

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	24-1731
Introduction Date	8-14-2024
Enactment Number	24-1497
Enactment Date	8/14/2024 CJH



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management  
Kenya Chatman, Executive Director, Division of Facilities Planning and Management

**Board Meeting Date** August 14, 2024

**Subject** Amendment No. 3, Engineering Services Agreement – Kilowatt Engineering, Inc. – Claremont Middle School MPR & Kitchen Project - Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No.3, Engineering Services Agreement by and between the District and Kilowatt Engineering, Inc., Oakland, CA, for the latter to continue to provide building enclosure commissioning services in additional amount of \$5,000.00, increasing Agreement not-to-exceed amount from \$81,933.84 to \$86,833.84, and extending the term of the Agreement from July 1, 2021 through June 30, 2024 to April 30, 2025, (an additional 304 calendar days). All other terms and conditions of the Agreement remain in full force and effect.

**Discussion** This Amendment is for increasing the not-to-exceed amount by \$5,000.00 for on going commissioning services needed through April 30, 2025.

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of Amendment No.3, Engineering Services Agreement by and between the District and Kilowatt Engineering, Inc., Oakland, CA, for the latter to continue to provide building enclosure commissioning services in additional amount of \$5,000.00, increasing Agreement not-to-exceed amount from \$81,933.84 to \$86,833.84, and extending the term of the Agreement from July 1, 2021 through June 30, 2024 to April 30, 2025, (an additional 304 calendar days). All other terms and conditions of the Agreement remain in full force and effect.

**Fiscal Impact** Fund 21 Building Funds, Measure Y

**Attachments**

- Amendment No. 3, including Exhibits
- Routing Form
- File ID's 23-2762; 22-0193 & 21-1510

## AMENDMENT NO. 3

### ENGINEERING SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Kilowatt Engineering, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **June 30, 2021** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Claremont Middle School MPR & Kitchen Project** as follows and in the attached Exhibit A:

**1. Services:**       The scope of work is unchanged.       **The scope of work has changed.**  
**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.  
 The CONTRACTOR agrees to provide the following amended services: No change to the scope of work. This amendment adds additional compensation to the project with an extended anticipated completion date of April 30, 2025, as described in the proposal dated June 10, 2023, attached to this Amendment as Exhibit A.

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**2. Terms (duration):**     The term of the contract is unchanged.       The term of the contract has changed.  
**If term is changed:** The contract term is extended by an additional **Three Hundred Four days (304)**, and the amended expiration date is **April 30, 2025**. The current end date is **June 30, 2024**.

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**3. Compensation:**     The contract price is unchanged.       The contract price has changed.  
**If the compensation is changed:** The not to exceed contract price for Basic Services is  
 Increased by: Five Thousand dollars NO/100 (\$5,000.00).  
 Decreased by \_\_\_\_\_ dollars and no/100 (\$\_\_\_\_\_).  
 Prior to this amendment, the not-to-exceed contract price was **Eighty-one thousand nine hundred thirty-three dollars and eighty-four cents (\$81,933.84)**, and after this amendment, the not-to-exceed contract price will be: **Eighty-six thousand eight hundred thirty-three dollars and eighty-four cents (\$86,833.84)**.

**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)
01	2-23-2022	Compensation & Term	\$30,008.00
02	1-24-2024	Compensation & Term	\$3,745.84

**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.

OAKLAND UNIFIED SCHOOL DISTRICT

*Benjamin Davis*  
Benjamin Davis, President,  
Board of Education

8/15/2024  
Date

*Kyla Johnson-Trammell*  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

8/15/2024  
Date

*Preston Thomas*  
Preston Thomas (Jul 18, 2024 19:11 PDT)  
Preston Thomas, Chief Systems & Services  
Officer, Facilities Planning and Management

Jul 18, 2024  
Date

**Approval as to form:**

*Mark Williams*  
Mark Williams, Esq.  
General Counsel, Facilities, Planning and  
Management

07/17/2024  
Date

CONTRACTOR

DocuSigned by:

*Sean Harleman* 7/27/2024

Sean Harleman Date  
Principal  
Print Name, Title

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: Kilowatt Engineering, Inc.**

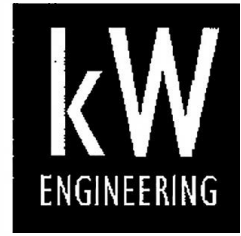
1. Detailed Description of Services to be provided: No change to the scope of work. This amendment adds additional compensation to the project with an extended anticipated completion date of April 30, 2025, as described in the proposal dated June 10, 2023, attached to this Amendment as Exhibit A.

