Newport-Mesa Unified School District

SERVICE AGREEMENT

This AGREEMENT is hereby entered into this 10th day of December in the year 20 20 in the County of Orange, State of California, by and between the Newport-Mesa Unified School District, hereinafter referred to as "DISTRICT" and Optimum Energy Design (CONTRACTOR)

5200 E. La Palma Ave.	Anaheim	CA	92807
(MAILING ADDRESS)	(CITY)	(STATE)	(ZIP CODE)

hereinafter referred to as "CONTRACTOR." DISTRICT and CONTRACTOR shall be collectively referred to as the "PARTIES." The PARTIES agree that this Agreement has been mutually drafted and authored by all the PARTIES and that it shall not be construed against any one Party. WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and WHEREAS, DISTRICT is in need of such special services and advice; WHEREAS, CONTRACTOR is specially trained, experienced, and competent to perform the special services required by the DISTRICT, and such services are needed on a limited basis.

Scope of Work – CONTRACTOR shall perform the services as set forth in the Proposal, which is attached hereto as Exhibit A (hereinafter referred to as "CONTRACTED SERVICES"), and incorporated as if fully set forth herein. CONTRACTOR's specific scope of work shall be set forth in Exhibit A and/or supplemented by purchase orders subsequently issued by the DISTRICT, on an as needed basis.

Fees and Expenses – For the CONTRACTED SERVICES provided for hereunder, CONTRACTOR shall be compensated as set forth in Exhibit A. The total cost of service requested by the DISTRICT and provided by the CONTRACTOR under this agreement shall be specifically authorized by Purchase Order (PO) and is estimated to be no more than: $ 4,999.00 in the aggregate under the term of this AGREEMENT.

Term of Agreement – CONTRACTOR shall commence providing service under this AGREEMENT beginning on 1/13/2021 and diligently perform as required and complete performance no later than 6/30/2021, or as per Exhibit A. Board approved for a total contract term not to exceed five (5) years, as allowed by Education Code § 17596.

Additional Terms – This AGREEMENT contains additional terms that are set forth in the attached documents titled General Conditions, Special Conditions, and Required Documents and Certifications, and associated Purchase Order(s), which by this reference are incorporated herein. DISTRICT and CONTRACTOR acknowledge, and agree to be bound by, the terms set forth in the selected documents attached to this AGREEMENT, as if such additional terms were fully set forth herein. This service agreement is valid following board approval and receipt of all required documents and certifications, including, but not limited to, proof of insurance and background clearance.

☑ General Conditions ☑ Special Conditions ☑ Required Documents and Certification ☑ Purchase Order(s)

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the date written above.

DISTRICT	**CONTRACTOR**
Signature	Signature
Jonathan Geiszler	Abby Banerjee
Typed Name	Typed Name
Director, Purchasing and Warehouse	President
Title	Title
	83-4294044
	FEIN or Social Security Number

DEFINITIONS

1. "Agreement" – means the document in its entirety, including all conditions, documents, and/or certifications incorporated by reference.
2. "District" – means the Newport-Mesa Unified School District, located at 2985 Bear St Costa Mesa, CA 92626.
3. "Contractor" – means the firm or individual as stated on page one (1) of the Agreement.

GENERAL CONDITIONS

1. Expenses – DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except where noted in Section 7. All expenses shall be approved by the DISTRICT representative authorized to approve such costs prior to being invoiced. All expenses must meet the DISTRICT's requirements for reimbursement for expenses as detailed on DISTRICT's website.
2. Independent Contractor – CONTRACTOR, in the performance of this AGREEMENT, shall be, and act, as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents 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 Workers' Compensation Insurance. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. 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.
3. Materials – CONTRACTOR shall furnish, at his/her 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:

   n/a

   CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.
4. Business Termination – In the event that CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of DISTRICT this AGREEMENT shall terminate and be of no further force and effect and any property or rights tangible or intangible, shall forthwith be returned to DISTRICT.
5. Termination – DISTRICT may, at any time, for any reason, terminate this AGREEMENT and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination.

Written notice by DISTRICT shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this AGREEMENT by the CONTRACTOR; or (b) any act by CONTRACTOR exposing the DISTRICT to liability to others for personal injury or property damage; or CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR's insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within five (5) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall upon the expiration of the five (5) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONTRACTOR. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT.

