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Enactment Date	11/9/2022 er



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Sondra Aguilera, Acting Superintendent
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date November 9, 2022

Subject Amendment No. 1 Engineering Services Agreement – Jensen Hughes – Roosevelt Middle School Modernization Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Amendment No. 1 Engineering Services Agreement by and between the **District** and **Jensen Hughes**, Concord, California, for the latter to provide additional services automatic sprinkler systems consulting services for the New Building A Modernization Phase, to ensure compliance with the California Building and Fire Codes and Oakland Unified School District design standards, for the **Roosevelt Middle School Modernization Project**, in an additional not-to-exceed of amount of **\$42,230.00**, which includes a not-to-exceed amount of **\$32,230.00 for Basic Services and includes a not-to-exceed amount of \$10,000.00 for Additional services**, increasing the Agreement’s total not-to-exceed amount from **\$123,660.00 to \$165,890.00**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Contractor, pursuant to the Amendment.

Discussion This Amendment is for additional services to provide automatic sprinkler systems consulting services for the New Building A Modernization Phase, to ensure compliance with the California Building and Fire Codes and Oakland Unified School District design standards, for the Roosevelt Middle School Modernization Project.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education of Amendment No. 1 Engineering Services Agreement by and between the **District** and **Jensen Hughes**, Concord, California, for the latter to provide additional services automatic sprinkler systems consulting services for the New Building A Modernization Phase, to ensure compliance with the California Building and Fire Codes and Oakland Unified School District design standards, for the **Roosevelt Middle School Modernization Project**, in an additional not-to-exceed of amount of **\$42,230.00**, which includes a not-to-exceed amount of **\$32,230.00 for Basic Services and includes a not-to-exceed amount of**

\$10,000.00 for Additional services, increasing the Agreement's total not-to-exceed amount from **\$123,660.00** to **\$165,890.00**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Contractor, pursuant to the Amendment.

Fiscal Impact

Fund 21 Building Fund, Measure Y

Attachments

- Amendment No. 1, including Exhibits
- File ID 22-0063
- Certificate of Insurance
- Routing Form

AMENDMENT NO. 1 TO AN ENGINEERING SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Jensen Hughes**. OUSD entered into an agreement with CONTRACTOR for services effective on **February 10, 2022** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Roosevelt Middle School Modernization Project** as follows, and in the attached Exhibit A:

1.	Services:	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u>.
<p>If scope of work changed: Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR agrees to provide the following amended services: To provide automatic sprinkler systems consulting services for the New Building A Modernization Phase, to ensure compliance with the California Building and Fire Codes and OUSD design standards, as described in the Proposal dated September 27, 2022, attached to this amendment, as part of Exhibit A.</p>			
2.	Terms (duration):	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p>If term is changed: The contract term is extended by an additional _____, and the amended expiration date is _____.</p>			
3.	Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u>.
<p>If the compensation is changed: The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <u>Forty-two Thousand Two Hundred Thirty Dollars No/100 (\$42,230.00), which includes a contingency fee of \$10,000.00.</u></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the not-to-exceed contract price was <u>One Hundred Twenty-three Thousand Six Hundred Sixty Dollars no/100 (\$123,660.00)</u>, and after this amendment, the not-to-exceed contract price will be: <u>One Hundred Sixty-five Thousand Eight Hundred Ninety Dollars no/100 (\$165,890.00)</u>.</p>			

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. **Amendment History:**

There are no previous amendments to this Agreement. This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

6. **Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

Amendment No. 1 – Jensen Hughes – Roosevelt Middle School Modernization Project - \$42,230.00

OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee

Gary Yee, President, Board of Education

11/10/2022

Date

Sondra Aguilera

Sondra Aguilera, Acting Superintendent and Secretary, Board of Education

11/10/2022

Date

Kenji A. T. N.

Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

10/17/22

Date

Approval as to form:

Arne Sandberg

10/17/22

Date

Arne Sandberg [name]
General Counsel, Facilities, Planning and Management

CONTRACTOR

Manuelita E. David

October 11, 2022

Contractor Signature

Date

Manuelita E. David, Team Lead + Senior Consultant

Print Name, Title

EXHIBIT "A"
Scope of Work for Amendment

Contractor Name: Jensen Hughes

Detailed Description of Services to be provided: To provide automatic sprinkler systems consulting services for the New Building A Modernization Phase, to ensure compliance with the California Building and Fire Codes and OUSD design standards, as described in the Proposal dated September 27, 2022, attached to this amendment, as part of Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

September 27, 2022

Mary Ledezma
Oakland Unified School District
955 High Street
Oakland, CA 94601
mary.ledezma@ousd.org
+1 510-499-4447

RE: Roosevelt Middle School Modernization at 1926 19th Avenue – Oakland, CA
Automatic Sprinkler Systems Consulting, OUSD Project #19101

Dear Ms. Ledezma,

Jensen Hughes, Inc. (Consultant) is pleased to submit this proposal to provide automatic sprinkler systems consulting services to Oakland Unified School District (OUSD) (Client) for the referenced project.

OUSD has retained HKIT Architects and their consultants for a modernization of the existing Roosevelt Middle School campus. The Project Definition Phase has been completed, and this proposal is based on that document, dated June 13, 2022. Based on the Project Definition Report, the modernization is anticipated to include the following phases:

1. **Building A Modernization Phase:** The design team will develop plans for the modernization of the existing Building A. Building A is a two-story building, approximately 91,000 square feet in area. It is anticipated that the existing automatic sprinkler system in Building A will be modified, or completely replaced with a new system.

It is our understanding that the new science modular building and portables, as part of the Interim Housing Phase, will not require sprinkler protection. Work related to the Interim Housing Phase, the existing Cafeteria Building B and the Gymnasium Building C is excluded. Construction is anticipated to start in Q1 of 2024. A 30-month construction period is anticipated.

OUSD has requested Jensen Hughes' assistance in reviewing the project's automatic sprinkler system designs to verify compliance with the California Building and Fire Codes (CBC and CFC) and OUSD design standards, participation in meetings, and to witness final acceptance testing.

