

**SERVICES AGREEMENT FOR:  
THE MOUNTAIN VIEW – LOS ALTOS UNION HIGH SCHOOL  
DISTRICT’S CONSTRUCTION PROGRAM  
FY 2021**

**PROJECT: PROGRAM SUPPORT SERVICES #4 - CONTRACT C18-004D**

THIS AGREEMENT is made effective as of the 1st day of July, 2020 (the “Effective Date”), by and between RGM KRAMER, INC., A CALIFORNIA CORPORATION (hereinafter “RGMK”) and the MOUNTAIN VIEW – LOS ALTOS UNION HIGH SCHOOL DISTRICT (hereinafter “DISTRICT”).

**RECITALS**

WHEREAS, DISTRICT desires to retain the services of RGMK for the benefit of the DISTRICT and to assist in the operation of the business of DISTRICT. In consideration of the mutual promises and covenants made herein, DISTRICT and RGMK agree as follows:

**ARTICLE 1  
TERM OF AGREEMENT**

Section 1.01 This Agreement will become effective on July 1, 2020 and, except as otherwise provided herein, will continue in effect until June 30, 2021.

**ARTICLE 2  
SERVICES TO BE PERFORMED BY RGMK**

Section 2.01 RGMK is hereby retained to perform professional services set forth in Exhibit “A” attached hereto and incorporated herein by reference as a consultant for DISTRICT. In that capacity, RGMK shall provide advice and counsel to the DISTRICT and perform the required duties on those or other matters as agreed to by RGMK and DISTRICT.

Section 2.02 RGMK will determine the method, details, and means of performing the above-described services, subject only to applicable laws and the rules and regulations of the DISTRICT. RGMK shall be free to utilize its own employees, consultants and associates as are necessary to accomplish the services to be performed herein.

Section 2.03 During the term of this Agreement, RGMK shall be free to engage in any other business or professional activities provided that none of it is done at the place of business of the DISTRICT and provided further that such activity does not interfere with the business of the DISTRICT.

**ARTICLE 3**  
**COMPENSATION AND TERM**

Section 3.01 RGMK shall receive compensation for services rendered under this Agreement as set forth in Exhibit "B." Unless indicated otherwise by Exhibit "B," RGMK shall submit monthly invoices, itemized by person, billing rate, hours worked and any reimbursable expenses incurred. The DISTRICT will pay invoices within thirty (30) days of receipt.

Section 3.02 The services of RGMK are to commence upon execution of this Agreement by the DISTRICT. The DISTRICT Associate Superintendent or his designee may, by written instrument signed by the Parties, extend the duration of this Agreement for a period of thirty (30) days in the manner provided in Section 15.02, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in this section.

**ARTICLE 4**  
**OBLIGATIONS OF RGMK and DISTRICT**

Section 4.01 Services performed by RGMK under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions.

Section 4.02 DISTRICT agrees to comply with all reasonable requests of RGMK necessary to the performance of RGMK's duties under this Agreement.

Section 4.03 DISTRICT shall provide office space on its premises for use by RGMK while RGMK performs services that must be conducted on DISTRICT premises. DISTRICT will pay for general office expenses including an office telephone, facsimile transmission equipment, photocopying, and printing. At the DISTRICT'S request, RGMK may provide any of these items subject to reimbursement by the DISTRICT.

Section 4.04 RGMK agrees that Rick Kramer shall maintain his role as Program Manager and Principal in Charge for the duration of this Agreement. RGMK shall not diminish his capacity in this role without prior written approval by DISTRICT.

Section 4.05 It is mutually agreed that all materials prepared by RGMK under this Agreement shall become the property of the DISTRICT, and RGMK shall have no property right therein whatsoever. Immediately upon termination, the DISTRICT shall be entitled to, and RGMK shall deliver to the DISTRICT, all data, drawings, specifications, reports, estimates, summaries, and other such materials as may have been prepared or accumulated to date by RGMK in performing this Agreement which is not RGMK's privileged information, as defined by law, or RGMK's personnel information, along with all other property belonging exclusively to the DISTRICT which is in RGMK's possession. Additionally, it is agreed that the parties intend this to be an agreement for services and each considers the products and results of the services to be rendered by RGMK hereunder (the "Work") to be a work made for hire.