6. Duty to Provide Fit Workers – CONTRACTOR and subcontractors, if any, shall at all times enforce appropriate discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in providing the services required under this AGREEMENT. It shall be the responsibility of the CONTRACTOR to ensure compliance with this section. Any person in the employ of the CONTRACTOR or subcontractor, whom DISTRICT may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from providing services under this AGREEMENT and shall not again provide services except with written consent of DISTRICT.

   The CONTRACTOR shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The CONTRACTOR shall certify in writing to the governing board of the DISTRICT that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The CONTRACTOR shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the DISTRICT. Reference California Education Code Section 45125.1.

7. Hold Harmless – CONTRACTOR agrees to and does hereby indemnify, hold harmless and defend the DISTRICT and its officers, agents and employees ("INDEMNITEES") from every claim or demand made and every liability, loss, damage or expense, negligence (including the active or passive negligence of INDEMNITEES as allowed by law), causes of action, costs, expenses, or injuries, fines, penalties in law or equity, regardless of whether the allegations are false, fraudulent, or groundless of any nature whatsoever, which may be incurred by reason of:
   a. Liability for damages for:
      i. Death or bodily injury to person;
      ii. Injury to, loss or theft of property; or
      iii. Any other loss, damage or expense arising out of i or ii above, sustained by the CONTRACTOR or any person, firm or corporation employed by the

CONTRACTOR, either directly or by independent contract, upon or in connection with the services called for in this AGREEMENT, however caused, to the extent resulting from CONTRACTOR's negligence or other wrongful negligence, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

b. Any injury to or death of any persons, including the DISTRICT or its officers, agents and employees, or damage to or loss of any property to the extent caused by any wrongful act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

c. Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this AGREEMENT.

d. CONTRACTOR's Indemnification includes any loss sustained by INDEMNITEES, and each of them, whether resulting from claims brought by third parties or sustained directly by any of the INDEMNITEES, as a result of 1) CONTRACTOR or any subcontractor's failure to implement and maintain appropriate data security or cybersecurity measures; 2) any data breach in which the DISTRICT's confidential information or privileged and confidential information is released, exposed, lost, or stolen as a result of CONTRACTOR's performance of services or otherwise arising from this AGREEMENT; 3) computer viruses, denial of service attacks, and other technologically harmful materials that harm or infect any of the INDEMNITEES's electronic equipment, software, data, or other proprietary material as a result of CONTRACTOR's performance of Services or otherwise arising from this AGREEMENT, and 4) infringement of copyright, trademark, trade dress, invasion of privacy violations as a result of CONTRACTOR's performance of Services or otherwise arising from this AGREEMENT, and 5) any breach by CONTRACTOR or any subcontractor of the California Student Data Privacy Agreement, if executed.

e. The CONTRACTOR, at the CONTRACTOR'S own expense, cost and risk shall defend any and all actions, suits, or other proceedings that may be brought or instituted against the DISTRICT and its officers, employees, agents, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT and its officers, agents, or employees in any action, suit or other proceedings as a result thereof.

8. Insurance – CONTRACTOR shall, at the CONTRACTOR'S sole cost and expense, take out prior to commencing the work, and maintain in force and effect, from the commencement of services until expiration of this AGREEMENT, and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain a policy or policies of insurance covering CONTRACTOR'S and subcontractor's services and furnish to the DISTRICT a certificate of insurance evidencing all coverages and endorsements required hereunder. Said certificate of insurance shall be due upon execution of this AGREEMENT, or such subsequent date as agreed to by the DISTRICT. Such insurance shall be with an insurance company admitted by the Insurance Commissioner of

the State of California to transact such insurance in the State of California. Minimum coverages shall be as follows:

a. General Liability Insurance for injuries including accidental death, to any one person in an amount not less than $1,000,000 per occurrence and $2,000,000 general aggregate.
b. Subject to the same limit for each person on account of one accident, in an amount not less than $1,000,000 per occurrence.
c. Property Damage Insurance in an amount not less than $1,000,000 per occurrence.
d. Comprehensive Automobile Liability Insurance covering the use of all owned, non-owned and hired vehicles with combined bodily injury and property damage in an amount not less than $1,000,000 per occurrence.
e. Statutory Workers' Compensation Insurance in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.
f. An endorsement to said policy(s) naming DISTRICT and its officers, agents and employees as additional insured while rendering services under this AGREEMENT.
g. A thirty (30) day written notice to DISTRICT of cancellation or reduction in coverage, ten (10) days' notice if cancellation is due to nonpayment of premium.
h. CONTRACTOR hereby grants to the DISTRICT a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.
i. CONTRACTOR shall furnish the District with certificates and endorsements affecting coverage required by the AGREEMENT. The endorsements are to be signed by the person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the DISTRICT before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements.

