that it is not subject to any contract, duty or any other obligation that would be breached by Consultant's entering into or performing its obligations under this Agreement or that is otherwise inconsistent with this Agreement.
13. **Intentionally Omitted.**
14. **Independent Contractor Relationship.** Consultant acknowledges and agrees that its relation to District under this Agreement is that of an independent contractor. Nothing in this Agreement is intended or should be construed to create a partnership, joint venture, or employer-employee relationship between District and Consultant or any of the Consultant Representatives. Consultant is not the agent of District and is not authorized, and must not represent to any third party that it is authorized, to make any commitment or otherwise act on behalf of District.
15. **Indemnification.**
 - a) To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant agrees to indemnify and hold harmless District and its affiliates and its and their employees, officers, directors, representatives and agents (each, a "**District Party**") from and against any and all claims, liabilities, losses, expenses and damages (including attorneys' and expert witnesses' costs and fees) arising from or relating to (i) any breach of any representation, warranty, covenant, or obligation of Consultant in this Agreement, (ii) the failure by Consultant to comply with all applicable laws and regulations in the performance of its obligations under this Agreement, or (iii) any intentional misconduct or gross negligence by Consultant or any Consultant Representative in performing the Services.
 - b) In the event of any claim, demand, suit, investigation or action (a "**Claim**") for which an District Party is or may be entitled to indemnification hereunder, Consultant agrees to be solely responsible for defending the Claim, subject to District's right to participate with counsel of its own choosing, at its own expense, and for payment of all judgments, settlements, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, resulting from the Claim against a District Party, provided that the Consultant will not agree to any settlement that imposes any obligation or liability on a District Party without District's prior written consent.
16. **Insurance Requirements.** Consultant, its agents and Subconsultants shall maintain, without cost to District, insurance coverage with limits not less than those set forth in **Exhibit D**, with insurers acceptable to District and authorized to do business in the State of California.
17. **Certificates of Insurance.** Consultant shall deliver to District not less than thirty (30) days after the execution of this Agreement duly executed Certificates of Insurance from a recognized carrier with an AM Best rating of "A-" with a financial size category of VIII or better as indicated in the BEST INSURANCE KEY RATING GUIDE. Said Certificates shall indicate that policies providing such coverage and limits of insurance are in full force and effect. Said Certificates shall further provide that no less than thirty (30) days' advance notice (10 days for non-payment of premium) will be given in

writing to District prior to cancellation or termination of the policies of insurance. Such delivery and any notifications shall be addressed to the District Representative as identified below.

18. **Default.** Consultant shall, at the option of District, be deemed to be in default of this Agreement if: (i) Consultant fails to make payment when due to Subconsultants or otherwise for materials or labor; or (ii) Consultant fails to coordinate its Services with the work and services of other consultants, engineers, or contractors concerning the Project; or (iii) Consultant continues to employ one or more individuals to perform Services in connection with the Projects who are unsatisfactory to District, after notice from District of its objection to the employment of such individual(s); or (iv) Consultant fails to provide the services of key personnel in accordance with the provisions of this Agreement; or (v) Consultant substantially fails to observe any other material term, provision, condition, covenant, or agreement in this Agreement to be observed and performed on the part of Consultant.
19. **Force Majeure.** If either party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation to make money payments, such party shall give to the other party prompt written notice thereof with reasonably full particulars concerning the inability to carry out its obligations. Thereupon, the obligations of the party giving notice, so far as they were affected by the Force Majeure (as defined below), shall be suspended during, but no longer than, the continuance of the Force Majeure, and said party shall use all possible diligence to remove the Force Majeure as quickly as possible. The term “Force Majeure” as used in this Agreement shall mean an act of God, strike or lockout (over which the party has no direct bearing in the resolution thereof), or other industrial disturbance, act of the public enemy, war, blockage, public riot, lightning, fire, flood, explosion, earthquake, failure to timely receive necessary government approvals, government restraint, and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the party claiming suspension.
20. **Notices.** All notices, consents, requests, approvals, demands and determinations required or permitted under this Agreement (other than routine operational communications), will be in writing and will be deemed duly given and received upon actual receipt (or independent confirmation thereof) by the following designees:

