

**NORTH MONTEREY COUNTY UNIFIED SCHOOL DISTRICT
INDEPENDENT CONSULTANT SERVICES AGREEMENT:
ARCHITECTURAL/ENGINEERING SERVICES**

This Independent Contractor Services Agreement (“Agreement”) is made and entered into effective **November 2, 2021** (the “Effective Date”) by and between North Monterey County Unified School District (“District”) and **Alioto Construction Inspections** (“Consultant”).

1. Retention of Consultant; Standard of Care. District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth herein, the following inspection services: **Inspector of Record Services for North Monterey County High School Antenna Project**. The Consultant agrees to perform such Services as expeditiously as is consistent with professional skill and care and the orderly progress of the District’s project.

All Services performed by the Consultant under and required by this Agreement shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by consultants in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the Services required by the District; and all such Services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). Consultant shall be responsible for the completeness and accuracy of any drawings, renderings, and specifications as may be required pursuant to the Services described in this Agreement. The District shall have the right to add or delete from the Consultant’s scope of Services as it may deem necessary for the best interests of the project and/or the District.

2. Compensation.

2.1 Payment for Services. Consultant’s fee for Services to be performed under this Agreement shall not exceed **\$2,000.00** (“Not to Exceed Amount”), unless agreed in writing by the District. For Services satisfactorily performed by Consultant following the execution of this Agreement, payment shall be made on a single payment at the close of the project, up to the Not to Exceed Amount, after receipt and approval by the District of the Consultant’s properly documented and submitted invoice. To be “properly documented and submitted”, an invoice shall be timely, be accompanied by all necessary documentation, list all Services performed, and for each Service performed, list the person performing it and the person’s rate of compensation. Consultant’s invoice shall be submitted within (10) days of the end of the monthly billing period.

3. Term. This Agreement shall begin on **December 10, 2021** and shall terminate upon completion of the Services, but no later than **January 31, 2022**. There will be no extension of the term of this Agreement without express written agreement by both parties.

4. Termination. The District may terminate this Agreement at any time by giving written notice to the Consultant. Such written notice shall be sufficient to stop further performance of Services by Consultant. In the event of termination prior to the end of the term of this

Agreement, Consultant shall invoice the District for any Services performed up to the date of termination, and shall promptly return any District property or records, and any copies thereof, in its possession to the District. The District may then proceed with services for its project in any manner the District deems proper.

6. Indemnity. The Consultant shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees against the payment of any and all costs and expenses, including but not limited to attorney's fees and litigation costs, claims, suits and liability arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Consultant, the Consultant's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

However, the Consultant's duty to defend shall be limited, as follows: (1) it shall only apply to defense of the portion of the claims against the District that arise out of, or pertain to, or relate to negligence, recklessness or willful misconduct of the Consultant, the Consultant's officers, employees, or consultants; and (2) Consultant shall be entitled to reimbursement of reasonable defense costs if a judgment is entered on the claims which specifically finds no negligence, recklessness, or willful misconduct by Consultant, the Consultant's officers, employees, or consultants. In addition, nothing in this Article 18.1 shall constitute a duty on the part of the Consultant to defend and indemnify beyond the limits of California Civil Code section 278.2.8.

7. Insurance.

7.1 General Liability Insurance. Without limiting Consultant's indemnification set forth in Section 6 above, Consultant shall secure and maintain in force during the term of this Agreement a comprehensive general liability policy and automobile policy using an occurrence policy form, with combined single limits of \$2,000,000, or \$1,000,000 per person and \$1,000,000 per accident, with no aggregate limit. The District shall be named as an additional insured on the policies by endorsements. The policy shall provide that it is primary such that insurance maintained by the District, if any, shall be excess and not co-primary. A copy of the declarations page of Consultant's insurance policies shall be attached to this Agreement as proof of insurance.

8. Consultant Qualifications. Consultant represents that Consultant is fully licensed in the State of California to perform the Services described in Section 1 of this Agreement.

9. California Residency. Consultant is a resident of the State of California.

10. Independent Consultant Status. While engaged in carrying out the terms and conditions of this Agreement, the Consultant is an independent Consultant, and not an officer, employee, agent, partner, or joint venturer of the District.

11. Workers' Compensation Insurance. Consultant agrees to provide all necessary workers' compensation insurance for Consultant's principals and employees, if any, at Consultant's own cost and expense.

12. Taxes. Consultant agrees that Consultant has no entitlement to any future work from the District or to any employment or fringe benefits from the District. Payments to the Consultant pursuant to this Agreement will be reported to Federal and State taxing authorities as required. District will not withhold any money from compensation payable to Consultant. In particular, District will not withhold FICA (social security); state or federal unemployment insurance contributions, state or federal income tax or disability insurance. Consultant agrees to defend, indemnify and hold District harmless from all State and Federal tax consequences and any related consequences stemming from or related to this Agreement. Consultant is independently responsible for the payment of all applicable taxes.

13. Ownership of Documents. All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Consultant under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to the current project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to the project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the current project) under Education Code Section 17316.

The Consultant will provide the District with a complete set of any reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Consultant under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Consultant's files for a period of no less than fifteen (15) years. Consultant shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

14. Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Consultant under this Agreement, not only as they relate or may relate to the current project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the project) but as they relate or may relate to other projects, provided

that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to the project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the project) under Education Code Section 17316. The Consultant shall require any and all subcontractors and subconsultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or subconsultants performed under this Agreement.

The compensation for the current project includes compensation not only for any use in connection with the project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to the project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District re-uses the plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship as described herein prepared by the Consultant and retains another Consultant for the preparation of those plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship the re-use, the District shall indemnify and hold harmless the Consultant and its subconsultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c). Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Consultant or its consultants prepares or causes to be prepared under this Agreement. Consultant shall indemnify, defend and hold the District harmless under Section 6 of this Agreement for any breach of Section 14 due to Consultant's negligence, recklessness or willful misconduct. The Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Consultant and provided to Consultant by the District.

15. Right to Audit Records. District has the right to audit Consultant's records and files regarding any of the Services performed by Consultant for the District during or after completion of the Services. Consultant shall keep complete records showing all hours worked and all costs and charges applicable to its performance of Services under this Agreement. District shall be given reasonable access to Consultant's records and files within ten (10) days of receipt of District's request. Consultant shall keep and maintain records and files related to the Services for ten (10) years.

16. Assignment. The Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

17. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Consultant and the District and their respective successors and assigns.

18. Severability. If any provision of this Agreement shall be held invalid or unenforceable

by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

19. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and venue shall be in the appropriate court for Monterey County, California.

22. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the Consultant, or if delivered at or sent by registered or certified mail to the last business address known to the person who sends the notice.

District:
Rick Diaz
Director of Facilities
North Monterey County USD
8142 Moss Landing Road
Moss Landing, CA 95039

Consultant:
Ross Alioto
Alioto Construction Inspections
3131B North Main St.
Soquel, CA 95073

23. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Consultant shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Consultant agrees that it shall comply with all legal requirements for the performance of duties under this agreement and that failure to do so shall constitute material breach.

24. Entire Agreement. This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

25. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

26. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

27. Board Approval/Ratification. The effectiveness of this Agreement is contingent upon approval or ratification by the District's Governing Board.

**NORTH MONTEREY COUNTY
UNIFIED SCHOOL DISTRICT**

By: _____

Name: Mary E. Dawson

Title: Assoc. Supt. Bus. Svcs.

Date: _____

ALIOTO CONSTRUCTION INSPECTIONS

By: _____

Name: Ross Alioto

Title: Owner, President

Date: 11-9-21