To the fullest extent permitted by law, The DISTRICT, its officers, officials, employees, and volunteers are to be covered as insureds as respects to any and all liability arising out of, or pertaining to, products of the CONTRACTOR; and with respect to liability arising out of automobiles owned, leased, hired, or borrowed by CONTRACTOR.

The CONTRACTOR's insurance coverage shall be primary insurance as respects to the District, it's officers, officials, employees, and volunteers. Any insurance or self-maintained by the DISTRICT, it's officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

9. Attorney's Fees – If either party hereto becomes involved in litigation arising out of this AGREEMENT or the performance thereof, the court in such litigation, or in a separate suit, shall award reasonable costs and expenses, including attorney fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.
10. Assignment – The CONTRACTOR shall not assign, transfer, convey, sublet or otherwise dispose of this AGREEMENT or of its rights, title or interest in or to the same or any part thereof.
11. Other Contractors – DISTRICT reserves the right to enter into other agreements for work additional or related to the subject matter of this AGREEMENT and CONTRACTOR agrees to

cooperate fully with these other contractors and with the DISTRICT. When request by the DISTRICT, CONTRACTOR shall coordinate its performance under this AGREEMENT with such additional or related work. CONTRACTOR shall not interfere with the work performance of any other contractor or DISTRICT employee.

12. Nonperformance – As used in this AGREEMENT, "failure to perform" means failure, for whatever reason, to deliver goods and/or perform work as specified and scheduled in this AGREEMENT. If CONTRACTOR fails to perform under this AGREEMENT, then DISTRICT, after giving seven (7) days' written notice and opportunity to cure to CONTRACTOR, has the right to complete the work itself, to obtain the contracted goods and/or services from other contractors, or a combination thereof, as necessary to complete the work. Both PARTIES agree that CONTRACTOR shall bear any reasonable cost difference, as measured against any unpaid balance due CONTRACTOR, for these substitute goods or services.
13. Remedies – In case of CONTRACTOR breach, and in addition to any other provision of this AGREEMENT, DISTRICT shall be entitled to any other available legal and equitable remedies. In case of DISTRICT breach, CONTRACTOR's remedy shall be limited to termination of the AGREEMENT and receipt of AGREEMENT payments to which CONTRACTOR is entitled.
14. Errors – CONTRACTOR shall perform any and all additional work necessary to correct errors in the services performed under this AGREEMENT without undue delays or additional costs to the DISTRICT.
15. Security – DISTRICT hereby deems all information, documents, and property contained in or on DISTRICT property privileged and confidential. Any removal or disclosure of any privileged and confidential materials by employees or agents of CONTRACTOR or any subcontractor without express written consent of DISTRICT shall be considered a material breach of this AGREEMENT and shall be cause for immediate termination of this AGREEMENT. IF CONTRACTOR BECOMES AWARE OF A POSSIBLE UNAUTHORIZED REMOVAL OR DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATERIALS, CONTRACTOR SHALL IMMEDIATELY NOTIFY DISTRICT.
16. Mandatory Reporter Requirements – CONTRACTOR acknowledges and understands that, pursuant to California Penal Code Section 11165.7, employees and agents of CONTRACTOR and any subcontractor whose duties under the Scope of Work include contact and supervision of children are mandatory reporters of known or suspected instances of child abuse or neglect. CONTRACTOR will ensure that employees or agents of CONTRACTOR and any subcontractor who are mandatory reporters will take the Child Abuse Mandated Reporter Educators Training Module within six weeks of hire and annually thereafter within the first six weeks of each school year. CONTRACTOR agrees to make this training available to each mandatory reporter. CONTRACTOR will ensure that each employee or agent of CONTRACTOR and any subcontractor who is a mandatory reporter will execute an Employee Acknowledgement Form and a Suspected Child Abuse Reporting Acknowledgement Form. CONTRACTOR will provide copies of each of these signed forms for each employee or agent of CONTRACTOR or any subcontractor who is a mandatory reporter to District within six weeks of the hire of the mandatory reporter and annually.
17. Unsupervised Contact: "Unsupervised contact" with students means contact that provides the person opportunity and probability for personal communication or touch with students when