1220 Concord Avenue, Suite 400
Concord, CA 94520 USA
O: +1-925-938-3550

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Scope of Services

Jensen Hughes proposes to provide the following scope of services:

MODERNIZATION OF BUILDING A

1. Review automatic sprinkler system drawings, hydraulic calculations, seismic brace calculations, product datasheets, and specifications, for compliance with the applicable California Building and Fire Codes, Division of the State Architect (DSA) Guidelines, NFPA 13 – *Standard for the Installation of Sprinkler Systems*, and the OUSD Automatic Sprinkler System Standard. Plan reviews will be limited to automatic sprinkler systems only. Jensen Hughes will provide a written report of plan review comments. Drawing reviews are estimated to begin in Q4 of 2022. Five reviews are included: one 100% SD plan review, one 100% DD plan review, one 50% CD plan review, one 90% CD plan review, and one 100% CD back check review.
2. Provide automatic sprinkler systems consulting regarding issues that may arise during construction. Consulting time may be used to provide general sprinkler consultation, review of Construction Change Documents (CCDs), Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions to unforeseen circumstances. A total of 12 hours is included.
3. Attend one predesign, one preconstruction, four construction observation site visits on-site meetings with the selected contractor and the OUSD project team. Attend eight meetings with designer, contractor and OUSD project team during the design and construction phases via conference call. Meetings shall be arranged by the Client. Attendance of a total of 14 meetings (site visits and on-line meetings) is included.
4. Witness the final hydrostatic test of the systems. Two site visits are included to witness final tests; one site visit for each of two construction phases. Results of the tests will be recorded and submitted to the Client.

OWNER'S CONTINGENCY

1. The Client has requested a contingency be included in our proposed services for addressing additional automatic sprinkler system consulting that may arise during design and construction. Contingency services will be provided on a time-and-expense basis. Contingency services include the following:
 - a. Additional plan reviews and written reports, if needed, to resolve plan review deficiencies during any phase of the project.
 - b. Additional site visits to witness testing, if needed to retest deficiencies during any phase of the project.

Additional Services

Any other work requested by Client outside of the Services specified above shall be considered an "Additional Service" and will be conducted on a mutually-agreed-upon basis. When such work is requested, Jensen Hughes will submit an estimate of the cost to the Client for approval prior to commencing work.

Additional work may include, but is not limited to:

1. Additional site visits and meetings.
2. Building and fire code analysis and appeals.
3. Review of shop drawings beyond the number noted in Scope of Services.

4. Review of requests for payment and change orders from the contractor.
5. Evaluation and testing of the existing automatic sprinkler systems.
6. Automatic sprinkler design services.
7. DSA submittals or verified reports.
8. Professional engineer review or stamping of documents or drawings.
9. Special hazard or kitchen hood fire suppression system design, testing, and consulting.
10. Building code and accessibility consultation.
11. Additional consulting services beyond those described in the Scope of Services.

All services not specifically described in the Proposal are excluded from Consultant's Scope of Services.

Client Responsibilities

This proposal is based upon the Client performing the following activities:

1. Provide Jensen Hughes with copies of all automatic sprinkler, architectural, structural, mechanical, electrical, and other information pertaining to the project in PDF format. These documents are for Jensen Hughes' use in providing the required consulting services. It is understood that Jensen Hughes will rely upon the accuracy of all documents and electronic data furnished.
2. Provide Jensen Hughes access to all areas of the building for the purpose of conducting the site visits and witnessing tests.
3. Provide personnel with keys for access to all building spaces.
4. Coordination of the project including, but not limited to, requesting site visits, scheduling meetings, and paying any associated meeting fees with local authorities.
5. Provide Jensen Hughes with adequate notice (7 to 10 business days) to schedule and staff the anticipated scope efforts prior to project deadlines.

Professional Fees

The proposed Scope of Services above will be provided by Consultant for a total fee of \$42,230, including necessary expenses to perform our Scope of Services. The Building A Modernization services are not-to-exceed fee. The Owner Contingency services will be provided on a time-and-expense basis, not-to-exceed \$10,000 contingency fee. The fee is broken out as follows:

<i>Phase or Activity</i>	<i>Fees</i>
Building A Modernization (fixed fee)	\$ 32,230
Owner Contingency (time and expense)	\$ 10,000
Total	\$ 42,230

BILLING RATES

The following hourly labor rates apply for the Owner Contingency Scope of Services:

<i>Labor Category</i>	<i>Hourly Rate</i>
Technical Fellow	Varies
Senior Consultant	\$270 - \$ 330
Consultant	\$205 - \$250
Associate	\$140 - \$195
Technician	\$100
Project Administrator	\$120

Payments

- + Invoices will be submitted on a monthly basis using Jensen Hughes' standard invoice format. For Firm Fixed Price engagements, invoices will be submitted based on a percent of completion or fixed amount by task. For Time and Materials engagements, invoices will be submitted based on hours expended and agreed upon bill rates plus any expenses. Any deviation from the Jensen Hughes standard invoice format and submission process (including the use of customized billing formats and client portals for invoice submission) will result in a service fee of 1.5% over and above the agreed-upon fee.
- + Payment is due 30 days after receipt by the client or as agreed to per the Master Service Agreement (MSA). For any invoices remaining unpaid after the agreed upon due date, Jensen Hughes reserves the right to pursue all available remedies, including, without limitation, charging a service fee of 1.5% per month, suspension of services, court costs, collection costs, reasonable attorneys' fees, expert fees, and all other costs allowed by law, which may be incurred by the Consultant in pursuit of unpaid invoices.
- + Jensen Hughes' preferred payment method is electronic. Wire and ACH information is provided on the attached Remittance Information sheet.

Terms + Conditions

If any terms set out in this Proposal conflict with the terms set out in Exhibit A, Standard Terms + Conditions, the order of precedence shall be as follows:

1. Terms as per the Proposal
2. Exhibit A, Standard Terms + Conditions

Refer to Exhibit A (attached) for full Standard Terms + Conditions.

DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

Project Name	Roosevelt Middle School Modernization Project	Site	212
Basic Directions			
Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.			
Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information

Contractor Name	Jensen Hughes	Agency's Contact	David Secoda		
OUSD Vendor ID #	002281	Title	Manager		
Street Address	1220 Concord Avenue, Ste. 400	City	Concord	State	CA
Telephone	925-257-5145	Policy Expires			
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	19101				

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	2-10-2022	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	2-09-2027
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$
Pay Rate Per Hour (if Hourly)	\$	If Amendment, Change in Price	\$42,230.00
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9655/9787	Fund 21, Measure Y	210-9655-0-9787-8500-6289-212-9180-9906-9999-19101	6289	\$42,230.00

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

1.	Division Head	Phone	510-535-7038	Fax	510-535-7082
	Executive Director, Facilities Planning & Management				
	Signature	Date Approved			
2.	General Counsel, Department of Facilities Planning and Management				
	Signature  Lozano Smith, approved as to form	Date Approved	10/17/22		
3.	Deputy Chief, Facilities Planning and Management				
	Signature	Date Approved			
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			

Board Office Use: Legislative File Info.	
File ID Number	22-0063
Introduction Date	2-9-2022
Enactment Number	22-0212
Enactment Date	2/9/2022 os



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Madashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date February 9, 2022

Subject Agreement for Engineering Services – Jensen Hughes, Inc. – Roosevelt Middle School Modernization Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Agreement for Engineering Services by and between the District and Jensen Hughes, Inc., Concord, California, for the latter to provide engineering and observation services which include, but is not limited to, independent peer review of fire & intrusion alarm documents, attend a pre-design meeting with District to identify the fire alarm systems, and provide written report of test results for the Roosevelt Middle School Modernization Project, in the not-to-exceed amount of **\$123,660.00**, which includes a contingency not-to-exceed fee of **\$10,560.00**, with work lasting for the duration of the project, and scheduled to commence on **February 10, 2022**, and scheduled to last until **February 9, 2027**, pursuant to the Agreement.

Discussion The vendor was selected to provide engineering and observation services of the fire alarm system design criteria. (Government Code §§4526 and 4529.10 et seq.)

LBP (Local Business Participation Percentage) 0.00%

Recommendation Approval by the Board of Education of Agreement for Engineering Services by and between the District and Jensen Hughes, Inc., Concord, California, for the latter to provide engineering and observation services which include, but is not limited to, independent peer review of fire & intrusion alarm documents, attend a pre-design meeting with District to identify the fire alarm systems, and provide written report of test results for the Roosevelt Middle School Modernization Project, in the not-to-exceed amount of **\$123,660.00**, which includes a contingency not-to-exceed fee of **\$10,560.00**, with work lasting for the duration of the project, and scheduled to commence on **February 10, 2022**, and scheduled to last until **February 9, 2027**, pursuant to the Agreement.

Fiscal Impact Fund 21 Measure B

Attachments

- Agreement
- Consultant Fee Schedule
- Insurance Certificate



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office With Every
Agenda Contract.

Legislative File ID No. 22-0063
Department: Facilities Planning and Management
Vendor Name: Jensen Hughes, Inc.
Project Name: Roosevelt Middle School Modernization **Project No.:** 19101
Contract Term for Duration of Project: Intended Start: **2-10-2022** Intended End: **2-9-2027**
Total Cost Over Contract Term: \$123,660.00
Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

Jensen Hughes, Inc., was chosen through a fair and competitive RFP process based on demonstrated competence, professional qualifications, expertise, and experience with similar projects they completed in the past for the District. Given the Consultant’s experience with similar projects and the level of complexity of the project, the District identified the chosen consultant as the most qualified at the most reasonable price.

Summarize the services or supplies this contractor or vendor will be providing.

Jensen Hughes will provide engineering and observation services including, but not limited to, independent peer review of fire & intrusion alarm design documents, attend pre-design meetings with the Building & Grounds and design consultant team to review strategic planning of new system and equipment design options, witness the fire & intrusion per-test and final acceptance test, and provide written report of test results and write acceptance letter after all deficiencies are cleared.

Was this contract competitively bid? Check box for “Yes” (If “No,” leave box unchecked)

If “No,” please answer the following questions:

1) How did you determine the price is competitive?

Jensen Hughes, Inc., has done work and is currently working for the District. Based on their experience and expertise with this particular type of work, the District found that the consultant performed work quickly, accurately, and efficiently, and at a reasonable cost to the District.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$99,100 or less (as of 1/1/22)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- Jensen Hughes, Inc. is providing engineering services.

**AGREEMENT
FOR
ENGINEERING SERVICES
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND
JENSEN HUGHES, INC.**

FOR THE ROOSEVELT MIDDLE SCHOOL MODERNIZATION PROJECT

February 10, 2022

OAKLAND UNIFIED SCHOOL DISTRICT
955 High Street
Oakland, California 94601

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**AGREEMENT
FOR
ENGINEERING SERVICES**

This agreement for engineering services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and JENSEN HUGHES, INC. (the “Engineer”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed engineer.
- B. Engineer represents that Engineer is licensed to provide engineering services in the State of California and is specially qualified to provide the services required by the District, including design and construction oversight of public school(s).
- C. The Parties have negotiated the terms under which Engineer will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are related to the Project, provided by Engineer, and authorized in writing by the District, and as further defined in Article 6 below.

1.2 **Agreement.** “Agreement” shall mean this Agreement for Engineering Services.

1.3 **Basic Services.** Engineer’s Basic Services consist of the services as defined in Article 5 and *Exhibit C*.

1.4 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between District and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.5 **Contractor.** “Contractor” shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.6 **District.** “District” shall mean Oakland Unified School District, and its governing board members, employees, agents and authorized representatives.

1.7 **Engineer.** "Engineer" shall mean Jensen Hughes, Inc., and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.8 **Project.** "Project" shall mean the work of improvement described in Article 3 and the construction and post-construction closeout thereof, including the Engineer's services thereon, as described in this Agreement.

1.9 **Project Construction Cost.** "Project Construction Cost" shall mean the estimate of total construction costs to the District as initially submitted by the Engineer under this Agreement and accepted by the District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time the District enters a construction contract to equal the construction contract amount.