In the case of DISTRICT:	Attn: Yancy Hawkins Deputy Superintendent, Business Services San Mateo Union High School District 650 N. Delaware Street San Mateo, CA 94401
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In the case of Consultant:	Attn: Chuck Shinneman Capital Engineering Consultants, Inc. 11020 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670
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A party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

21. **Compliance with Law.** Consultant agrees that it will comply with all applicable federal, state, and/or local laws, ordinances, regulations, codes, orders or rules of all governmental, quasigovernmental or regulatory authorities and local hearing boards, community organizations and commissions having jurisdiction over or an interest in the Projects or the Services, or any portion thereof, or over District, or

Consultant, as applicable (each, an “Authority” and, collectively, the “Authorities”) in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required. .

22. Intentionally Omitted.

23. Governing Law; Venue. This Agreement is governed by the laws of the State of California without reference to any conflict of laws principles that would require the application of the laws of any other jurisdiction. Consultant irrevocably consents to the personal jurisdiction of the state courts for San Mateo County for any suit or action arising from or related to this Agreement, and waives any right Consultant may have to object to the venue of such courts. Consultant further agrees that these courts will have exclusive jurisdiction over any such suit or action initiated by Consultant against District.

24. Legal Fees. The prevailing party in any litigation between the parties relating to this Agreement will be entitled to recover its reasonable attorneys’ fees and court costs, in addition to any other relief that it may be awarded.

25. Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

26. No Assignment. This Agreement and Consultant’s rights and obligations under this Agreement may not be assigned, delegated, or otherwise transferred, in whole or in part, by operation of law or otherwise, by Consultant without District’s express prior written consent. Any attempted assignment, delegation, or transfer in violation of the foregoing will be null and void.

27. Remedies. District’s remedies for any breach of this Agreement by Consultant will include damages, injunctive relief, specific performance, and restitution.

28. Waiver. All waivers must be in writing and signed by the party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

29. Construction. Section headings are included in this Agreement merely for convenience of reference; they are not to be considered part of this Agreement or used in the interpretation of this Agreement. When used in this Agreement, “including” means “including without limitation.” Whenever District’s consent or approval is required under this Agreement, District may grant or deny its consent or approval in its sole and absolute discretion. No rule of strict construction will be applied in the interpretation or construction of this Agreement. In the event of any conflict between this Agreement and a SOW, this Agreement will control unless the SOW expressly refers to the parties’ intent to alter the terms of this Agreement with respect to that SOW.

30. Entire Agreement; Amendments. This Agreement is the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous communications and understandings between the parties. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged.

31. Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference.

Exhibit A – Scope of Services and Deliverables

Exhibit B – Key Personnel

Exhibit C – Compensation and Fee Schedule

Exhibit D – Insurance Requirements

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SAN MATEO UNION HIGH SCHOOL DISTRICT

CAPITAL ENGINEERING CONSULTANTS, INC.

Signed: _____

Signed: _____

Name: Yancy Hawkins

Name: Chuck Shinneman

Title: Associate Superintendent,
Chief Business Officer

Title: Principal-In-Charge

EXHIBIT A

SCOPE OF SERVICES AND DELIVERABLES

The following applies to six comprehensive high schools including but not limited to: Central Plant Boilers, Chillers, Fan Coil Units, Variable Air Volume Boxes, Rooftop Package Units, Duct Furnaces, Forced Air Units, Split Systems, Variable Refrigerant Volume Systems, Make-up Air Units, Exhaust Fans.