not under direct DISTRICT supervision. As required by DISTRICT policy, CONTRACTOR shall ensure that CONTRACTOR, any subcontractors [of all tiers], and their officers, employees, and agents will have no direct, unsupervised contact with students while on DISTRICT property. CONTRACTOR will work with DISTRICT to ensure compliance with this requirement. If CONTRACTOR is unable to ensure through a security plan that none of its officers, employees, or agents, or those of its subcontractors, will have direct, unsupervised contact with students in a particular circumstance or circumstances, then CONTRACTOR shall notify DISTRICT before beginning any work that could result in such contact. In addition to any Live Screen Criminal Background Check Requirements as set forth above, CONTRACTOR authorizes DISTRICT, at its discretion, to obtain information about CONTRACTOR and its history and to independently conduct its own criminal background check, including fingerprinting, of any CONTRACTOR officers, employees, or agents who may have unsupervised contact with students. CONTRACTOR shall cause its employees and/or subcontractors, if any, to authorize DISTRICT to conduct these background checks. CONTRACTOR shall pay all fees for processing the background check. DISTRICT may deduct the cost of such fees from a progress or final payment to CONTRACTOR under this AGREEMENT, unless CONTRACTOR elects to pay such fees directly.

18. Compliance with Applicable Laws – The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT's general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONTRACTOR, CONTRACTOR's business, equipment and personnel engaged in operations covered by this AGREEMENT or accruing out of the performance of such operations.
19. Permits/Licenses – All business licenses, permits and/or fees required by the codes, ordinances and statutes of the State of California, the County of Orange, and the Cities of Costa Mesa or Newport Beach, as appropriate, must be taken out by the CONTRACTOR at CONTRACTOR'S sole cost and expense.
20. Employment with a Public Agency – CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR 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.
21. Conflict of Interest – CONTRACTOR affirms that to the best of his/her knowledge, there exists no actual or potential conflict between CONTRACTOR's family, business, or financial interest and the services provided under this AGREEMENT in violation of any applicable state, local, or federal law, including, but not limited to, Government Code section 1090, and in the event of change in either private interests or services under this AGREEMENT, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the DISTRICT. CONTRACTOR shall not be in a reporting relationship to a DISTRICT employee who is a near relative, nor shall a near relative be in a decision-making position with respect to the CONTRACTOR.
22. Affirmative Action Employment – In the performance of the terms of this AGREEMENT, CONTRACTOR agrees that it will not engage in, nor permit such subcontractor as it may employ to engage in, unlawful discrimination in employment of persons because of the race, religious

creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

23. Notice – All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by:
    a. Personal service or;

    b. U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

DISTRICT:	CONTRACTOR:
Newport-Mesa Unified School District	Optimum Energy Design
2985 Bear Street	5200 E. La Palma Ave.
Costa Mesa, CA 92626	Anaheim, CA 92807
Attn: Purchasing Director	

24. Tobacco/Vapor Use Policy – In the interest of public health, the DISTRICT is proud to provide a healthy, tobacco/vapor-free environment. Smoking or the use of any tobacco or vapor products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the DISTRICT pursuant to DISTRICT'S Policy 3620. Failure by CONTRACTOR to abide with the conditions of Policy 3620 may result in the termination of this AGREEMENT.
25. Non-Waiver - The failure of the DISTRICT in any one or more instances to insist upon strict performance of any of the terms of this AGREEMENT or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
26. 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.
27. Governing Law – The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California.
28. Provisions of Law Clause – Each and every provision of law clause required by law to be inserted in the AGREEMENT shall be deemed to be inserted herein and the AGREEMENT shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the AGREEMENT shall forthwith be physically amended to make such insertion or correction.
29. Force Majeure Clause – The PARTIES to this AGREEMENT shall be excused from performance thereunder during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss, or shortage of transportation facilities,

lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence thereof is presented to the other PARTY (IES), provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the party not performing.