1.10 **Wrongful Acts or Omissions.** "Wrongful Acts or Omissions" shall mean Engineer's acts or omissions in breach of this Agreement, the applicable standard of care, or law.

ARTICLE 2 RETENTION OF ENGINEER; STANDARD OF CARE

2.1 District retains Engineer to perform, and Engineer agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the engineering services specified in this Agreement and related incidental services. The Engineer agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The term for the performance of Basic and Additional Services ("Services") shall be the duration of the Project ("Term"), and Architect shall complete the Services within the Term. The Services shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by engineers in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). Engineer shall be responsible for the completeness and accuracy of its plans and specifications.

ARTICLE 3 DESCRIPTION OF PROJECT

3.1 The Project concerning which such engineering services shall be provided is described as:

Roosevelt Middle School Modernization fire and intrusion alarm engineering and observation services, including, but not limited to, independent peer review of design and supervision of construction.

The project is not intended to be split into multiple prime contracts.

ARTICLE 4 COMPENSATION

4.1 **Basic Services.** For the Basic Services satisfactorily performed under this Agreement, Engineer shall be compensated according to its hourly rate schedule (Section 4.8, below). Engineer's total compensation for its Basic Services shall not exceed ONE HUNDRED TWENTY-THREE THOUSAND SIX HUNDRED SIXTY DOLLARS AND NO/100 (\$123,660.00), which is Engineer's estimate of the maximum total cost of its Basic Services on the Project, based on its December 21, 2021, fee estimate. However, Engineer will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Engineer acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 **Additional Services.** Engineer may invoice separately for Additional Services if provided by Engineer under Article 6, and the total compensation for Additional Services shall not exceed ZERO DOLLARS (\$0). However, Engineer will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

4.3.1 "Reimbursable Expenses" are those actual out-of-pocket expenses directly incurred as a result of Engineer's performance of Basic or Additional Services under this Agreement. Engineer may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Engineer and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Engineer must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 Engineer shall be reimbursed by District for its Reimbursable Expenses on the Project. Engineer's total reimbursement for Reimbursable Expenses shall not exceed ZERO DOLLARS AND NO/100 (\$0), which is Engineer's estimate of the maximum total cost of Reimbursable Expenses on the Project.

4.4 The total not-to-exceed price under this Agreement based on Sections 4.1, 4.2, and 4.3 above is ONE HUNDRED TWENTY-THREE THOUSAND SIX HUNDRED SIXTY DOLLARS AND NO/100 (\$123,660.00). For services satisfactorily performed, payment for Basic Services, Additional Services, and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Engineer's properly documented and submitted invoices. To be

“properly documented and submitted,” an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person’s rate of compensation. Engineer’s invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Engineer of the dispute and, upon Engineer’s request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Engineer shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Engineer shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Engineer cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Engineer otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Engineer's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, or other amounts withheld from the Contractor. However, District may withhold from payments to Engineer to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Engineer is responsible under Section 5.7.20. If the total amount invoiced by Engineer reaches the not-to-exceed Basic Services amount before Engineer’s Basic Services under this Agreement are complete, Engineer must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

4.6 Should District cancel the Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Engineer shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Engineer's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Engineer’s records and files regarding, or relating to, any of the work performed by Engineer for District on this Project during or after the Project. Engineer shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Engineer will be responsible for Engineer's consultants keeping similar records. District shall be given reasonable access to Engineer’s Project related records and files for audit purposes within ten (10) days of receipt of District’s request. Engineer shall keep and maintain those records and files for ten (10) years.

4.8 Engineer’s hourly rate schedule for its services is attached as *Exhibit A*.

4.9 Engineer shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5
BASIC SERVICES TO BE RENDERED BY ENGINEER

5.1 General

5.1.1 Engineer's Basic Services consist of the investigation, design, and construction oversight services normally required to perform the tasks, work, and services described in *Exhibit C*. The District shall have the right to add or delete from the Engineer's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Engineer shall expeditiously and diligently perform all of its work and obligations under this Agreement. Engineer may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Engineer acknowledges that its priority is to complete the Project and the Engineer's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Engineer shall review the estimate described more fully below at each phase of Engineer's services, also as defined below. If such estimates are in excess of the Project budget, the Engineer shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Engineer's services include the presentation to the District of Project Construction Cost, the Engineer shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

5.1.4 The Engineer shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Engineer and Engineer's consultants shall cooperate with District and the District's consultants in verifying that Engineer's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Engineer shall attend those meetings.

5.1.6 The Engineer shall investigate existing conditions of facilities and thoroughly account for, and list in the construction documents, any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Engineer's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Engineer shall provide a minimum of one (1) full-time employees before construction commences, and one (1) full-time employees after construction commences, to perform its duties and responsibilities under this Agreement. All personnel provided by Engineer shall be qualified to perform the services for which they are provided. Engineer shall obtain District's written approval of each employee of Engineer who provides services under this Agreement, and written

approval of each change of employees who are providing such services. District may, upon thirty (30) days' written notice, cause Engineer to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Engineer shall provide them immediately.

5.1.8 Engineer is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Engineer shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants

5.2.1 Engineer's Consultants. The Engineer shall employ or retain at Engineer's own expense, engineers and other consultants necessary to Engineer's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Engineer for this Project shall be approved by District prior to their commencement of work. The Engineer's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Engineer's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Engineer must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 District's Consultants. Engineer shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Engineer shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Engineer shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon

termination of this Agreement or completion of the Project, shall have returned to it by Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Engineer shall assist the District with submittals required of the architect by the Division of the State Architect (“DSA”), OPSC.

5.3 [Not Used]

5.4 Non-Design Pre-Construction Services

Engineer shall perform all non-design pre-construction engineering services required for the Basic Services, including all such services specified in *Exhibit C*.

5.5 Design Services

Engineer shall perform the engineering design services required for the Basic Service, including those specified in *Exhibit C*.

