

**Cambrian School District
4115 Jackson Drive
San Jose, CA 95124
(408) 377-2103**

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

This Independent Agreement for Professional Services ("Agreement") is made and entered into as of the 17th day of March 2022 by and between the Cambrian School District ("District") and Cypress Engineering Group ("Vendor"), (together, "Parties").

HVAC Commissioning for Phase 1 Modernizations at 5 School Sites

Description of Project/Scope of Work:

HVAC commissioning and associated scope for the Phase 1 Modernizations at 5 School Sites Project as detailed in the proposal dated 3/1/2022 (attached).

NOW, THEREFORE, the Parties agree as follows:

1. **Term.** Services will tentatively commence March 21st, 2022. Tentative completion is August 24th, 2022.
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: Fixed Fee Basis for the above listed scope for a not-to-exceed (NTE) amount of **\$84,500** 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 20th 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: | Vendor: |
| Cambrian School District | Cypress Engineering Group |
| Attn: John Pappalardo, Ed.D. | Attn: Metin Serttunc, PE, CBCP, CEM |
| 4115 Jacksol Drive | 8 Harris Court, Suite A8 |
| San Jose, CA 95124 | Monterey, CA 93940 |
| (408) 377-2103 | (831) 218-1802 |

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: _____

Cambrian School District

Cypress Engineering Group

By: _____

By: _____

Print Name: John Pappalardo

Print Name: Metin Serttunc

Print Title: Chief Financial Officer

Print Title: Principal

Information regarding Vendor:

Vendor: _____

Employer Identification and/or Social Security Number

License No.: _____

Address: _____

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: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:
____ Individual
____ Sole Proprietorship
____ Partnership
____ Limited Partnership
____ Corporation, State: _____
____ 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: _____

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 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: _____

The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

[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: _____
Signature: _____
Print Name and Title: _____



8 Harris Court, Suite A8 831.218.1802
Monterey, CA 93940 cypresseg.com

John Pappalardo
pappalardo@cambriansd.com
Chief Financial Officer/ Cambrian School District
4115 Jacksol Drive, San Jose, CA 95124

Updated March 1, 2022

Re: **CAMBRIAN SCHOOLS (5 SITES) SUMMER 2022 HVAC COMMISSIONING SERVICES**

Dear Mr. Pappalardo:

We propose to furnish HVAC Commissioning Services covering the summer 2022 HVAC unit replacement projects per the attached Scope of Work.

The proposed fee for this work is **EIGHTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$84,500)**.

School Name	# of Units	# of Split Systems	Cx Fee
Fammatre Elementary School	21	2	\$ 15,750.00
Farnham Elementary School	17	1	\$ 13,250.00
Sartorette Elementary School	17	3	\$ 14,000.00
Bagby Elementary School	29	2	\$ 21,000.00
Ida Price Middle School	29		\$ 20,500.00
Total Commissioning Fee			\$ 84,500.00

This proposal may only be modified in writing signed by all parties. In the event of litigation arising with respect to the payment of Cypress Engineering Group's invoices, the prevailing parties shall be entitled to reasonable attorney's fees and court costs. Any litigation between the parties shall be adjudicated in the County of Monterey, California. Our standard Terms and Conditions of Offer as attached are incorporated into this Proposal/Acceptance.

Billing will be on a monthly basis and payment is due net thirty (30) days from date of invoice, unless other arrangements have been made in writing in advance.

Please indicate your acceptance of this proposal by signing this letter and returning the same to our office, retaining a copy for your records. This proposal and pricing will expire in 90 days.

We appreciate this opportunity to be of service.

Sincerely,

Cypress Engineering Group

Cambrian School District

Metin Serttunc, PE, CBCP, CEM
Principal
Certified Building Commissioning Professional
metin@cypresseg.com
Mobile: 408-510-0906