30. Time is of the Essence – Time is of the essence in the performance of and compliance with each of the provisions and conditions of this contract.
31. Safety and Security – It shall be the responsibility of the CONTRACTOR to ascertain from the DISTRICT, the rules and regulations pertaining to safety, security and driving on school grounds, particularly when children are present. During outbreaks of communicable disease, such as the coronavirus pandemic, the CONTRACTOR is expected to follow all District safety and health precautions to prevent the spread of communicable disease. This includes frequent handwashing with soap and water, use of hand sanitizer when hand washing is not practicable, wearing a mask or face covering and appropriate level PPE, maintaining physical distancing of 6 feet from others, when practicable, and participating in district passive and active health screening.
32. Invoicing Required Documentation – If the below information is missing from an invoice under this AGREEMENT, the DISTRICT shall reject it and request an updated document with the appropriate date the document was re-delivered to the DISTRICT:
    a. Name of firm and address or person and address submitting invoice.
    b. Name of school district as addressee (not school).
    c. Date of invoice. Note: Payment Terms: net 30 days, unless cash discount provided
    d. Number of school district purchase order (if applicable).
    e. Special terms, such as discounts.
    f. Description of each item, not just a stock number.
    g. Quantity.
    h. Unit quantity (dozen, gross, pound, etc.)
    i. Unit price for each item.
    j. Extended price for each item.
    k. Hours and rates for labor charges, if applicable
    l. Subtotals of amounts subject to sales tax.
    m. Amount of sales tax (if applicable), or total fixed fee, if applicable.
    n. Phased billing may apply if fixed fee.
33. Nondiscrimination – CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age of such persons.
34. Entire Agreement/Amendment – This AGREEMENT and any exhibits attached hereto constitute the entire agreement among the PARTIES to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both Parties to the AGREEMENT.
35. Authority – The undersigned warrant that they are duly authorized representatives of the PARTIES and have been empowered to execute this AGREEMENT on behalf of the PARTY indicated.
36. Order of Precedence – The documents listed below are hereby incorporated by reference. In the event of an inconsistency or conflict between or among the provisions of this AGREEMENT, the inconsistency shall be resolved by giving precedence in the following order:
    a. Special Conditions
    b. General Conditions
    c. Purchase Order(s)

In the event of any conflict, discrepancy, error or omission among any parts of the AGREEMENT, either PARTY shall immediately notify the other PARTY and both PARTIES shall decide how to remedy such conflict, discrepancy, error or omission. If the PARTIES cannot resolve any such conflict, discrepancy, error or omission by mutual agreement, the AGREEMENT may be immediately terminated. The AGREEMENT Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's packaging, invoices, catalogs, brochures, technical data sheets or other documents.

CONTRACTOR certifies under penalty of perjury that CONTRACTOR is a (check applicable):

☐ Individual / Sole Proprietor or single-member LLC ☐ C Corporation ☐ S Corporation
☐ Partnership ☐ Other _____
☒ LLC. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) S

SPECIAL CONDITIONS

These conditions are applicable based on the responses in Exhibit B, or where applicable based on the services rendered to the DISTRICT. It is the CONTRACTOR's sole and absolute responsibility to report any ambiguities, inconsistencies, or errors to the DISTRICT.

1. Criminal records check – Exhibit B shall be completed by the CONTRACTOR. If CONTRACTOR shall engage district pupils, Exhibit C will be completed and returned to the DISTRICT.
    a. Criminal Background Check Requirements – CONTRACTOR, at its sole cost and expense, and as necessary to satisfy the requirements of Education Code (EC) section 45125.1 and 45125.2 or DISTRICT policy, will conduct all required criminal background checks. If required by EC section 45125.1, CONTRACTOR must provide for the completion of Exhibit C Criminal Records Check Certification, in the DISTRICT's required format, prior to any of the CONTRACTOR's employees, or those of any other subcontractors, who are anticipated to come into contact with the DISTRICT's students. CONTRACTOR further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code section 45125 et seq., and CONTRACTOR will comply with any such requirements. CONTRACTOR further acknowledges and agrees that no CONTRACTOR or subcontractor employees, agents or representatives shall come into contact with students if they have been convicted of a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c).] Notwithstanding anything to the contrary herein, if CONTRACTOR is an individual operating as a sole proprietor, is required by Education Code section 45125.1(k), it shall be the responsibility of the DISTRICT to prepare and submit that individual's fingerprints to the Department of Justice.
2. BMX Acknowledgement – If CONTRACTOR is performing a BMX and/or skateboard event on DISTRICT property, Exhibit D shall be completed and returned to the DISTRICT.
3. Insurance –
    a. Special Hazards Insurance, where appropriate, with special rider to include automotive and truck, where operated, and material hoist, where used, in an amount not less than $1,000,000 per occurrence. Yes ☐ No ☑
    b. Sexual Abuse or Molestation Insurance in an amount not less than $1,000,000 per wrongful act and $2,000,000 aggregate. Yes ☐ No ☑