Section 4.06 None of the services covered by this Agreement shall be subcontracted without the prior written consent of the DISTRICT, which will not be unreasonably withheld. RGMK shall be as fully responsible to the DISTRICT for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by RGMK.

## **ARTICLE 5** **LIMITED LIABILITY**

Section 5.01 RGMK shall indemnify, defend and hold harmless the DISTRICT, its officers, officials, agents, employees, and volunteers from and against any and all claims, damages, demands, liability, costs, losses, and expenses, including, without limitation, court costs and reasonable attorneys' fees, arising in any manner by reason of negligent acts or negligent failure to act, errors, omissions, or willful misconduct incident to the performance of this Agreement on the part of RGMK except such loss or damage which was caused by the sole negligence, active negligence or willful misconduct of the DISTRICT. The provisions of this paragraph shall survive termination or suspension of this Agreement.

## **ARTICLE 6** **INSURANCE**

Section 6.01 RGMK shall maintain general liability insurance (occurrence form or its equivalent) naming DISTRICT as additional insured covering all operations by or on behalf of RGMK providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for: 1) premises and operations; 2) contractual liability insuring the obligations assumed by RGMK in this Agreement; 3) broad form property damage; and 4) personal injury liability.

Limits of liability shall not be less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$1,000,000 for personal injury liability

\$2,000,000 general aggregate

\$2,000,000 Umbrella Excess Liability each Occurrence/Aggregate

Section 6.02 RGMK shall maintain workers' compensation insurance and employer's liability insurance as required by law.

Section 6.03 RGMK shall provide proof of automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Section 6.04 RGMK shall carry professional liability insurance with limits of liability

no less than \$1,000,000.

Section 6.05 RGMK shall provide the DISTRICT with copies of certificates for all policies obtained for this project, as well as copies of policies and endorsements.

Section 6.06 RGMK shall also provide the DISTRICT with thirty (30) days' notice prior to cancellation, non-renewal or endorsement reducing or restricting coverage, or reduction of coverage amounts of any of the insurance.

## **ARTICLE 7** **LICENSURE AND STANDARDS**

Section 7.01 RGMK shall, at all times during the term of this Agreement, maintain any and all professional licenses necessary to perform under the terms of this Agreement. RGMK shall commit no trespass on any public or private property in performing any of the work authorized by this Agreement. It shall be DISTRICT's responsibility to obtain all rights of way and easements to enable RGMK to perform its services hereunder. RGMK shall assist DISTRICT in providing the same.

## **ARTICLE 8** **TERMINATION OF AGREEMENT**

Section 8.01 In the event a party to this Agreement fails to comply with any of its material obligations hereunder, through no fault of the other party, the non-defaulting party may terminate this Agreement on thirty (30) days' written notice to the party in default, provided that such right of termination may not be exercised if the default is cured within thirty (30) days of receipt of the written notice by the defaulting party.

Section 8.02 The DISTRICT reserves the right to terminate this Agreement for its convenience upon fourteen (14) days' written notice to RGMK. In such event, RGMK shall be paid for all services performed through the date of termination and for all reimbursable expenses incurred through the date of termination.

Section 8.03 RGMK reserves the right to terminate this Agreement for its convenience upon thirty (30) days' written notice to the DISTRICT. In such event, RGMK shall dedicate 40 hours unpaid during the termination period to assist the DISTRICT in transition of the program or project to a new provider.