Signature: _____

Name: _____

Title: _____

Date: _____

SCOPE OF WORK

◆ Commissioning Services – Construction Phase

1. Provide Commissioning Plan to include
 - a. Identify the equipment and systems to be commissioned
 - b. Define the scope of the commissioning process
 - c. Define the commissioning roles and responsibilities for each member of project team
 - d. Construction checklist development and execution
 - e. Functional test procedure format and development
 - f. Test readiness confirmation
 - g. Functional testing process - including management, execution and documentation
 - h. Issues log process
 - i. O&M manuals
 - j. Contractor's Project Turnover Documentation requirements
 - k. Sampling Requirements
 - l. Define the milestones and commissioning activities with time interval
2. Conduct initial scope meeting with commissioning team members. Team members are General Contractor (GC), Owner Representative (OR), Mechanical Subcontractor (MC), TAB Subcontractor (TAB), Plumbing Subcontractor (PC) and IOR (inspector of Record).
3. Schedule commissioning meetings with related parties, as necessary. Commissioning meetings may be done remotely to coordinate commissioning activities. Kickoff meeting will be held on site prior to start of testing activities.
4. Provide system readiness checklists for equipment to be commissioned to the subcontractors for completion. System readiness to be filled by contractors to indicate equipment is started up per manufacturer's instructions and is ready for functional testing.
5. Provide Functional Test Forms to design team and subcontractors.
6. Before functional tests the following items need to be completed and reviewed by Commissioning Agent (CA):
 - a. All factory start-ups and system readiness forms completed by factory technician or subcontractor.
 - b. All the RFIs related to Commissioning activities are answered and executed by contractor
 - c. Control Systems need to be fully installed and operational.
 - d. Final TAB report is provided.
 - e. System readiness checklists are completed and signed by each responsible contractor.
 - f. Punch list items and corrections.
 - g. O&M Manuals for each commissioned equipment and systems are available and submitted to CA.
 - h. As-Built Drawings shall be completed and are ready at site.
7. Administer and document functional tests done by subcontractors.
8. Prepare field reports indicating the summary of the process and non-compliance items (part of commissioning issue log).
9. Provide and maintain commissioning issues log throughout construction process.
10. Verify training of the owner O&M personnel and end users

Re: **CAMBRIAN SCHOOLS (5 SITES) SUMMER 2022 HVAC COMMISSIONING SERVICES**

- 11. Prepare final commissioning report with recommendations.
- 12. The following contents will be included in the Systems Manual for commissioned equipment:
 - a. Sequences of operation
 - b. Building occupancy schedule
 - c. Equipment run-time schedules
 - d. HVAC equipment setpoints
 - e. Minimum outside air requirements
 - f. Final TAB report
 - g. Systems narrative for HVAC systems, control systems, controls, and zoning.
 - h. CEC Acceptance Test forms (Contractor to provide the forms and CxA to review and include in system manual)

COMMISSIONED EQUIPMENT

- ◆ HVAC Systems
HVAC System includes all the Classroom Furnaces (Furnaces, Cooling Coils and Condensing Units) and Split Systems Serving the small offices. Number of units for each school site is presented below

School Name	# Of Units	# of Split Systems
Fammatre Elementary School	21	2
Farnham Elementary School	17	1
Sartorette Elementary School	17	3
Bagby Elementary School	29	2
Ida Price Middle School	29	

- ◆ HVAC Controls System (Pelican Thermostats) Pelican Thermostats in Classroom 1 and 2 in Ida price will be part of the scope. All the gateways and Repeater operations will be checked during the commissioning activities.
- ◆ TAB Verification
- ◆ Commissioning activities (functional tests) maybe scheduled after substantial completion after regular school hours or over the weekend due to the construction schedule as needed.

EXCLUSIONS

- ◆ Scheduled weekly construction meetings.
- ◆ Title 24 acceptance testing and documentation.
- ◆ Systems manual.
- ◆ Lighting Controls
- ◆ Any work not mentioned in scope of work above.
- ◆ Electrical power distribution systems testing.
- ◆ Envelope commissioning.
- ◆ Renewable energy systems.
- ◆ Fire alarm / fire sprinkler systems.

TERMS AND CONDITIONS

Upon issuance of a purchase order, or any other written acceptance of a Cypress Engineering Group, LLC proposal, the undersigned indicates acceptance on the Client's behalf of these terms and conditions:

1. Cypress Engineering Group, LLC Scope of Work is proprietary. As such the work may not be duplicated nor used by anyone including, but not limited to, competitors or customers, without the express written agreement of Cypress Engineering Group, LLC and agreement of appropriate compensation. Such compensation shall be negotiated on a case-by-case basis.
2. Cypress Engineering Group, LLC requires written approval of this Proposal or a written purchase order number for billing purposes before work under this or any other Cypress Engineering Group, LLC contract may proceed on your behalf.
3. This proposal, unless otherwise indicated, is executed on a "Fixed Fee" basis. By issuing a purchase order or written approval to Cypress Engineering Group, LLC, you are agreeing that you have reviewed the scope of the project contained in this proposal and you are accepting it as full and complete, and that any work not included but that may be required will be at additional cost upon the further agreement of the parties.
4. Either party may at any time and without cause terminate this Agreement by giving 7 calendar days' written notice of termination to the other party. In the event of such termination, the Client will pay Cypress Engineering Group, LLC an appropriate prorated fee based on the stated "fixed fee" for all services rendered and expenses incurred by Cypress Engineering Group, LLC through the date of termination.
5. Nothing in this Agreement or in the course of dealing between the Client and Cypress Engineering Group, LLC pursuant hereto shall deemed to create between such parties (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship of any other relationship other than that of customer and independent contractors with respect to each other.
6. Failure by either party to enforce any of the provisions of this Agreement or any rights with respect hereto or the failure to exercise any option provided hereunder shall in no way be considered to be waiver of such provisions, rights or options, or to in any way affect the validity of this Agreement. No waiver of any rights under either this Agreement, or any modification or amendment of this Agreement shall be effective or enforceable unless in writing and signed by both parties.
7. If the client fails to pay due amounts within fifty (50) calendar days of the date of the invoice, this shall constitute a Material Breach of the Agreement and the Engineer may, at any time, and without waiving any other claim against the Client and without thereby incurring any liability whatever to the Client, suspend this Agreement, or terminate this Agreement. The Client agrees to release the Engineer from any consequences of such suspension or termination of services due to the Client's non- payment of the Engineer's fees. Service charges of 1% per month shall accrue on all unpaid invoice amounts thirty (30) days after date of invoice unless prior arrangements have been made.

