

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and K2M Consultants (CONTRACTOR). AUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, account, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. Services. The CONTRACTOR shall provide the following services (include location, dates, to whom services are provided):

Contract #2407: All Sites Energy Management Systems (EMS) Support, Maintenance and Repairs

Contractor to Provide Consultation and Repair Service as Required Through District Dispatch:

- Provide Annual Maintenance Service to All Trane Controls Sites (All Work to be Performed on Weekend Schedules)
- o Verify Integrity Inputs and Outputs
- o Verify Proper Operation of End Devices (Actuators, Motors, etc.)
- o Make Recommendations for Repairs as Needed
- o Replace Batteries in Wireless Zone Sensors
- o Check Time Clock Settings
- o Review Firmware and Application Versions and Upgrade to Current Revision
- o Backup Controller Configuration and Programming to External Storage Device

See Enclosed Time & Materials Rate Sheet

2. Terms. The term of this agreement shall be from July 1, 2024 (or the day immediately following approval by the Superintendent or Assistant Superintendent(s) per (Education Code(s) §35161 and §17604) if the aggregate amount CONTRACTOR contracted with AUSD is below \$114,500; or, approval by the Board of Education if the total contract(s) exceeds \$114,500) to June 30, 2025. The work shall be completed no later than Monday, June 30, 2025.

3. Compensation. This sum shall be for full performance of this Agreement and includes fees, costs, and expenses incurred by CONTRACTOR including, but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs. **Select one of the following:**

- 3.1.1 CONTRACTOR is providing services for a flat fee which shall not exceed \$ _____
- 3.1.2 CONTRACTOR will be compensated at an hourly rate. CONTRACTOR will provide a maximum hours of service at a rate of \$ ____ /hour for a total not to exceed \$ _____.
- 3.1.3 Other: Not to Exceed \$30,000.00, Based on Enclosed Time & Materials Rate Sheet

AUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred or equipment, materials or supplies used by CONTRACTOR in performing services for AUSD, except as follows N/A; which shall not exceed a total cost of \$ N/A.

Payment for the work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to AUSD for work actually completed and after AUSD's written approval of the work, or the portion of the work for which payment is to be made.

The granting of any payment by AUSD or the recipient thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by AUSD and in that case must be replaced by CONTRACTOR without delay.

4. Strategic Alignment. Select one of the following:

4.1 **School-based Agreements:** How does this service support academic goals and increase student achievement as described in the Board-approved School Site Plan? _____

4.2 **Central Office Agreements:** How does this service support the overall strategic goals of the department and increase student achievement? HVAC Compliance and Safety

5. Conduct of Contractor. CONTRACTOR will adhere to the following staff requirements and provide AUSD with evidence of staff qualifications as identified prior to commencing the work under this Agreement and consistent with invoicing requirements outlined in Section 9.

5.1 Tuberculosis Screening. Select one of the following:

5.1.1 TB Clearance will be completed through AUSD prior to starting work or such records are already on file.

5.1.2 Agency certifies that they require all employees or subcontractors to complete TB testing and maintain such records.

5.1.3 **Waiver of TB Screening.** CONTRACTOR is not required to provide evidence of TB Clearance because CONTRACTOR will not work directly with students more than eight (8) hours.

KM (CONTRACTOR initials)

BDA
BA (AUSD Representative initials)

5.2 Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by AUSD or acting as independent contractors of CONTRACTOR, who may have contact with AUSD 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. CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviewed subsequent arrest records for all Employees who may come into contact with AUSD pupils in providing services to the AUSD under this Agreement."

Fingerprinting of Employees and Agents. Select one of the following:

- 5.2.1 Fingerprint Clearance will be completed through AUSD prior to starting work or records are already on file.
- 5.2.2 Agency or Organization certifies that they require all employees or subcontractors to complete fingerprinting and maintains such records.

- 5.2.3 **Waiver of Fingerprint Requirement.** CONTRACTOR is not required to comply with section 5.2 as:
- CONTRACTOR staff will have no contact or interactions with students outside of the immediate and constant supervision and control of the pupil's parent or guardian or a school employee; or
 - CONTRACTOR services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility, and CONTRACTOR'S employees shall have only limited contact with students. Accordingly, the requirements of Education Code section 45125.2 shall not apply to services under this Agreement:

_____ (CONTRACTOR initials)

_____ (AUSD Representative initials)

- 5.3 **Removal of CONTRACTOR's Employee(s).** In the event that AUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CONTRACTOR-related persons, employee, representative, or agent from an AUSD school site and/or property, CONTRACTOR shall immediately upon receiving notice from AUSD of such desire, cause the removal of such person or persons.