Section 8.04 Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

## **ARTICLE 9** **STATUS AS INDEPENDENT CONTRACTOR**

Section 9.01 DISTRICT shall not provide any worker's compensation insurance benefits or unemployment insurance, nor withhold Federal or State income taxes on behalf of

RGMK, its consultants or its employees. DISTRICT and RGMK acknowledge and agree that neither RGMK, its consultants nor its employees will be considered as employees of DISTRICT but are instead working for DISTRICT in their status as consultants or employees of RGMK, which is retained solely as an independent contractor. RGMK is responsible for payment of any Federal and State taxes and any other Federal and State requirements not otherwise specifically provided for in this Agreement. RGMK agrees to indemnify DISTRICT for any and all claims relating to such taxes and other requirements. RGMK shall have no power or authority by this Agreement to bind the DISTRICT in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status.

#### **ARTICLE 10** **ASSIGNMENT**

Section 10.01 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by either party to this Agreement without the prior written consent of the other party.

#### **ARTICLE 11** **FINGERPRINTING**

Section 11.01 Pursuant to Education Code section 45125.2, DISTRICT has determined on the basis of scope of work in the Agreement of this Project, that RGMK and its subcontractors and employees will have only limited contact with pupils at most. RGMK shall promptly notify DISTRICT in writing of any facts or circumstances which might reasonably lead DISTRICT to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

#### **ARTICLE 12** **COVENANT AGAINST CONTINGENT FEES; INTEREST IN CONTRACT**

Section 12.01 RGMK warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for RGMK, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for RGMK, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DISTRICT shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

Section 12.02 RGMK covenants that neither it, nor any of its employees, agents, contractors, nor subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. RGMK shall make all disclosures required by the DISTRICT's conflict of interest code in accordance with the category

designated by the DISTRICT, unless the DISTRICT determines in writing that RGMK's duties are more limited in scope than is warranted by the category designated by the DISTRICT code and that a narrower disclosure category should apply. RGMK also agrees to make disclosure in compliance with the DISTRICT conflict of interest code if, at any time after the execution of this Agreement, DISTRICT determines and notifies RGMK in writing that RGMK's duties under this Agreement warrant greater disclosure by RGMK than was originally contemplated. RGMK shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the DISTRICT.

**ARTICLE 13**  
**COST DISCLOSURE – DOCUMENTS AND WRITTEN REPORTS**

Section 13.01 RGMK shall be responsible for compliance with California Government Code section 7550, if the total cost to produce any document or written report associated with this Agreement is over Five Thousand Dollars (\$5,000).

**ARTICLE 14**  
**DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION**

Section 14.01 Pursuant to section 17076.11 of the Education Code, the DISTRICT has a participation goal for disabled veteran business enterprises (DVBE's) of at least three (3) percent, per year, of funds expended each year by the DISTRICT on projects that use funds allocated by the State Allocation Board. Should this project use funds allocated under the State School Facilities Program, to the extent feasible and as required by law, RGMK shall provide to the DISTRICT certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBE's in conjunction with the Agreement, and documentation demonstrating RGMK's good faith efforts to meet these goals.

**ARTICLE 15**  
**MISCELLANEOUS**

Section 15.01 Any and all notices or other communications required or permitted to be given under any provisions of this Agreement shall be in writing and shall be deemed to have been duly given: (i) if personally delivered, when delivered; and (ii) if mailed by first-class registered mail, return receipt requested, addressed to the parties at the addresses set forth below, five (5) days after mailing:

If to the DISTRICT:	Mountain View – Los Altos Union High School District Mike Mathiesen Associate Superintendent for Business 1299 Bryant Avenue Mountain View, CA 94040
If to RGMK:	RGM Kramer, Inc. Richard A. Kramer

President  
3230 Monument Way  
Concord, CA 94518

Any party may by notice to the other party, given as aforementioned, change its address for notification purposes.

Section 15.02 This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by RGMK for DISTRICT and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

Section 15.03 If any provision in 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 without being impaired or invalidated in any way.

Section 15.04 If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in separate action brought for that purpose, in addition to any other relief to which party may be entitled.