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





# OUSD Claremont Commissioning Request for Proposal

**To:** Chastity Henderson, David Freeze; OUSD  
**From:** Eric Uribe, Sean Harleman, kW Engineering  
**Project:** Claremont Middle School Multi-Purpose Room  
**Subject:** Commissioning Request for Proposal Response  
**Date:** June 10, 2023

## Introduction

Delays have cost the Claremont project schedule to extend past the initial completion date. Contracts associated with this project are ending soon and must be amended in order to receive payments for remaining services. As of end of May 2024, the commissioning budget has spent \$68,608.59, with \$13,325.25 budget remaining.

	<b>kW Budget</b>	<b>MH Original Budget</b>	<b>Contingency Budget</b>	<b>Totals</b>
<b>Contract Fee</b>	\$59,753.84	\$17,800.00	\$4,380.00	\$81,933.84
<b>Job-To-May '24 Invoice</b>	\$49,206.00	\$17,800.00	\$1,602.59	\$68,608.59
<b>Budget Remaining</b>	\$10,547.84	\$0.00	\$2,777.41	<b>\$13,325.25</b>

A summary of budget spent so far includes:

- All design phase commissioning tasks.
- All envelope commissioning tasks through construction.
- MEP Construction phase coordination and test preparation.
- Lighting System, Irrigation System and Domestic Hot Water System testing.

## Remaining Tasks

- Remaining coordination and test preparation.
- HVAC system testing and BMS trending verification.
- Commissioning report and CHPS documentation.
- 10-month post-occupancy review.

## Additional Fees Requested

Based on an estimated project end date of April 2025, kW is requesting an additional \$5,000 in contingency fees, for a new total of \$86,933.84 to finish the commissioning scope of work.

	<b>kW Budget</b>
<b>Current Total Contract Amount</b>	\$81,933.84
<b>Additional Requested</b>	\$5,000.00
<b>New Contract Amount Requested</b>	<b>\$86,933.84</b>



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Claremont Middle School MPR & Kitchen Project	<b>Site</b>	201
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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	Kilowatt Engineering, Inc.	Agency's Contact	Sean Harleman				
OUSD Vendor ID #	002451	Title	Principal				
Street Address	287 17th Stret, Suite 300	City	Oakland	State	CA	Zip	94612
Telephone	510-834-6420	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 #	15127						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	
		New Date of Contract End (If Any)	4-30-2025

### 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	\$5,000.00
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 9670	Fund 21, Measure Y	201-9655-0-9670-8500-6215-201-9180-9906-9999-15127	6215	\$5,000.00

### 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.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities</b>				
	Signature		Date Approved	Jul 18, 2024	
	<small>Kenya Hatman (Jul 18, 2024 09:13 PDT)</small>				
2.	<b>General Counsel, Facilities</b>				
	Signature		Date Approved	07/17/2024	
3.	<b>Chief Systems &amp; Services Officer, Facilities Planning and Management</b>				
	Signature		Date Approved	Jul 18, 2024	
	<small>Preston Thomas (Jul 18, 2024 19:11 PDT)</small>				
4.	<b>Chief Financial Officer</b>				
	Signature		Date Approved		
5.	<b>President, Board of Education</b>				
	Signature		Date Approved		



Board Office Use: <b>Legislative File Info.</b>	
File ID Number	23-2762
Introduction Date	1-24-2024
Enactment Number	24-0247
Enactment Date	1-24-2024 er



**OAKLAND UNIFIED SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management- Kenya Chatman, Executive Director, Division of Facilities Planning and Management

**Board Meeting Date** January 24, 2024

**Subject** Amendment No. 2, Engineering Services Agreement – KW Engineering, Inc. – Claremont Middle School MPR & Kitchen Project - Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No.2, Engineering Services Agreement by and between the District and KW Engineering, Inc., Oakland, CA, for the latter to provide additional building enclosure commissioning services in an additional amount of \$3,745.84, increasing Agreement not-to-exceed amount from \$78,188.00 to \$81,933.84, and extending the term of the Agreement from October 31, 2023 to June 30, 2024, (an additional 243 calendar days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant, pursuant to the Amendment.