6. **Insurance.** The CONTRACTOR shall procure and maintain the following insurance coverage at all times. Failure to provide documentation or maintain coverage during the contract's term will result in termination.

6.1 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 conformance with the laws of the State of California and Federal laws when applicable. Workers' Compensation shall meet statutory requirements and Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per occurrence. **Select one of the following:**

- The CONTRACTOR is aware of and in compliance of the provisions of Section 3700 of the Labor Code and will provide AUSD proof of coverage before commencing the performance of the work of this Agreement.

***CONTRACTOR acknowledgement** Kim McArthur

- The CONTRACTOR is exempt from Workers' Compensation Requirements as a Sole proprietor or Independent Contractor with no employees.

6.2 General Liability and Automobile Liability Insurance. Commercial General Liability Insurance and when applicable, Automobile Liability Insurance (Any Auto) that shall protect the CONTRACTOR and AUSD, from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Service with a minimum requirement of One Million Dollars (\$1,000,000) per occurrence. Certain professional services provided through this Agreement may require higher cover limits as determined by AUSD.

***CONTRACTOR acknowledgement** Kim McArthur

6.3 Professional Liability Insurance. If CONTRACTOR is providing AUSD professional or advice or consultation for implementation under this Agreement, CONTRACTOR shall maintain errors and omissions insurance or professional liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

Waiver of Professional Liability Insurance. CONTRACTOR is not required to maintain professional liability insurance due to the scope of services in this Agreement.

 KM (CONTRACTOR initials)
 (AUSD Representative initials)

6.4 Proof of Carriage of Insurance. CONTRACTOR shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been provided to AUSD and approved by AUSD. Certificates and insurance policies shall include the following:

6.4.1 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 AUSD, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice.”

6.4.2 An endorsement stating that the AUSD are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability, and Employers’ Liability Insurance. An endorsement shall also state that the Contractor’s insurance policies shall be primary to any insurance or self-insurance maintained by the AUSD.

6.4.3 All policies shall be written on an occurrence form.

6.4.4 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 AUSD.

7. Notices. All notices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

AUSD	CONTRACTOR
Name: <u>Brian Addicott</u>	Name: <u>Kirk McCutcheon</u>
Title: <u>mof@alamedaunified.org</u>	Title: <u>Owner, K2M Consultants</u>
Address: <u>DO/MOF</u>	Address: <u>5313 Center Hill Dr</u>
<u>2060 Challenger Drive, Alameda, CA 94501</u>	<u>Fort Worth, TX, 76179</u>
Email: <u>(510) 337-7090</u>	Email: <u>service@K2Mconsultants.com</u>

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address.

8. Invoicing. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to AUSD. All amounts paid by AUSD shall be subject to audit by AUSD.

8.1 Invoices shall be emailed directly to accountspayable@alamedaunified.org or mailed to Attn: Accounts Payable at 2060 Challenger Drive, Alameda, CA 94501. Invoice shall include but not be limited to: consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of service, number of hours of service, brief description of services provided, hourly rate, and total payment requested.

9. Licenses and Permits. CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

10. Contractor Qualifications / Performance of Services.

10.1 Contractor Qualifications. CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.

10.2 Standard of Care. CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of AUSD. Contractor'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 schools.

11. Status of Contractor. This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR certifies that s/he performs work that is outside the usual course of the AUSD's business. CONTRACTOR further certifies s/he is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of AUSD, and are not entitled to benefits of any kind or nature normally provided employees of AUSD and/or to which AUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR 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 CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. AUSD's interest is only in the results obtained.

12. Assignment. The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of AUSD.

13. Site Access/Security. While providing services as set forth in this contract, it may be determined that keys are necessary for access or emergency response. In the event that keys are approved to be issued to the CONTRACTOR, the CONTRACTOR acknowledges and agrees to the responsibility of securely maintaining said keys. The CONTRACTORS' duty, along with its employees or subcontractors if applicable, is to ensure the keys are kept safe, used only for business purposes, and not misused (shared, duplicated, etc.). In the event of any lost or stolen keys, the organization must report the incident to the AUSD in no less than 24 hours. Furthermore, should any contractor be reassigned to another site or their contract with AUSD terminate or expire, all individuals must return all keys to the original issuer on their final day. The CONTRACTOR assumes all liability for re-keying costs at any AUSD school site associated with the use, loss, or failure to return AUSD keys, including the potential of reduced or withheld invoice payments if necessary.

14. Anti-Discrimination. It is the policy of AUSD 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 CONTRACTOR 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 AUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractors. Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation.