Section 15.05 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 15.06 Failure of any party hereto at any time to require performance by any other party of any provision of this Agreement shall not affect the right of such party to require performance of that provision, and any waiver by any party of any breach of any provision of this Agreement shall not be construed as waiver of any continuing or succeeding breach of such provision, waiver of the provision itself, or waiver of any right under this Agreement.

Section 15.07 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to an original and all of which counterparts of this Agreement, taken together, shall constitute but one and the same instrument.

Section 15.08 RGMK shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable Federal, State, County and Municipal laws, ordinances, regulations, orders, and decrees which in any manner affect those engaged or employed on the

work described by this Agreement or the materials used or which in any way affect the conduct of the work.

Section 15.09 RGMK shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

Section 15.10 RGMK shall maintain and make available for inspection by the DISTRICT and its auditor's accurate records of all of its costs, disbursements and receipts with respect to any work under this Agreement. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Agreement are made to RGMK.

Section 15.11 The parties shall make a good faith effort to settle any claim or dispute arising under this Agreement. Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The parties shall select a disinterested third person mediator within a reasonable period of time, mutually agreed to by the parties. The mediation shall be commenced within 30 days of the selection of the mediator. If the parties elect to mediate but fail to select a mediator within a 15-day period, any party may petition the Superior Court of Santa Clara County to appoint the mediator.

IN WITNESS WHEREOF, the parties have caused this Agreement for Services to be duly executed as of the day and year written below.

**"DISTRICT"**

Mountain View – Los Altos Union High  
School District  
1299 Bryant Avenue  
Mountain View, CA 94040

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

By: \_\_\_\_\_  
Mike Mathiesen  
Associate Superintendent

**"RGMK"**

RGM Kramer, Inc.  
a California Corporation  
3230 Monument Way  
Concord, CA 94518

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

By: \_\_\_\_\_  
Richard A. Kramer  
President



## EXHIBIT A – SERVICES TO BE PERFORMED

### Purpose and Intent

RGM Kramer, Inc. (hereinafter RGMK), as a qualified Program and Construction Manager, shall provide the services set forth herein (the “Program Management Services”) to assist DISTRICT staff in the management and implementation of the District’s Construction Program. The projects within the Construction Program will be coordinated in an expeditious and efficient manner, in order that they may be completed within budgetary limits and ready for use at the earliest possible dates. The scope of these services includes those activities indicated in the “Program Manager” Column of the “RGMK Roles and Responsibilities” table below.

The Designated Program Manager is: Rick Kramer. RGMK agrees that Rick Kramer will be available to provide the services of the Designated Program Manager for a minimum of 72 hours per month to perform the services described herein. The DISTRICT furthermore guarantees reimbursement for a minimum of the same. Additional required services beyond the minimum dedicated number of hours may be provided by the Program Manager himself or designated employees or associates at the rates set forth in this Agreement. Notwithstanding anything above, RGMK shall only invoice for hours of labor and reimbursable services and expenses actually provided to the DISTRICT.

### Basic Services

RGMK covenants with the DISTRICT to further the interests of the DISTRICT by providing the services hereunder in cooperation with and reliance upon, the design and engineering services of the appropriate DISTRICT's design consultants. RGMK also agrees to furnish business administration and management services in an expeditious and economical manner, consistent with the interests of the DISTRICT.

RGMK will perform the Program Management Services described in this Agreement and RGMK shall report directly to the Associate Superintendent for Business of the DISTRICT.