1. Meet with Staff from Operations and Maintenance Department to determine required HVAC Controls functions and monitoring.
2. Inventory existing mechanical systems to determine current conditions throughout six the comprehensive high school campuses.
3. Provide a detailed list of systems and all HVAC equipment including motor plate data for each piece of equipment.
4. Coordinate with controls systems manufacturer(s) to determine system requirements to achieve the Districts required function & monitoring.
5. Prepare bid documents for the replacement of existing controls systems. Documents should be scalable down to individual school sites.
6. Assist the District with during the process including responding to pre-bid Requests for Information (RFI's).
7. Provide a fee proposal for Construction Administration Services on a site-by-site basis with a discount if sites are combined into one or two projects.
8. Basis of Design to be Pelican Wireless Systems

EXHIBIT B

KEY PERSONNEL LIST

Name: Chuck Shinneman

Title: Associate Principal-In-Charge

Name: Ashkan Azarkeyvan

Title: Senior Associate

Name: Aaron Wintersmith

Title: Senior Associate

Name: Ramon Ramos

Title: Engineer

EXHIBIT C

COMPENSATION AND FEE SCHEDULE

Capital Engineering Consultants, Inc. 2021 Billing Rates

Sr. Principal	\$240.00 / hour
Principal	\$218.00 / hour
Director	\$208.00 / hour
Sr. Project Manager	\$198.00 / hour
Project Manager	\$190.00 / hour
Field Services	\$188.00 / hour
Senior Engineer	\$170.00 / hour
Engineer	\$155.00 / hour
Senior Designer	\$145.00 / hour
Designer	\$133.00 / hour
Technician / CADD	\$122.00 / hour
Intern	\$117.00 / hour
Project Administrator	\$102.00 / hour
Sr. Admin.	\$69.00 / hour
Clerical / Admin.	\$56.00 / hour

Reimbursable expenses include: Postage other than for general correspondence; plan check permit and inspection fees required by governing bodies; plotting of CADD originals; printing and reproduction costs applicable to project submissions to client or review agencies; toll calls; mileage to and from site meetings at IRS allowed rate; overnight or daily delivery service when required to meet a need of the client not the fault of the Engineer or to meet a previously agreed to submission date.

Reimbursable expenses will be billed at actual cost plus a service charge of 10%.

Travel time will be at the rate indicated in Capital's rate sheet for various staff members.
Minimum travel time for field work will be 4 hours, charged at the rate of the staff member.

EXHIBIT D

INSURANCE REQUIREMENTS

Consultant shall maintain at its expense such insurance as is specified herein and in **Section 16** of this Agreement. All insurance shall be subject to the reasonable approval of District as to coverages, terms and insurance carriers. The following are minimum coverages for insurance required to be maintained under this Agreement:

1. Commercial General Liability

- A. Limit of Liability: \$3,000,000 each occurrence, \$3,000,000 aggregate; with excess umbrella liability coverage in the amount of \$10,000,000 each occurrence and in the aggregate
- B. Form: 1973 Comprehensive General Liability or 1986 Commercial General Liability (specify form on certificate of insurance) or in a form as reasonably approved by District.

3. Business Automobile Policy

- A. Limit of Liability: \$1,000,000 each accident
- B. Form: Business Automobile Policy
- C. Specific Coverage Requirements: Coverage for automobiles, both owned and non-owned, operated in connection with the Project

4. Workers' Compensation and Employer Liability

- A. Workers' Compensation: State statutory limits required by law
- B. Employers' Liability: \$1,000,000 each accident/aggregate (where applicable)

5. General.

- A. All insurance coverages shall be provided, without liability on the part of District for premiums thereof, and District and its trustees, officers, and employees shall be included as additional insureds.
- B. All insurance coverages shall provide that subrogation against District or its affiliates for losses or claims shall be waived.
- C. All insurance carried by Consultant shall be considered to be primary and any insurance carried by District or any affiliate shall be considered to be excess and non-contributory with such primary insurance. The certificates required hereunder shall evidence (i) that the insurance is in force and not impaired by pre-existing claims or occurrences under any aggregate limit that may be in effect; (ii) additional insured status as required; (iii) waiver of subrogation as required; (iv) primary status of Consultant's insurance; and (v) that no less than thirty (30) days written notice will be given to District prior to any cancellation or non-renewal of any policy except for cancellation or non-renewal of any policy based on non-payment of premium, which shall be subject to no less than ten (10) days written notice. Consultant agrees to give no less than thirty (30) days written notice to District of any modification of any policy.
- D. Consultant shall require any Subconsultant to comply with all insurance requirements of this Agreement and this Exhibit.