

**SUPPLEMENTAL CONTRACT INCORPORATING  
REGION 4 ESC/OMNIA PARTNERS, CONTRACT FOR  
THE PURCHASE OF HVAC EQUIPMENT, INSTALLATION, SERVICE & RELATED PRODUCTS**

This **Supplemental Contract Incorporating the Region 4 Education Center (ESC)/OMNIA Partners (“ESC/OMNIA”) Contract #R200401 for the Purchase of HVAC Equipment, Installation, Service & Related Products** is entered into by and between the **Mountain View Whisman School District**, a California public school district (“**District**”) and **Norman S. Wright Mechanical Equipment Corporation**, a California corporation (“**Vendor**”). District and Vendor may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

**RECITALS**

**WHEREAS**, District has a need for HVAC equipment and related supplies (“**Products and Supplies**”) to be purchased and installed at the following District sites:

- Crittenden Middle School, 1701 Rock St, Mountain View, CA 94043;
- Monta Loma Elementary School, 460 Thompson Ave, Mountain View, CA 94043;
- Theuerkauf Elementary School, 1625 San Luis Ave, Mountain View, CA 94043;

(“**Site(s)**”); and

**WHEREAS**, District desires to purchase the Products and Supplies in a cost-effective manner by entering into and a procurement contract with Vendor for procurement of the Products and Supplies; and

**WHEREAS**, after a competitive solicitation and selection process by ESC/OMNIA, ESC/OMNIA and Daikin Applied America’s Inc. (“**Daikin**”) entered into a contract dated October 1, 2020 (“**Administrative Contract**”) – which is current and valid through September 30, 2023 – and Vendor is an authorized dealer for Daikin consistent with the terms of the Administrative Contract; and

**WHEREAS**, the Administrative Contract includes HVAC equipment and related supplies, including the Products and Supplies; and

**WHEREAS**, Vendor wants to provide the Products and Supplies to the District pursuant to and consistent with the terms of the Administrative Contract and this Contract; and

**WHEREAS**, the Administrative Contract allows for any state and local governmental entity including public and private schools to purchase products and services at prices indicated in the Administrative Contract and enter into supplemental agreements to further define the materials and products, and the level of service requirements, over and above the minimum defined in the Administrative Contract.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the Parties agree as follows:

1. This Contract fully incorporates by this reference the following documents and comprise the “**Master Contract**”:
  - 1.1. Administrative Contract and all documents incorporated therein by reference or operation of law, including any contract updates that amend the Administrative Contract, and attached hereto as:  
[https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin\\_Applied/Contract\\_Documents/R200401/R200401\\_Daikin\\_MAD\\_2020\\_10\\_1.pdf](https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin_Applied/Contract_Documents/R200401/R200401_Daikin_MAD_2020_10_1.pdf)
  - 1.2. Request for Proposal by Region 4 Education Service Center for HVAC Equipment, Installation, Service & Related Products (“**ESC RFP**”), including without limitation, the Terms and Conditions of the ESC RFP and

the Special Conditions (“**Master Contract Terms and Conditions**”) and any other provisions and/or documents incorporated therein by reference or operation of law, and attached hereto as:  
[https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin\\_Applied/Contract\\_Documents/R200401/20-04\\_HVAC\\_RFP.pdf](https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin_Applied/Contract_Documents/R200401/20-04_HVAC_RFP.pdf)