### RGMK Roles and Responsibilities

PROGRAM ACTIVITIES	Program Manager	Architect	PM / CM	Project Inspector
Assist CBO Develop Needs Assessment, Master Plans	Assist	Responsible		
Assist CBO Develop Design and Materials Standards		Responsible		
Assist CBO Manage Program Staff	Responsible			
Develop and Manage Program Tasks and Milestones	Responsible			
Prepare Program Status Reports	Responsible	Assist	Assist	
Implement Program Management Controls	Responsible			

PROGRAM SUPPORT SERVICES - CONTRACT C18-004D

Develop Program Implementation Plan	Responsible			
Develop and Manage Program Schedule	Responsible			
Assist CBO Manage Program Budget and Cash Flows	Responsible			
Assist CBO Manage CEQA Compliance	Responsible			
Assist CBO Manage State Funding Coordination	Responsible	Assist		
Assist CBO Manage Labor Compliance Program	Responsible		Assist	
Assist CBO Review non-contractor Vendor Invoices	Responsible	Assist	Assist	Assist
Assist CBO DOJ Compliance Program	Responsible		Assist	
Assist CBO Public Relations with Board, Public, Site, COC	Responsible	Assist	Assist	
Assist CBO District Safety Program	Responsible		Assist	
Assist CBO Develop Bidding Process, UPCCAA	Responsible		Assist	

## **EXHIBIT B – COMPENSATION**

### **Basis of Compensation**

Compensation for this contract shall be billed on a Time and Materials Basis as set forth herein. The initial not to exceed amount of this contract shall be \$300,000 based on 12 months of services. Payment for RGMK's services shall be at the billable rates indicated below. RGMK shall use its best efforts to keep the cost of these Services to within the Program's allocated budgets for these services. All billings submitted by RGMK are subject to monthly review with the District's Associate Superintendent for Business and payment pursuant to the provisions of Section 3.01. Under this agreement, RGMK shall only bill DISTRICT for services that are performed in the "Responsible" party role of Kramer Roles and Responsibilities table of Exhibit A.

RGMK's billable rates include payments for RGMK's labor costs and home office expenses, including salaries, personnel benefits, bonuses, vacation, sick leave, personal leave, cell phones, personal computer equipment, general liability, professional liability and workers compensation insurance. Expenses not included in RGMK's billable rates may be directly allocable to this program and necessary for the execution of this agreement. Upon DISTRICT approval, these items may either be provided directly by the DISTRICT or will be provided by RGMK and invoiced to the DISTRICT as reimbursable services or expenses. Typical reimbursable items are: reimbursable services (legal, accounting, moving, engineering, investigations, specialty inspections, printing and reproduction, program related travel, etc.) reimbursable expenses (photographs, postage, on-site office expenses such as: site office trailer rentals, office furniture, utility expenses, drinking water, janitorial services, sanitation service, etc.). Additionally, insurance required beyond the terms of this agreement shall be a reimbursable expense.

**RGM Kramer, Inc.**

**2020 BILLING RATE SCHEDULE**

<b>Classification</b>	<b>Rate</b>
Principals	\$ 200.00
Project Executives	190.00
Sr. Program Managers	190.00
Deputy Program Managers	160.00
Sr. Project Managers	175.00
Project Managers 1	160.00
Project Managers 2	145.00
Contracts Managers	135.00
Asst. Project Managers	120.00
Sr. Estimators / Sr. plan reviewers / Sr. schedulers	170.00
Estimators / plan reviewers / schedulers	160.00
Move Managers	115.00
Project Engineers 1	120.00
Project Engineers 2	95.00
Project Assistants / Coordinators	85.00
Administrative Assistants	75.00
Clerical / Interns	60.00
Sr. Construction Manager / Sr. Construction Superintendent	170.00
Construction Manager / Construction Superintendent	155.00
Asst. Construction Manager / Asst. Construction Superintendent / Foreman	120.00
Labor compliance Manager	95.00
Outside Consultants / Services / Temporary Facilities / Supplies	Invoice + 15%

The above rates are subject to annual adjustment each January.

RGM Kramer, Inc. and the DISTRICT shall review these rates for adjustment on January 1<sup>st</sup> of each year while this agreement is in effect. The DISTRICT shall not withhold approval of reasonable rate adjustments. Upon request, RGMK shall provide supporting statistical documentation such as regional cost of construction labor indexes and insurance costs.