5.6 [Not Used]

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 [Not Used]

5.7.3 [Not Used]

5.7.4 The Engineer shall provide prompt and timely direction to the District, Project inspectors and/or Contractor as to the interpretation of Contract Documents. Engineer shall respond to all requests for information (“RFI’s”) from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the Project and is causing, or may cause, delay, in which case the Engineer shall respond as soon as reasonably possible, if not immediately. If the Engineer is not able to take action within the time required due to reasons beyond Engineer’s control, the Engineer may take action within a reasonable period of time under the circumstances; however, the Engineer shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Engineer cannot take action within the time required, what the Engineer is doing to expedite its response, when the Engineer expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Engineer's own knowledge of the Project (including documents in Engineer's possession or reasonably available to it), Engineer shall assist the architect in preparation of an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Engineer cannot guarantee precise accuracy of such drawings, Engineer shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Engineer shall have no responsibility for their conformity to field conditions, except that in the event that the Engineer, consistent with standards of due care, becomes aware of non-conformity with field conditions, Engineer shall have a duty immediately to notify the District in writing. Engineer shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Engineer shall assist the architect in the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.*

5.7.7 The Engineer shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Engineer may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Engineer shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Engineer shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

Engineer must assist and cooperate with the architect as architect supervises, coordinates, and manages the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District, and architect, with the DSA Construction Oversight Process.

The Engineer must comply with any applicable requirements of the DSA Construction Oversight Process.

The Engineer shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved construction documents, to the extent Engineer's negligence, recklessness or willful misconduct caused the additional DSA fees, and for delay damages to the extent required under Section 5.7.20.2 below.

5.7.9 The Engineer shall visit the site, both as the Engineer deems necessary and as requested by the District, but under no circumstances less than once a week times per 16 weeks, to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's

work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents.

5.7.10 The Engineer shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Engineer will exercise reasonable care in the discharge of Engineer's obligation to discover significant defects and faults.

5.7.11 The Engineer shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Engineer shall take such action as soon as possible. If Engineer is not able to take such action within the required time due to reasons beyond Engineer's control, the Engineer may take action within a reasonable period of time under the circumstances; however, the Engineer shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Engineer cannot take action within the time required, what the Engineer is doing to expedite its response, when the Engineer expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Engineer will have the authority to reject work and materials which do not conform to the Contract Documents. The Engineer's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Engineer's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Engineer will also recommend substitution of materials or equipment when, in the Engineer's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Engineer shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Engineer shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Engineer, unless due to Wrongful Acts or Omissions.

5.7.14 The Engineer shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Engineer will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Engineer is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Engineer nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

With respect to asbestos and asbestos containing materials, the parties acknowledge that the Engineer has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Engineer shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Engineer shall provide such certification as to Hazardous Substances as may be required of engineers for such projects by the OPSC.

5.7.16 Based on the Engineer's observations, and an evaluation of each Project Application for Payment, the Engineer will assist the architect in its estimation of the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Engineer shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Engineer agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Engineer which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Engineer, and after such termination, District may pursue claims, lawsuits or other proceedings against Engineer.

5.7.18 The Engineer will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Engineer shall assist the architect in its recommending, preparing and processing of the necessary change orders. Payment of fees to the Engineer as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Engineer's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Engineer shall be paid for time spent on the proposed change order.

5.7.19.2 Change orders due to Engineer. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Engineer's services in connection with that change order are not compensable and Engineer shall not include those services on any invoice.

5.7.19.3 Change orders beyond District or Engineer control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of, Wrongful Acts or Omissions, or the District otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Engineer shall be responsible for the following:

5.7.20.1 In the event of such a change order, Engineer shall be responsible for the difference between (a) what the contractor would have added to its original bid or proposal for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Engineer's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Engineer shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may backcharge, and withhold payment from, the Engineer for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so backcharges and withholds, upon Engineer's request District and Engineer shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Engineer as described above. If District and Engineer do not reach agreement on all four of these items when meeting and conferring, then District and Engineer shall use mediation

in good faith to resolve the dispute. If mediation fails, then either District or Engineer can initiate a court action to resolve the dispute.

5.7.21 [Not Used]

5.7.22 The Engineer shall assist the architect and the District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Engineer shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 [Not Used]

5.7.24 Engineer shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Engineer has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Engineer shall remedy the violation at its own cost. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph due to Engineer's negligence, recklessness or willful misconduct.** The Engineer shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Engineer, nor shall Engineer be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Engineer's design is reviewed by DSA. In the event that the Engineer is or becomes aware of possible non-compliance with the foregoing standards, Engineer shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Engineer, whether supplied by District or by Engineer, which are relied upon, altered or otherwise utilized by Engineer, Engineer shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Engineer under this Agreement.

ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY ENGINEER

6.1 "Additional Services" shall be provided by Engineer if authorized in writing by District. No additional compensation shall be paid to Engineer for performing these Additional Services unless the District and the Engineer agree in writing as to the amount of compensation for such services

prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement. Any work performed by Engineer without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Engineer;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Engineer's or its consultants' alleged Wrongful Acts or Omissions;

6.2.9 providing services of consultants for other than the normal engineering services for the Project;

6.2.10 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.7.19.1), above; and

6.2.11 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted engineering practice.

**ARTICLE 7
RESPONSIBILITIES OF DISTRICT**

It shall be the duty of District to:

- 7.1 pay all fees required by any reviewing or licensing agency;
- 7.2 designate a representative authorized to act as a liaison between the Engineer and the District in the administration of this Agreement and the Contract Documents;
- 7.3 furnish, at the District's expense, the services of a Project Inspector;
- 7.4 review all documents submitted by the Engineer and advise the Engineer of decisions thereon within a reasonable time after submission;
- 7.5 issue appropriate orders to Contractors through the Engineer;
- 7.6 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer;
- 7.7 furnish the services of consultants not routinely provided by the Engineer when such services are reasonably required by the scope of the Project and are requested by the Engineer;
- 7.8 provide asbestos review and abatement, identifying materials which may qualify for same;
- 7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and the District will also provide information regarding programmatic needs and specific equipment selection data;
- 7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and
- 7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware; however, the District's failure to do so shall not relieve the Engineer of Engineer's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this Agreement.