- 15. Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on AUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to smoke or use drugs or alcohol on these sites.
- 16. Indemnification.** CONTRACTOR agrees to defend, indemnify and hold harmless AUSD, its Board, trustees, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of the CONTRACTOR or its sub-Contractors, and any other person, firm or corporation furnishing or supplying services, materials or supplies in conjunction with the services of the CONTRACTOR, whether authorized by this Agreement or not. CONTRACTOR further agrees to waive all rights of subrogation against AUSD. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of AUSD or any of its agents or employees
- 17. Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of AUSD and cannot be used without AUSD's express written permissions. AUSD shall have all rights, 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 AUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artworkcopy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any other original works of authorships, or other documents prepared by CONTRACTOR or its subcontractors in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of AUSD.
- 18. Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
- 19. Termination.** AUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. AUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, AUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, AUSD may secure the required services from another contractor. If the cost to AUSD exceeds the cost of providing the services pursuant to the Agreement, CONTRACTOR shall pay the additional cost.
- 20. 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.
- 21. AUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** AUSD may evaluate the CONTRACTOR's work in any way that AUSD is entitled to do so pursuant to applicable law. The AUSD's evaluation may include, without limitation:
- 21.1** Requesting that AUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - 21.2** Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor.

- 22. Limitation of AUSD Liability.** Other than as provided in this Agreement, AUSD'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 AUSD 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.
- 23. Confidentiality.** CONTRACTOR and all personnel designated by CONTRACTOR to perform under this Agreement shall maintain the confidentiality of information received in the course of performing this Agreement. This requirement shall extend beyond the effective termination or expiration date of this Agreement. In the event CONTRACTOR receives student data protected by the Family Educational Rights and Privacy Act ("FERPA"), Provider shall abide by Education Code section 49073, including the following: (a) Provider shall not use the student data provided, for an unauthorized purpose, transfer the student data to an unauthorized third party, or sell said data (b) Provider shall delete or otherwise dispose of student data in its possession after the termination of services under this Agreement (c) Provider shall undertake reasonable precautions to protect the student data and shall promptly report to the AUSD any unauthorized access to the student data.
- 24. Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable AUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of AUSD to perform any service by this Agreement. CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement. In the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to AUSD's attention in writing. Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify AUSD of this information.
- 25. 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.
- 26. Litigation.** This Agreement shall be performed in Alameda, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.
- 27. Agreement Contingent on Governing Board Approval.** The AUSD shall not be bound by the terms of this Agreement until it has been formally approved or ratified by the AUSD's Governing Board, and/or Executive Cabinet as its designee, and no payment shall be owed or made to CONTRACTOR absent formal approval.
- 28. 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. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

- 29. Contract Publicly Posted.** This contract, its contents, and all incorporated documents are public documents and will be made available by AUSD to the public online via the Internet.
- 30. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List.
- 31. Force Majeure.** At the AUSD's discretion, the Parties shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine/shelter in place order, strike, lockout, labor dispute, or any other occurrence which is beyond the control of the parties, when evidence thereof is presented to the other party. The AUSD shall not be responsible for any costs associated with this Agreement while performance is so excused.
- 32. Other.** Additional terms attached or edits to must be approved by AUSD.

I. SITE

CONTRACTOR Kirk McCutcheon, Owner K2M Consultants
Print Name & Title: _____

CONTRACTOR Signature:  Date: 5-3-2024

SOURCE OF FUNDS (check appropriate):
Unrestricted Funds (Fund 01) Donated Funds Restricted Funds

Budget Code: 01-8150-0-0000-8500-6200-077-77-3014

 06/18/2024
Brian Addicott (Jun 18, 2024 15:11 PDT)
Requesting Administrator Date

The person(s) signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.

SEND TO: Business Services


II. HR

Human Resource Approval Yes No

 06/18/2024
Signature of Human Resource Administrator Date

III. BOARD DELEGATES

- Superintendent, Pasquale Scuderi
- Assistant Superintendent of Human Resources, Tim Erwin
- Assistant Superintendent of Educational Services, Kirsten Zazo
- Assistant Superintendent of Business Services, Shariq Khan

 06/18/2024
Shariq Khan (Jun 18, 2024 16:26 PDT)
Signature of Superintendent or Assistant Superintendent Date

IV. BOARD

BOE Approval Required for Contracts Equal To Or Greater Than \$114,500:

Signature of President, Board of Education Date

Signature of Secretary, Board of Education Date

Independent Contractor Status Verification

Contractors who are Individual/sole proprietors or single-member LLCs must complete this form and submit with other contract documents.

Check all items that are true and correct. Contractor must inform Fiscal Services if business is converted into a corporation.