LIABILITY

1. Cypress Engineering Group, LLC will prepare the agreed upon documents and execute the agreed upon services in accordance with generally accepted professional practices and in good faith for the intended use of the project and makes no further warranty either express or implied.
2. Cypress Engineering Group, LLC shall not be responsible for any costs that result from concealed conditions or any other conditions that are beyond their reasonable control, or that they would not reasonably be expected to have considered as part of a normal engineering and/or construction process. The total liability, if any, shall not exceed the amount paid under this contract.
3. Third Party Liability: Cypress Engineering Group, LLC shall not be responsible for the means, methods, procedures, performance, techniques, or sequences of construction, for safety on the job site, or for the contractors' failure to carry out the work in accordance with any applicable Engineering or Design Documents. Cypress Engineering Group, LLC shall not be responsible for the acts or omissions of any contractor or agent of any firm other than Cypress Engineering Group, LLC
4. Cypress Engineering Group, LLC shall not be responsible for evaluations or designs that indicate the need to repair, remove, encapsulate or enclose asbestos containing materials or installations. Should the services proposed herein indicate that asbestos abatement and/or treatment is required in any of the installations at the client's properties, a specialty contractor skilled and qualified in this type of work will be required under separate contract. The details of such a contract would be addressed on an as-needed basis at that time.
5. In recognition of the relative risks and benefits of the project to both Client and Cypress Engineering Group, LLC, Client agrees to limit the liability of Cypress Engineering Group, LLC, and its officers, employees and sub consultants to Client, as well as to the Owner, any and all other design professionals, all construction contractors and all subcontractors on the project arising out of or relating to Cypress Engineering Group, LLC's services on this project, such that the total aggregate liability to all those named shall not exceed the lesser of the damages actually sustained as a direct result of any proven negligent act or omission by Cypress Engineering Group, LLC, or the total fee for the services rendered by Cypress Engineering Group, LLC on this project. Client further agrees to require of his other contractors and their subcontractors an identical limitation of liability for Cypress Engineering Group, LLC's professional acts, errors, or omissions. Neither Client nor the contractor nor any of his subcontractors assumes any liability for damages to others which may arise on account of the professional acts, errors, or omissions of Cypress Engineering Group, LLC. The fees quoted and agreed to by both parties of this Agreement are in light of these limitations and any increase in Cypress Engineering Group, LLC's liability from what is stated herein shall be specifically negotiated and established in writing.
6. Client agrees to defend, indemnify and hold harmless Cypress Engineering Group, LLC, its individual owners, directors, corporate officers, employees, agents and sub consultants from any such special, indirect or consequential damages claims against Cypress Engineering Group, LLC by any other third party for reasons beyond Cypress Engineering Group, LLC's control. Cypress Engineering Group, LLC shall be responsible only for its express negligence, recklessness or willful misconduct.

Re: **CAMBRIAN SCHOOLS (5 SITES) SUMMER 2022 HVAC COMMISSIONING SERVICES**

7. If one or more of the provisions contained in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected.
8. This Agreement constitutes the entire agreement of the parties and superseded all oral negotiations and prior writings with respect thereto.
9. Cypress Engineering Group, LLC and the Client are entering into this Agreement solely on the basis of the agreement and representations contained herein, and for their own purposes, not for the benefit of any third party.
10. This agreement shall be construed under the laws of the State of California. Any dispute regarding this agreement shall have venue in the Monterey County, California.
11. Notice required to be given, as a covenant to this proposal shall be tendered in writing. It may be so given transmitting same by personal delivery, or by first-class, postage prepaid mail to the corporate address of Cypress Engineering Group, LLC as follows:

Cypress Engineering Group, LLC
8 Harris Court, Ste A.8
Monterey, CA 93940

12. This proposal must be accepted in writing within 30 calendar days or it shall be automatically withdrawn and shall be of no force or effect.