**ARTICLE 8
PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

- 8.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for

the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Engineer and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Engineer, or otherwise resulting directly or indirectly from the Engineer's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Engineer in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than One Million Dollars (\$1,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than Two Million Dollars (\$2,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Engineer shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the District.

8.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Engineer's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Engineer shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements

have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

8.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Engineer's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

8.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Engineer may be held responsible for the payment of damages resulting from the Engineer's operations.

8.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

8.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 9 WORKER'S COMPENSATION INSURANCE

9.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. All such insurance shall include a waiver of any subrogation rights as against the District. If the Engineer employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

9.2 Prior to the commencement of services under this Agreement, the Engineer shall furnish to

the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Engineer's services, if Engineer ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Engineer shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

ARTICLE 10 ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least One Million Dollars (\$1,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Engineer shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Engineer's professional sub-consultants (including consultants of Engineer's) shall comply with this Article 10, and Engineer shall include such provisions in its contracts with them.

10.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

10.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

10.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

10.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Engineer may be held responsible for the payment of damages resulting from the Engineer's operations.

10.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

10.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

10.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Engineer shall be familiar with, and Engineer and Engineer's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA").

ARTICLE 12 TERMINATION OF AGREEMENT

12.1 **Termination by District** – This Agreement may be terminated, or the Project may be canceled, by the District for the District's convenience and without cause at any time immediately upon written notice to the Engineer. In such event, the Engineer shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Engineer, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Engineer. Such Notice shall

include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Engineer must cure such breach. In response to such Notice, if the Engineer fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Agreement through written notice delivered to the Engineer, which shall be effective upon such delivery. In such event, the Engineer shall be compensated for all services completed under this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District in writing, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 Termination by Engineer – For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Engineer may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Engineer may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Engineer, Engineer shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Termination Provisions

12.3.1 Following the termination of this Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Engineer, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Engineer shall promptly make any such

documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer or any of its agents under this Agreement shall immediately upon request by the District be delivered to the District. Engineer may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Engineer may have against the District or a claim by the Engineer to an ownership interest in the intellectual property embodied in the documents or materials.

**ARTICLE 13
ENGINEER AN INDEPENDENT CONTRACTOR**

13.1 It is specifically agreed that in the making and performance of this Agreement, the Engineer is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

**ARTICLE 14
STANDARDIZED MANUFACTURED ITEMS**

14.1 The Engineer shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

**ARTICLE 15
OWNERSHIP OF DOCUMENTS**

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

15.2 The Engineer will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship

fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Engineer's files for a period of no less than ten (10) years. Engineer shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

ARTICLE 16 LICENSING OF INTELLECTUAL PROPERTY

16.1 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Engineer shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

16.2 The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Engineer and retains a certified engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Engineer and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Engineer represents and warrants that Engineer has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Engineer or its consultants prepares or causes to be prepared under this Agreement. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Engineer's negligence, recklessness or willful misconduct.** The Engineer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Engineer and

provided to Engineer by the District.

**ARTICLE 17
ACCOUNTING RECORDS OF ENGINEER**

17.1 Engineer's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

**ARTICLE 18
INDEMNITY**

18.1 Engineer Indemnification. To the fullest extent permitted by law, including California Civil Code section 2782.8, the Engineer shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees ("District Indemnitees") against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Engineer, the Engineer's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

The Engineer's defense obligation shall consist of payment of 50% of the attorneys' fees, experts' fees, and all other litigation costs incurred in the District's defense ("Defense Costs"), with such payment occurring within thirty (30) days of Engineer's receipt of each invoice for such Defense Costs. After conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse the Engineer for any amount of Defense Costs paid by Engineer in excess of the proportional fault of the Engineer to the extent specified in a settlement agreement, arbitration award, or verdict; or Engineer shall reimburse the District for any amount of Defense Costs paid by District in excess of the proportional fault of the parties other than the Engineer to the extent specified in a settlement agreement, arbitration award, or verdict.

For purposes of this Article 18.1 only, "claims" means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Engineer shall meet and confer with other parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Engineer.

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Engineer and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Engineer's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Engineer shall be entitled to such indemnification only if each of the following conditions are met: (a) Engineer actually re-draws or completes such other designs or contract documents; (b) Engineer complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Engineer with the previously prepared documents or materials; and (d) District expressly requests that the Engineer utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

19.1 **Time for Completion.** Time is of the essence for performance of the Services under this Agreement. The Engineer shall timely complete its Services as expeditiously as possible and according to the schedule attached as *Exhibit B* to this Agreement.

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Engineer and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Engineer is delayed in the Engineer's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Engineer. District shall not be liable for damages to the Engineer on account of any such delay.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its district office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

20.2 The Engineer shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District: Oakland Unified School District
955 High Street
Oakland, California 94601
Attention: Tadashi Nakadegawa, Deputy Chief

Engineer: Jensen Hughes, Inc.
1220 Concord Avenue, Suite 400
Concord, CA 94520
Attention: David Secoda,

With a copy to: Jensen Hughes, Inc.
3610 Commerce Drive, Suite 817
Baltimore, MD 21227-1640
Attn: Corporate Counsel

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Engineer and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Engineer.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Engineer, by the execution of this Agreement, acknowledges that the Engineer has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's professional materials. The Engineer's materials shall not include the District's confidential or proprietary information if the District has previously advised the Engineer in writing of the specific information considered by the District to be confidential or proprietary.

20.10 Prior to executing this Agreement, the Engineer shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this

Agreement, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

20.12 A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute (including a dispute related to indemnity by the Engineer for claims against the District by a contractor based on allegations of deficiencies in the Engineer's plans or specifications). The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

20.13 [Not Used]

20.14 The following forms, attached to the proposal, are incorporated into the contract:

- ~~Roof project certification (if required: see Public Contract Code §3006).~~
- Fingerprinting Notice and Acknowledgement.
- ~~Iran Contracting Act Certification.~~
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- ~~Buy American Certification.~~
- ~~Local Business Participation Form.~~

Within ten (10) days after award and before commencement of the services, the signed agreement and insurance documentation shall be submitted to the District.

20.15 [Not Used]

DISTRICT:
OAKLAND UNIFIED SCHOOL DISTRICT

ENGINEER:
JENSEN HUGHES, INC.

