

**Mountain View-Los Altos High School District
1299 Bryant Ave.
Mountain View, CA 94040
(650) 940-4650**

**INDEPENDENT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

This Independent Agreement for Professional Services ("Agreement") is made and entered into as of the 20th day of November 2024 by and between the Mountain View-Los Altos High School District ("District") and McCloskey Consultants, Inc. ("Vendor"), (together, "Parties").

**Air Monitoring Services During Construction for
Mountain View High School Cafeteria Modernization
DSA #01-121566**

Description of Project/Scope of Work:

Provide continuing Asbestos Air Monitoring services for the Mountain View High School Cafeteria Modernization. DSA #01-121566 *project, located in Mountain View, California.*, as referenced in DSA 103, plans/specification and proposal for Air Monitoring Services, Mountain View High School dated November 12, 2024 (attached).

NOW, THEREFORE, the Parties agree as follows:

1. **Term.** Services will tentatively commence in December 2024. Tentative project completion is August 2025 for a total duration of 9 months with monitoring of 30 days over the 9-month period.
2. **Submittal of Documents.** The Vendor shall not commence the Work under this Agreement until the Vendor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form

3. **Compensation.**

- 3.1. The Vendor's services will be billed via: Time and Material (T&M) Basis for the above listed scope for a not-to-exceed (NTE) amount of \$58,500 for the term of this Agreement. Vendor shall only bill hours actually worked on the Project. Should the anticipated services exceed this NTE amount, Vendor shall notify the District 30 days in advance for possible adjustment to the NTE.
- 3.2. Vendor shall submit monthly invoices itemized by person, billing rate, hours worked, and any reimbursable expenses incurred in sufficient detail as requested by the District (if T&M). Invoices shall be submitted to the district on the last day of each month and are due and payable by the 30th day of the following month.

4. **Expenses.** District shall not be liable to Vendor for any costs or expenses paid or incurred by Vendor in performing services for District, except as follows:

4.1. Not applicable.

5. **Independent Contractor.** Vendor, in the performance of this Agreement, shall be and act as an independent contractor. Vendor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the district, and are not entitled to benefits of any kind or nature normally provided employees of the district and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Vendor 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 Vendor's employees. In the performance of the work herein contemplated, Vendor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

6. **Labor Compliance Program.** The Vendor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program. If the Vendor employs subcontractor(s), the Vendor shall ensure that its contract(s) with its subcontractor(s) include language notifying the subcontractor(s) of the District's Labor Compliance Program, if any.

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

7.1. Not applicable.

8. **Performance of Services.**

8.1. **Standard of Care.** Vendor represents that Vendor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Vendor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

8.2. **Meetings.** Vendor and District agree to participate in regular meetings as deemed necessary by the District to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Vendor's performance of Services.

8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

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

9. **Originality of Services.** Except as to standard generic details, Vendor 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 Vendor and shall not be copied in whole or in part from any other source, except that

submitted to Vendor by District as a basis for such services.

10. **Copyright/Trademark/Patent.** Vendor 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. Vendor consents to use of Vendor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Vendor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Vendor transacted under this Agreement. Vendor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Vendor 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 Vendor and shall conduct audit(s) during Vendor's normal business hours, unless Vendor otherwise consents.

12. **Termination.**

12.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Vendor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Vendor. Notice shall be deemed given when received by the Vendor or no later than three days after the day of mailing, whichever is sooner.

12.2. **Without Cause By Vendor.** Vendor may, upon thirty (30) days' notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Vendor for services satisfactorily rendered to the date of termination. Written notice by Vendor shall be sufficient to stop further performance of services to District. Vendor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

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

- 12.3.1. material violation of this Agreement by the Vendor; or
- 12.3.2. any act by Vendor exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Vendor is adjudged a bankrupt, Vendor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Vendor's insolvency.
- 12.3.4. 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 Vendor. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Vendor 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.

13. **Indemnification.** To the furthest extent permitted by California law, Vendor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Vendors, employees, trustees, and volunteers (“the indemnified parties”) from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity (“Claim”), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, Vendors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages. Vendor further agrees to reimburse District for any expenditures, including reasonable attorney’s fees, District may incur by reason of the matters that are the subject of the indemnification provisions stated herein.

14. **Insurance.**

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

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Vendor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **Workers’ Compensation and Employers’ Liability Insurance.** Workers’ Compensation Insurance and Employers’ Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Vendor shall be required to secure workers’ compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers’ Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Vendor’s profession.

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

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

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, Vendors, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Vendor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

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

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

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

16. **Compliance with Laws.** Vendor 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. Vendor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Vendor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Vendor 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 Vendor's receipt of a written termination notice from the District. If Vendor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Vendor shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Vendor and all Vendor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **Employment with Public Agency.** Vendor, if an employee of another public agency, agrees that Vendor 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.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed

under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Vendor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Vendor agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Vendor's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Vendor must submit, upon request by District, appropriate documentation to the District identifying the steps the Vendor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **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.
23. **District's Evaluation of Vendor and Vendor's Employees and/or Subcontractors.** The District may evaluate the Vendor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 23.1. Requesting that District employee(s) evaluate the Vendor and the Vendor's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of Vendor, Vendor'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 Vendor and all Vendor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Vendor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
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:

Mountain View-Los Altos High School District
Attn: Mike Mathiesen
1299 Bryant Ave.
Mountain View, CA 94040
(650) 940-4650

Vendor:

McCloskey Consultants, Inc.
Attn: Thomas F. McCloskey, P.G., C.E.G., C. Hg
420 Sycamore Valley Rd West
Danville, CA 94526
Cell: (925) 786-2667

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. 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.

28. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

29. 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.

30. 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.

31. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

32. Attorney Fees/Costs. Notwithstanding the Indemnity provision herein, 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.

33. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

34. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

35. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

36. 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.

37. **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: _____

Mountain-View Los Altos High School District

McCloskey Consultants, Inc.

By: _____

By: _____

Print Name: Michael Mathiesen

Print Name: Tom McCloskey _____

Print Title: Associate Superintendent,
Business Services

Print Title: _____

Information regarding Vendor:

Vendor: McCloskey Consultants, Inc.

27-2450525 :

License No.: PG-5766

Employer Identification and/or Social Security Number

Address: 420 Sycamore Valley Rd West
Danville, CA 94526

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.

Telephone: (925) 786 2667

Facsimile:

E-Mail: _____

Type of Business Entity:

Individual

Sole Proprietorship

Partnership

Limited Partnership

Corporation, State: CA

Limited Liability Company

Other: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

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

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

Date: _____

Name of Vendor or Company: McCloskey Consultants, Inc.

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 Vendor Agreement for Professional Services ("Agreement"):

[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.] Vendor'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 Vendor's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Vendor for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

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

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Vendor's services under this Agreement and Vendor certifies its compliance with these provisions as follows: *"Vendor certifies that the Vendor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Vendor'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 Vendor, 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."*

Vendor'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 Vendor's on-site employees of Vendor by an employee of Vendor, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- _____ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

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

[MUST BE COMPLETED BY VENDOR'S AUTHORIZED REPRESENTATIVE.] I am a representative of the Vendor 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 Vendor.

Date: _____
Name of Vendor or Company: McCloskey Consultants, Inc.
Signature: _____
Print Name and Title: _____