c. Fire Insurance on all work subject to loss or damage by fire. Amount of fire insurance shall be sufficient to protect against loss or damage in full until work is accepted by the DISTRICT. Yes ☐ No ☑

d. Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this AGREEMENT and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. DISTRICT, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT. Yes — No ✓

e. Professional Liability (Errors and Omissions; E&O) Insurance: Professional Liability (Errors and Omissions) Insurance appropriate to Contractor's profession, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. DISTRICT, its board of trustees, employees, agents, and volunteers must be named as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT. Yes ☑ No ☐

4. Originality of Services – CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video

productions prepared for, and submitted to, the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.

5. Copyright/Trademark/Patent – CONTRACTOR understands and agrees that all materials 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.
    a. Originality of Services
    b. Copyright/Trademark/Patent
6. Prevailing Wage Requirements – CONTRACTOR acknowledges and agrees that, if applicable, CONTRACTOR shall be responsible for payment of prevailing wage rates in accordance with Labor Code sections 1720 et seq. and 1770 et seq. to all personnel performing SERVICES under this AGREEMENT. CONTRACTOR shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed under this AGREEMENT from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the DISTRICT shall provide CONTRACTOR with a copy of the prevailing rates of per diem wages. If the DISTRICT is using State funds for the project and is required to enforce a Labor Compliance Program ("LCP"), then Contractor will be required to enforce the District's Labor Compliance Program ("LCP"), as applicable. If applicable, Certified Payroll records shall be maintained by the CONTRACTOR and copies of the certified payroll shall be electronically sent to the Department of Industrial Relations and be delivered to the DISTRICT at the end of each month during the entire duration of the AGREEMENT. If the AGREEMENT is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Subject to exceptions as set forth in Labor Code section 1771.1, CONTRACTOR or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any AGREEMENT for public work, as defined by statute, unless it is currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. DISTRICT may not accept a bid nor any contract or subcontract entered into without proof of the CONTRACTOR or subcontractor's

current registration to perform public work pursuant to Section 1725.5. For more information, go to http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html

7. Subcontractors – CONTRACTOR shall not delegate, by contract, agreement or otherwise, any services or tasks required under this AGREEMENT to any other person or entity without the express written permission of DISTRICT by executed addendum. Consent to any subcontract may be withheld by DISTRICT at its sole and unrestricted discretion. DISTRICT shall not be obligated to pay for any services or work performed by an unauthorized person or entity. CONTRACTOR shall at all times during the term of this agreement remain fully and independently responsible and liable to DISTRICT for the full and complete performance of the terms and conditions of this AGREEMENT. CONTRACTOR shall be responsible for ensuring that all subcontractors independently satisfy all of the requirements of CONTRACTOR under this AGREEMENT, including but not limited to the insurance and indemnification provisions of this AGREEMENT, unless otherwise agreed in writing by the DISTRICT's Risk Manager or designee. Prior to performance of Services by any subcontractor, the subcontractor shall provide DISTRICT with evidence of all insurance, certificates, forms, and licenses required by this AGREEMENT.

Exhibit A

Scope of Work / Fees and Expenses / Term of Agreement

Scope of Work

Will provide needs assessments for HVAC for Building E, F, G, and H at Lindbergh per the attached proposal

Fees and Expenses

NTE $4999.00

Term of Agreement

1/13/2021 - 6/30/2021

Exhibit B

Child Engagement Certification

To the Governing Board of Newport-Mesa Unified School District:

I/We, Optimum Energy Design certify that:

Name of Contractor

CONTRACTOR's employees, agents, or officers shall NOT engage in any UNSUPERVISED CONTACT with any child of the DISTRICT without DISTRICT staff present.

I/We declare under penalty of perjury that the foregoing is true and accurate.

Executed at _____, California on _____.