- 1.3. Award Letter dated August 25, 2020, from ESC to Daikin attached hereto as:  
[https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin\\_Applied/Contract\\_Documents/R200401/R200401\\_Daikin\\_AWL\\_2020.08.25.docx.pdf](https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin_Applied/Contract_Documents/R200401/R200401_Daikin_AWL_2020.08.25.docx.pdf)
- 1.4. Daikin’s Response to the ESC RFP (“**Vendor Response**”):  
[https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin\\_Applied/Contract\\_Documents/R200401/Daikin\\_Applied\\_RFP\\_20-04\\_Open\\_Records\\_Submission\\_Package.pdf](https://www.omniapartners.com/fileadmin/public-sector/suppliers/A-D/Daikin_Applied/Contract_Documents/R200401/Daikin_Applied_RFP_20-04_Open_Records_Submission_Package.pdf)
- 1.5. Vendor quote dated March 2, 2022, attached hereto as **Attachment B (“Quote”)**; provided, however, that no term other than the product type, product description, quantity, and price shall be incorporated into this Contract.
2. **Extend Master Contract Terms.** Vendor hereby extends to the District identical terms and conditions as those granted under the Master Contract as explained, modified and supplemented in this Contract.
3. **Order of Precedence.**
  - 3.1. To the extent any term or condition of this Contract is inconsistent with the Master Contract, this Contract shall control, especially with respect to the delivery, payment, venue, or jurisdiction provisions in this Contract which shall control over all other contradictory provisions.
  - 3.2. Unless otherwise provided, the order of preference is as follows: (i) the terms of this Contract; (ii) the terms and conditions of the Administrative Contract (except for delivery, payment, venue, jurisdiction provisions and dispute resolution); (iii) the terms of the Master Contract Terms and Conditions; (iv) the terms and conditions of the ESC RFP (except for delivery, payment, venue or jurisdiction provisions); (v) Vendor Response; and (vi) Quote.
4. **California Law.** Vendor shall at all times comply with applicable California law in performing any service, providing the Products and Supplies, and/or satisfying its obligations to the District under this Contract. The Parties further agree and acknowledge that the District is not subject to the laws of the states of Texas.
5. **Term.** The Parties agree that the “Term of agreement” section of the Administrative Agreement is hereby deleted in its entirety and replaced with the following term: The term of this Contract shall begin on the Effective Date and continue for one (1) year. Either Party may terminate this Contract without cause upon thirty (30) days’ prior written notice to the other Party. This Contract may be extended as agreed by the Parties in writing.
6. **Price and Payment.** Prices for the Products and Supplies shall be as set forth in the Quote, or as otherwise agreed to by the Parties in writing. District agrees to pay Vendor for Products and Supplies received pursuant to this Contract, at the price indicated herein, and as more specifically described in the Quote. District will pay Vendor all undisputed amounts after delivery of the Products and Supplies and within thirty (30) days after Vendor submits an approved invoice to the District. Vendor hereby acknowledges and certifies that the prices indicated herein and the Quote are the prices indicated and/or authorized pursuant to the Master Contract.
7. **Delivery/Freight.**
  - 7.1. Vendor shall deliver the Products and Supplies **directly to the Sites** at the addresses above on or before **[number of days] (XX) days** after the Effective Date, or as agreed to in writing by the District and Vendor. The terms of delivery are as follows:

- 7.1.1. The Products and Supplies shall be delivered by Vendor at Vendor's sole expense. Packing slips must accompany all shipments. Vendor shall strictly adhere to the delivery and completion schedules specified in this Contract.
- 7.1.2. Time, if stated as a number of days, shall mean calendar days unless otherwise specified.
- 7.1.3. The quantities specified in the Quote are the only quantities required, unless otherwise agreed to by the Parties in writing. If Vendor delivers in excess of the quantities specified in the Quote, the District shall not be required to make any payment for the excess equipment, materials, or supplies, and may return them to Vendor at Vendor's expense or utilize any other rights available to the District at law or in equity.
- 7.1.4. The risk of loss or damage to the Products and Supplies shall not pass to the District until the District receives physical possession of the Products and Supplies.
- 7.1.5. All line items shall be delivered to the District, complete as requested in one shipment. Partial line item delivery shall not be accepted without prior consent. Payment for partial line items shall be delayed until the complete quantity has been received by the District. NOTE: This does not mean that the District will not accept a partial purchase order delivery, as long as the total quantity requested for each line item is included in the shipment.

7.2. All prices in the Quote are quoted F.O.B. destination, unpacked, assembled (if necessary) to the designated District site(s) at the time of order. No additional freight, drayage or labor charges will be permitted. All cartons and other packaging materials, to the extent unpacking occurs, must be removed from the site by Vendor or its agents.

8. **Notice.** Any notice required or permitted to be given under this Contract shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**DISTRICT**

Mountain View Whisman School District  
 1400 Montecito Ave,  
 Mountain View, CA 94043  
 Attn: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

**VENDOR**

Norman S. Wright Mechanical Equipment  
 Corporation  
 99A South Hill Drive,  
 Brisbane, CA 94005  
 ATTN: Josh Fleischmann  
 Telephone: (415) 467-7600

9. **Termination for Non-Appropriation of Funds.** The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of this Contract by the District. If the District fails to appropriate sufficient monies to provide for the continuation of this Contract, or if appropriations to the District are reduced and the effect of such reduction is to provide insufficient monies for the continuation of this Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. Vendor will only be entitled to payment for deliverables that have been satisfactorily completed as of the termination date.

10. **Drug-Free / Tobacco Free / Smoke Free Policy.** No drugs, alcohol, tobacco, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, consultants, or contractors are to use drugs on any District site.

11. **Safety And Security.** Vendor is responsible for maintaining safety in the performance of this Contract. Vendor shall be responsible for complying with the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present. Vendor is responsible for complying with, and the Contract Price includes the costs of complying with, all applicable federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to site safety in connection with COVID-19, and/or any similar virus or derivative strain. Vendor shall submit the executed Health and Safety Certification Form attached hereto as **Attachment "A"** and incorporated herein by this reference.