850.44
Gary Yee, President 2/10/2022
Date

Manukita E. Arnold 1/10/2022
Signature Date

[Signature] 2/10/2022
Kyla Johnson Trammell, Secretary Date
and Superintendent, Board of Education

Team Leader / Senior Consultant
Title

[Signature] 1/13/2022
Tadashi Nakadegawa, Deputy Chief, Date
Facilities Planning and Management

Approved As to Form:



OUSD Facilities Legal Counsel

1/13/22

Date

Exhibit A
RATE SCHEDULE

BILLING RATES

The following hourly labor rates apply for the Owner Contingency Scope of Services:

<i>Labor Category</i>	<i>Hourly Rate</i>
Senior Consultant	\$256 - \$400
Consultant	\$189 - \$236
Associate	\$112 - \$179
Technician	\$98 - \$132
Project Administrator	\$115

Exhibit B
PROJECT SCHEDULE

Contract Term: Intended Start: February 10, 2022
Intended End: February 9, 2027

Exhibit C
SCOPE OF SERVICES



December 21, 2021

EXHIBIT C

Mary Ledezma
Oakland Unified School District 955 High Street
Oakland, CA 94601
mary.ledezma@ousd.org
+1 510-499-4447

RE: Roosevelt Middle School Modernization at 1926 19th Avenue – Oakland, CA
Fire and Intrusion Alarm Systems Consulting, OUSD Project #19101

Dear Ms. Ledezma,

Jensen Hughes, Inc. (Consultant) is pleased to submit this proposal to provide fire and intrusion alarm systems consulting services to Oakland Unified School District (OUSD) (Client) for the referenced project.

OUSD has retained HKIT Architects and their consultants for a modernization of the existing Roosevelt Middle School campus. Based on HKIT's proposal, the modernization is anticipated to include the following phases:

1. Project Definition Phase: The architect will develop options for the campus with consideration of OUSD's budget and needs.
2. Interim Housing Phase: The design team will develop plans for interim housing which will be needed when the existing Building A is vacated for modernization work to proceed. The interim housing is anticipated to be a cluster of new portable classrooms.
3. Building A Modernization: The design team will develop plans for the modernization of existing Building A. Building A is a two-story building, approximately 91,000 square feet in area.
4. New Building B: The design team will develop plans for the new building. The new Building B is anticipated to be approximately 15,000 square feet in area.

The scale of the modernization will be refined by the design team during the Project Definition Phase. The basis of this proposal is a new fire alarm system and a new intrusion alarm system will be designed for the Interim Housing, modernized Building A, and new Building B. Work related to existing Building C (gymnasium) is excluded. Construction is anticipated to start in Q1 of 2024. A 30-month construction period is anticipated.

OUSD has requested Jensen Hughes' assistance in reviewing the project's fire and intrusion alarm designs to verify compliance with the California Building and Fire Codes (CBC and CFC) and OUSD design standards, participation in meetings, and to witness testing of the fire and intrusion alarm systems.

1220 Concord Avenue, Suite 400
Concord, CA 94520 USA
O: +1-925-938-3550

Scope of Service

Jensen Hughes proposes to provide the following scope of services:

PROJECT DEFINITION PHASE

1. Provide fire and intrusion alarm systems consulting to assist OUSD with the evaluation of options presented by the design team. Meeting participation will be via Zoom, Microsoft Teams or teleconference. The coordination of meetings, and recording of meeting minutes are the responsibility of the Client. Participation in up to three meetings is included. Up to 8 hours of fire and intrusion alarm systems consulting is included.

INTERIM HOUSING PHASE

1. Review fire and intrusion alarm drawings, datasheets, and specifications, for compliance with the applicable California Building and Fire Codes, Division of the State Architect (DSA) Guidelines, NFPA 72 - *National Fire Alarm and Signaling Code* requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. Jensen Hughes will provide a written report of plan review comments. Drawing reviews are estimated to begin in Q4 of 2022. Four reviews are included: one 100% DD plan review, one 50% CD plan review, one 90% CD plan review, and one 100% CD back check review.
2. Provide fire alarm and intrusion alarm systems consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions. A total of 8 hours is included.
3. Attend one pre-design, one pre-construction, two pre-pull, and two pre-device connection on-site meetings with the selected contractor and the Client. Meetings shall be arranged by the Client. Six meetings are included.
4. Witness the pre-test and final acceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD Alarm Shop, and the Inspector of Record (IOR). Results of the tests will be recorded and submitted to the Client. Four visits to witness testing are included as follows:
 - Witness one (1) fire alarm system pre-test.
 - Witness one (1) intrusion alarm system pre-test.
 - Witness one (1) fire alarm system final acceptance test.
 - Witness one (1) intrusion alarm system final acceptance test.

MODERNIZATION OF BUILDING A

1. Review fire and intrusion alarm drawings, datasheets, and specifications, for compliance with the applicable California Building and Fire Codes, Division of the State Architect (DSA) Guidelines, NFPA 72 - *National Fire Alarm and Signaling Code* requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. Jensen Hughes will provide a written report of plan review comments. Drawing reviews are estimated to begin in Q1 of 2023. Four reviews are included: one 100% DD plan review, one 50% CD plan review, one 90% CD plan review, and one 100% CD back check review.

2. Provide fire alarm and intrusion alarm systems consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions. A total of 16 hours is included.
3. Attend one pre-design, one pre-construction, two pre-pull, and two pre-device connection on-site meetings with the selected contractor and the Client. Meetings shall be arranged by the Client. Six meetings are included.
4. Witness the pre-test and final acceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD Alarm Shop, and the Inspector of Record (IOR). Results of the tests will be recorded and submitted to the Client. Four visits to witness testing are included as follows:
 - Witness one (1) fire alarm system pre-test.
 - Witness one (1) intrusion alarm system pre-test.
 - Witness one (1) fire alarm system final acceptance test.
 - Witness one (1) intrusion alarm system final acceptance test.