INDEPENDENT CONTRACTOR STATUS CHECKLIST
(Employee v. Independent Contractor)

Contractor's Name: _____

Current AUSD employee or substitute? Yes No

LABOR CODE FACTORS (§ 2750.3) – ALL 3 MUST APPLY

- CONTRACTOR** and its workers are free from the control and direction of the AUSD in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- The work to be performed by the **CONTRACTOR** and its workers is outside the usual course of the AUSD's business.
- CONTRACTOR** is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

IRS COMMON LAW FACTORS:

- NO INSTRUCTIONS:** The worker will not be required to follow explicit instructions to accomplish the job. AUSD may provide job specifications, however.
- NO TRAINING:** The worker will not receive training provided by AUSD. The worker will use independent methods to accomplish the work.
- RIGHT TO HIRE OTHERS:** The worker is being hired to provide a result and will have the right to hire others to do the actual work/job.
- WORK NOT ESSENTIAL TO AUSD:** AUSD's success or continuation does not depend on the services of the worker.
- OWN WORK HOURS:** The worker will establish the work hours for the job.
- NOT A CONTINUING RELATIONSHIP:** The worker will not have a continuing relationship with AUSD. If the relationship is frequent, it will be at irregular intervals, or call (no full-time), or whenever work is available.
- CONTROL OF ASSISTANTS:** If assistants are hired, it will be at the worker's sole discretion. The worker will be responsible for hiring, supervising, and paying those assistants.
- TIME TO PURSUE OTHER WORK:** The worker will have time to pursue other gainful work.
- JOB LOCATION:** The worker will control the job location if work is performed on AUSD's premises; AUSD will not direct or supervise the work.
- ORDER OF WORK:** The worker will determine the order and sequence in which the job will be performed.

- BASIS OF PAYMENT:** The worker will be paid by the job or project, not by actual time expended. Periodic payments may be made, though, based on a percentage of the completed job. Also, overall compensation may be based on the projected number of days/hours needed to do the job times a fixed daily/hourly rate. However, this compensation will be set in advance of the job.
- WORK FOR MULTIPLE FIRMS:** The worker may work for more than one firm or agency at a time.
- BUSINESS EXPENSES:** The worker will be responsible for incidental or special business expenses.
- OWN TOOLS/EQUIPMENT:** The worker will furnish the tools/equipment needed for the job. If AUSD leases equipment to the worker, the terms will be equivalent to what an independent business person could have obtained in the open market.
- SIGNIFICANT INVESTMENT:** The worker can perform services without hiring AUSD's facilities (equipment, office furniture, machinery, etc.). The worker's investment in his/her trade is real, essential, and adequate.
- SERVICES AVAILABLE TO GENERAL PUBLIC:** The worker makes his/her services available to the general public by (check one or more):
 - Having an office and assistants
 - Advertising his/her services (e.g., business cards, letterhead, telephone book, other)
 - Having business signs
 - Having a business license
 - Listing services in a business directory
 - Other
 - (Attached copies of business license, business cards, letterhead, advertisement)
- POSSIBLE PROFIT OR LOSS:** The worker can make a profit or a loss (check one or more):
 - The worker hires, directs, and pays assistants
 - The worker has his/her own office, equipment, materials, or facilities
 - The worker has continuing and recurring liabilities
 - The worker has agreed to perform specific jobs for prices agreed upon in advance
 - The worker's services affect his/her own business reputation
- LIMITED RIGHT TO DISCHARGE:** The worker cannot be fired so long as a result is produced which meets the contract specifications.
- NO COMPENSATION FOR NON-COMPLETION:** The worker is responsible for the satisfactory completion of the job and is not entitled to compensation in case of non-completion.
- NO INTERIM REPORTS:** The worker is hired for the final result, and therefore, the worker will be asked for progress or interim reports. (Note: Reports which are defined in the Independent Contractor Agreement as an expected final result of the agreement or which are required by state or federal law are part of the services contracted for and are not considered "interim" or "progress" reports.)

I, _____ (contractor's printed name), certify that all the statements as checked above are true and correct according to the best of my knowledge.

Signature: _____

TIME, MATERIALS, AND SUBCONTRACTOR RATE SHEET

PROJECT NO.: 2407 between **Alameda Unified School District** (the "District" or the "Owner") and K2M Consultants (the "Contractor" or the "Bidder").

Contractor shall provide standard Schedule 1 Labor Rates and Schedule 2 Markup percentages for materials, equipment, and subcontractors for all work within in the scope of the contract for routine and urgent services.