12. **Fingerprinting.** If Vendor will have any interaction with District's students or will perform any services or work of this Contract upon a District school site on any day Monday through Friday from 7:00 AM until 4:00 PM, Vendor shall comply at all times with the provisions of Education Code section 45125.2 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees, its subcontractor(s), and its subcontractors' employees. Verification of compliance with this section shall be provided in writing to the District prior to each individual's performance of the services or work hereunder and prior to permitting the individual to enter upon a District school site.
13. **Release.** Vendor acknowledges that it is voluntarily and freely entering into this Contract and deciding to perform the services and work hereunder may require Vendor to enter upon and into the District's school sites ("**Premises**") and that Vendor's use of the Premises includes the possible exposure to and illness from infectious disease including, but not limited to, MSRA, influenza and COVID-19 (collectively "**Infectious Disease**"). Vendor further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Vendor hereby releases the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "**indemnified parties**") from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Vendor, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants and any other person tracing exposure or illness to Vendor, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Premises for the performance of the services and work required by this Contract.
14. **Conflict of Interest.** Vendor hereby certifies that no employee, officer, agent, consultant, or subcontractor of Vendor has any financial interest or business relationship with the District, District's staff or any individual member of the District's governing board; nor does Vendor have any actual knowledge or reason to know that any such District board member(s) or staff will obtain a financial interest or present or anticipated benefit from the agreement contemplated by this Contract that would constitute a conflict of interest under California Public Contract Code section 10365.5; Government Code sections 1090 et seq. or 87100 et seq., pertaining to conflicts of interest in public contracting.
15. **General Terms and Conditions.**
  - 15.1. The Parties acknowledge that each of them has fully discussed the contents of this Contract with their chosen representatives and/or legal counsel and has had the benefit of legal counsel in negotiating and drafting the terms of this Contract. Accordingly, this Contract shall not be construed as having been drafted by one Party or the other.
  - 15.2. This Contract and the attachments hereto and the documents specifically incorporated into the Contract by reference, constitute the entire Contract between the District and Vendor. No other promises, contracts, or statements between the Parties shall be binding unless made in writing and signed by all Parties hereto.
  - 15.3. Each Party hereto shall bear its own costs and attorneys' fees incurred or connected with the drafting and signing of this Contract and the events leading up to this Contract.
  - 15.4. This Contract and the rights and obligations of the Parties hereunder shall be construed and interpreted in accordance with the laws of the State of California. Any action or proceeding to enforce this Contract shall be commenced and maintained in the county in which the District administrative offices are located.
  - 15.5. The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Contract.
  - 15.6. The Parties acknowledge that this Contract is only binding once it is approved by the District's governing board.

15.7. This Contract may be executed in several counterparts and shall be deemed legally effective after approval by the District's Governing Board and at such time as duly executed counterparts have been furnished and delivered to each Party. Fully executed copies and facsimile versions of this Contract shall have the same force and effect as the original.

**ACCEPTED AND AGREED** on the latest date indicated below ("**Effective Date**"):

Dated: \_\_\_\_\_, 2022

Dated: \_\_\_\_\_, 2022

**FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT**

**NORMAN S. WRIGHT MECHANICAL EQUIPMENT CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**Information regarding Vendor:**

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation
- Limited Liability Company
- Other: \_\_\_\_\_

\_\_\_\_\_  
**Employer Identification and/or Social Security Number**

**NOTE:** United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. To comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Attachment A

HEALTH & SAFETY CERTIFICATION

I, \_\_\_\_\_  
[Your Name], \_\_\_\_\_ [Firm  
Name] ("Vendor").

hereby acknowledge that Vendor must comply with the policies, safety protocols and practices, vaccination and COVID testing policies established by the District, the Health Officer of the County of Santa Clara, the state of California, and OSHA and Cal-OSHA related to required health monitoring, cleaning and sanitization practices, physical distancing requirements, face coverings, use of personal protective equipment, site safety protocols, community infectious disease spread reduction plan, and communication matters (collectively "**Health & Safety Policies**") in effect as of the date of this Contract and as may be revised during the term. Vendor must always review and implement the Health & Safety Policies in its performance of this Contract, including the work of Vendor's consultants and subcontractors.

Additionally, I hereby certify that Vendor's employees, agents, subcontractors, any subcontractor's employees or agents and any other person that may enter upon any District school site for purpose of performing Vendor's obligations under this Contract, will not be allowed to enter the District site if they have a fever, cough or other COVID-19 or infectious disease symptom(s) and/or if they have not complied with the Health & Safety Policies.

I further agree to implement, comply with, and fulfill the terms and requirements of the Health & Safety Policies. I also acknowledge and hereby certify that I will require any of the Vendor's employees, agents, subcontractors, or Vendor's subcontractors' employees or agents to comply with the requirements of the Health & Safety Policies.

**ACKNOWLEDGEMENT AND CERTIFICATION**

I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Vendor to all provisions and items included in this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

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

Proper Name of Vendor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Attachment B**

**VENDOR QUOTE**

[INSERT VENDOR QUOTE]