NEW BUILDING B

1. Review fire and intrusion alarm drawings, datasheets, and specifications, for compliance with the applicable California Building and Fire Codes, Division of the State Architect (DSA) Guidelines, NFPA 72 - *National Fire Alarm and Signaling Code* requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. Jensen Hughes will provide a written report of plan review comments. Drawing reviews are estimated to begin in Q1 of 2023. Four reviews are included: one 100% DD plan review, one 50% CD plan review, one 90% CD plan review, and one 100% CD back check review.
2. Provide fire alarm and intrusion alarm systems consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions. A total of 8 hours is included.
3. Attend one pre-design, one pre-construction, two pre-pull, and two pre-device connection on-site meetings with the selected contractor and the Client. Meetings shall be arranged by the Client. Six meetings are included.
4. Witness the pre-test and final acceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD Alarm Shop, and the Inspector of Record (IOR). Results of the tests will be recorded and submitted to the Client. Four visits to witness testing are included as follows:
 - Witness one (1) fire alarm system pre-test.
 - Witness one (1) intrusion alarm system pre-test.
 - Witness one (1) fire alarm system final acceptance test.
 - Witness one (1) intrusion alarm system final acceptance test.

OWNER'S CONTINGENCY

1. Client has requested a 10% contingency. Up to 40 hours of fire and/or intrusion alarm systems consulting is included. Contingency services will be provided on a time-and-expense basis. Contingency services include the following:
 - a. Additional plan reviews and written reports, if needed, to resolve plan review deficiencies during any phase of the project.
 - b. Additional site visits to witness testing, if needed to re-test deficiencies during any phase of the project.

Additional Services

Any other work requested by Client outside of the Services specified above shall be considered an "Additional Service" and will be conducted on a mutually-agreed-upon basis. When such work is requested, Jensen Hughes will submit an estimate of the cost to the Client for approval prior to commencing work.

Additional work may include, but is not limited to:

1. Additional site visits.
2. Additional meetings.
3. Additional system tests.
4. Building and fire code analysis and appeals.
5. Review of additional resubmitted shop drawings or construction change orders.
6. Review of requests for payment and change orders from the contractor.
7. Additional construction observation visits beyond the Scope of Services.
8. Additional time for system acceptance testing beyond that noted in Scope of Services resulting from contractor's delays or deficiencies.
9. Evaluation of the existing fire alarm or intrusion alarm systems.
10. Fire alarm or intrusion alarm system design services.
11. DSA submittals or verified reports.
12. Professional engineer review or stamping of documents or drawings.
13. Automatic sprinkler system design, testing and consulting.
14. Mechanical, structural, or civil engineering and consulting.
15. Special hazard or kitchen hood fire suppression system design, testing, and consulting.
16. Building code and accessibility consultation.

All services not specifically described in the Proposal are excluded from Consultant's Scope of Services.

Client Responsibilities

This proposal is based upon the Client performing the following activities:

1. Provide Jensen Hughes with PDF file copies, of all fire and intrusion alarm system drawings pertaining to the project. These documents are for Jensen Hughes' use in providing consulting services. It is understood that Jensen Hughes will rely upon the accuracy of all documents and electronic data furnished.

2. Provide Jensen Hughes access to all areas of the building for the purpose of conducting the site visits and witnessing tests.
3. Ensure systems are ready to commence testing immediately upon arrival of inspectors.
4. All prior approvals from regulatory agencies must be onsite including, but not limited to, approved permit drawings and shop drawings documentation. In addition, copies of all permits, variances, waivers, or other types of agreements concerning the project must be available for review prior to testing.
5. Provide portable radios.
6. Provide personnel familiar with the location and operation of the fire alarm and intrusion alarm systems.
7. Provide personnel properly equipped for testing the fire and intrusion alarm systems and devices.
8. Provide UL-listed canned smoke, magnets, flow gauges, magnahelic pressure gauges, and all other equipment and materials required to test systems and devices.
9. Provide personnel with keys for access to all building spaces, elevator reset/bypass, fire alarm control panels, central station communicators, fire alarm wiring terminal cabinets, and annunciator panels.
10. Provide personnel capable of bypassing notification appliances and all auxiliary system control functions for portions of the test.
11. Provide personnel authorized to contact the OUSD Alarm Center and remote station to take fire alarm monitoring out-of-service for portions of the test.
12. Provide personnel familiar with the operation and location of air handling units, elevators, and other system interfaces, where applicable.
13. Provide at least two individuals for fire and intrusion alarm system testing. One person will remain at the panel for signal identification and system resets. The second person will activate devices. Due to the need for disconnecting wires and devices for supervision testing, at least one of these individuals shall be a technician familiar with the installation.
14. Coordination of the project including, but not limited to, requesting site visits, scheduling meetings, and paying any associated meeting fees with local authorities.

Professional Fees

The proposed Scope of Services above will be provided by Consultant for a firm not-to-exceed fee of \$123,660, including an OUSD contingency fee of \$10,560.00. The fee is broken out as follows:

<i>Phase or Activity</i>	<i>Fees</i>
Project Definition (not to exceed fee)	\$ 3,960
Interim Housing (not to exceed fee)	\$ 32,160
Building A Modernization (not to exceed fee)	\$ 42,180
Building B (not to exceed fee)	\$ 34,800
Owner Contingency (time and expense) Total	\$ 10,560
	\$ 123,660



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

Project Name	Roosevelt Middle School Modernization	Site	212
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	Jensen Hughes, Inc.	Agency's Contact	David Secoda				
OUSD Vendor ID #	002281	Title	Manager				
Street Address	1220 Concord Avenue, Ste. 400	City	Concord	State	CA	Zip	94520
Telephone	925-938-3550	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	19101						

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	2-10-2022	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	2-9-2027
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$123,660.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9799 9787	Fund 21 Msr B	210-9799-0-9787-8500-5825-212-9180-9901-9999-19101	5825	\$123,660.00

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities Planning and Management				
	Signature <i>K. Chatman</i>	Date Approved	1-13-22		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature <i>[Signature]</i> Lozano Smith, as to form only	Date Approved	1/13/22		
3.	Deputy Chief, Facilities Planning and Management				
	Signature <i>[Signature]</i>	Date Approved	1/13/2022		
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			