Date

_____

Signature

_____

Typed or printed name

_____

Title

_____

Address

DISTRICT Administrator certifies the above to be true and accurate:

_____

Signature

_____

Typed or printed name

_____

Date

Exhibit C

CRIMINAL RECORDS CHECK CERTIFICATION

AB 1610, 1612 and 2102

To the Governing Board of Newport-Mesa Unified School District:

I/We, Optimum Energy Design certify that:

Name of Contractor

1. I/We have carefully read and understand the Notice to Contractors Regarding Criminal Record Checks (Education Code Section 45125.1) required by the passage of AB 1610, 1612 and 2102.
2. Due to the nature of the work I will be performing for the District, my employees may have contact with students of the District.
3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the Department of Justice.

I/We declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California on _____.

Date

_____

Signature

_____

Typed or printed name

_____

Title

_____

Address

_____

Telephone

NOTICE REGARDING CRIMINAL RECORDS CHECK

(EDUCATION CODE SECTION 45125.1)

Education Code Section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code Section 1192.7(c), or has been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony.

Penal Code Section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another; any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder; explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; kidnapping; continuous sexual abuse of a child; and carjacking.

Penal Code Section 1192.7 lists the following "serious" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to injure or to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor; penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

REQUIRED DOCUMENTS AND CERTIFICATIONS

☑ 1. W-9
☑ 2. Insurance (Refer to § 8 of General Conditions)
  ✓ a. Worker's Compensation and Employers Liability Insurance
☑ 3. Exhibit B – Child Engagement Certification
☑ 4. Exhibit C – Criminal Records Check
☐ 5. Exhibit D – BMX / Skateboard Acknowledgement
☐ 6. Live Scan (DOJ and FBI Clearance – FOR SOLE PROPRIETORS ONLY)
☐ 7. Professional License (SPED)
☐ 8. Resume (SPED)
☐ 9. TB Test

optimum energy design

PR # P7802925

PROPOSAL FOR ENGINEERING SERVICES

October 28, 2020

Newport Mesa Unified School District
2985 Bear Street, Bldg. E.
Costa Mesa, CA 92626

Attention: **Ara K. Zareczny, Director, Facilities Development, Planning and Design**

Project: **Lindbergh School**
220 23rd Street
Costa Mesa, CA 92627

Subject: **Proposal for Consulting Engineering Services**

We are pleased to submit this proposal for the consulting services necessary for the above project.

Project Description:

Provide needs assessments for HVAC for Building E, F, G, and H at the above site.

Scope of Work:

For this scope of work, we will provide the following services:

1. **Site Walk:** Attend a total of one (1) site meeting/ visual survey walk with district maintenance and operation personnel to determine replacement options for the existing systems including the following:
    a. Air conditioning system options including all equipment
    b. Air distribution
    c. HVAC refrigerant piping systems.
    d. HVAC controls
    e. Electrical power distribution infrastructure for new HVAC
    f. Evaluate 30-day pertinent panel load readings performed by district

    Note: All scope will be based on visual observations only and excludes any invasive or destructive testing
2. **Written assessment**: Includes the following:
    a. Summary matrix of proposed options
3. **ROM Estimate**: Includes the following:
    a. Budget installation and soft costs for each HVAC option
4. **Exclusions**:
    a. Additional site visits and district meetings
    b. Video Survey of infrastructure piping
    c. Destructive testing
    d. Cost estimating
    e. Printing and delivery Costs

SEE NEXT PAGE FOR FEES:

FEE PROPOSAL:

Mechanical Fee:	**$3,499.00**
Electrical Fee:	**$1,500.00**
Total	**$4,999.00**

Reimbursables: None

Fees will be billed monthly for the percentage of the engineering services completed.

Additional services will be provided as requested and will be charged on the basis of the following rates.

POSITION	**RATE (HOURLY)**
President	$165
Sr. Project Engineer/ Manager	$145
Project Manager	$130
Design Engineer	$120
Designer	$105
CAD	$95
Administrative	$85
EXPENSES (where allowed)	
Mileage	$0.54 per mile
Printing & Deliveries	$7.50 per sheet plus delivery expenses

These fees and hourly rates include all charges for such items as telephone, fax, computer, local travel.

If you have any questions concerning the proposed scope of work, services, fees and agreement, please call me. If this proposal and agreement are acceptable, please return one signed copy of each for our records. Thank you for this opportunity to be of service. I look forward to working with you and your office on this project.

Very truly yours,

Optimum Energy

Abby Banerjee, P.E.
President

Accepted for NMUSD

By:.....

Date:.....