Company Information

Company Name:	
Contractor License Number:	
Classification(s):	
DIR Registration Number:	

Schedule 1 – Labor Rates

Labor Rates shall be in alignment with the State of California Department of Industrial Relations (DIR) published prevailing wage rates for public works projects in keeping with the California Contract Code.

Labor rates shall be inclusive of all travel, transportation, technology, insurance, taxes, overhead, and profit required to complete all contract work.

Job Classification	Straight time	Overtime	Double time
Foreman	185	277.5	
Journeyman			
Helper/Apprentice			
Superintendent			
Project Manager			

Table 1: Labor Rates

Schedule 2 – Materials, Equipment and Subcontractor Markup

Materials

Material expenses will be billed at cost plus a fee of 25% for overhead and profit.

Equipment

Equipment rented from outside vendors will be billed plus a fee of 25% for handling, overhead and profit. Similar equipment owned by Contractor will be billed to the job at standard, prevailing rental rates as established by outside vendors for similar equipment.


Subcontractors

Subcontractor expenses will be billed at cost plus a fee of 25% for overhead and profit.

Note: Detailed documentation shall be submitted with all invoicing, indicating all labor hours, rates, materials, equipment rentals, subcontractor costs, and other fees or costs for verification prior to payment.

TIME, MATERIALS, AND SUBCONTRACTOR RATE SHEET

I acknowledge that I am aware that the rates provided shall remain in effect throughout the duration of the contract agreement unless otherwise noted by amendment to the contract.

Date:	5-3-2024
Company Name:	K2M Consultants
Signature:	
Printed Name:	Kirk McCutcheon
Printed Title:	Owner

#

Policy Number: VPPL018794
Insured Name: K2M Consultants
Number: 10

VP 07 83 07 17

Effective Date: 07/19/2023

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

Professional Liability Coverage Part

I. **Section VIII. DEFINITIONS**, paragraph **G. Insured(s)**, is amended to add the following provisions:

Insured includes as an additional **Insured** any person or organization for whom the **Named Insured** is performing **Professional Services** when the **Named Insured** and such person or organization have agreed in writing in a contract or agreement, prior to the performance of **Professional Services**, that such person or organization be added as an additional **Insured** on the **Named Insured's** policy. This endorsement shall only apply to **Claim Expenses** with respect to **Claims** made against such additional **Insured** arising solely out of **Wrongful Acts** of the **Named Insured** in the performance of **Professional Services** for the additional **Insured**.

The Company will not pay any **Loss** on behalf of the additional **Insured**.

Such person or organization is an additional **Insured** only with respect to the **Named Insured's** ongoing performance of **Professional Services** for the additional **Insured**. A person's or organization's status as an additional **Insured** under this endorsement ends when the **Named Insured's Professional Services** for that additional **Insured** are completed.

II. **Section IV. EXCLUSIONS**, paragraph **L. Insureds versus Insureds**, is deleted in its entirety and replaced with the following:

L. Insureds versus Insureds

Claim by or on behalf of any **Insured**, or any present or former shareholder, partner, officer, director, or employee of any **Insured**, against any other **Insured**. However, this exclusion shall not apply to any **Claim** made against the **Named Insured** by any person or organization considered an additional **Insured** and that would otherwise be afforded under this Policy.

Endorsement Premium: Included

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.



E3306
1st Edition

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

07/26/2023
Effective Date

607045268
Policy Number

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COMMON POLICY CONDITIONS - BP 00 09

SCHEDULE

Name of Person or Organization:
ALAMEDA UNIFIED SCHOOL DISTRICT

(If no entry appears above, information required to complete this Endorsement must be shown in the Declarations as applicable to this endorsement.)

The provisions of the Businessowners Common Policy Conditions are modified by this endorsement as follows:

Condition **K. Transfer Of Rights Of Recovery Against Others To Us** in the Businessowners Common Policy Conditions is amended by the addition of the following:

3. We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your work done under a contract with that person or organization and included in the products-completed operations hazard. This waiver applies only to the person or organization shown in the Schedule above.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all the terms of the policy.



**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

- BUSINESSOWNERS LIABILITY COVERAGE FORM
- BUSINESSOWNERS COVERAGE FORM
- APARTMENTOWNERS LIABILITY COVERAGE FORM
- CONDOMINIUM LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ALAMEDA UNIFIED SCHOOL DISTRICT	All Sites 2060 Challenger Drive, Alameda CA 94501
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following is added to Paragraph **C. Who Is An Insured** of the applicable Coverage Form:

Any person(s) or organization(s) shown in the Schedule is also an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Paragraph **D. Liability And Medical Expenses Limits Of Insurance** of the applicable Coverage Form:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
 - 2. Available under the applicable Limits Of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all the terms of the policy.