**Discussion** This Amendment is for additional commissioning services and two hundred forty-three (243) calendar days’ extension to the term date.

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of Amendment No.2, Engineering Services Agreement by and between the District and KW Engineering, Inc., Oakland, CA, for the latter to provide additional building enclosure commissioning services in an additional amount of \$3,745.84, increasing Agreement not-to-exceed amount from \$78,188.00 to \$81,933.84, and extending the term of the Agreement from October 31, 2023 to June 30, 2024, (an additional 243 calendar days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant, pursuant to the Amendment.

**Fiscal Impact** Fund 21 Building Funds, Measure Y

**Attachments**

- Amendment No. 2, including Exhibits
- Routing Form
- File ID’s 22-0193 & 21-1510

## AMENDMENT NO. 2

### ENGINEERING SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **KW Engineering, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **June 30, 2021** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Claremont Middle School MPR & Kitchen Project** as follows and in the attached Exhibit A:

1.	<b>Services:</b>	<input checked="" type="checkbox"/> The scope of work is <u>unchanged</u> .	<input type="checkbox"/> <b>The scope of work has <u>changed</u>.</b>
<p><b>If scope of work changed:</b> 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: The scope of services remains unchanged.</p>			
2.	<b>Terms (duration):</b>	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extended by an additional <b><u>Two Hundred Forty-three days (243)</u></b>, and the amended expiration date is <b><u>June 30, 2024</u></b>. The current end date is <b><u>October 31, 2023</u></b>.</p>			
3.	<b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price for Basic Services is</p> <p><input checked="" type="checkbox"/> Increased by: <u>Three Thousand Seven hundred forty-five dollars and eighty-four cents (\$3,745.84)</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 <b><u>Seventy-eight thousand one hundred eighty-eight dollars No/100 (78,188.00)</u></b>, and after this amendment, the not-to-exceed contract price will be: <b><u>Eighty-one thousand nine hundred thirty-three dollars and eighty-four cents (\$81,933.84)</u></b>.</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)
01	2-23-2022	Compensation & Term	\$30,008.00


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 to Professional Services Contract

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
Benjam Davis  
President,  
Board of Education

1/25/2024  
Date


  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

1/25/2024  
Date

  
Preston Thomas (Dec 20, 2023 00:35 PST)  
Preston Thomas, Chief Systems & Services  
Officer, Facilities Planning and Management

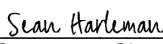
Dec 20, 2023  
Date

**Approval as to form:**

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

12/19/23  
Date

**CONTRACTOR**

DocuSigned by:  
  
Sean Harleman  
Contractor Signature  
Principal  
Print Name, Title

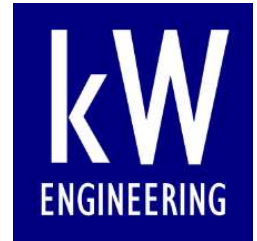
12/14/2023  
Date

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: KW Engineering, Inc.**

1. Detailed Description of Services to be provided: The scope of services remains unchanged.
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



## OUSD Claremont Commissioning Request for Proposal

**To:** Chastity Henderson, David Freeze; OUSD  
**From:** Eric Uribe, Sean kW Engineering  
**Project:** Claremont Middle School Multi-Purpose Room  
**Subject:** Commissioning Request for Proposal Response  
**Date:** November 3, 2023

### Introduction

Delays have cost the Claremont project schedule to extend past the initial completion date. Contracts associated with this project are ending soon and must be amended in order to receive payments for remaining services. As of end of October 2023, the commissioning budget has spent \$39,933.14, with \$38,254.16 budget remaining.

	<b>kW Budget</b>	<b>MH Original Budget</b>	<b>MH Contingency Used</b>	<b>Elect. Cx Budget</b>	<b>Totals</b>
<b>Contract Fee</b>	\$44,838.00	\$17,800.00	\$4,380.00	\$11,170.00	\$78,188.00
<b>Job-To-Sept. '23 Invoice</b>	\$18,562.50	\$17,800.00	\$89.02	\$0.00	\$36,451.52
<b>October '23 Invoice</b>	\$1,968.75	\$0.00	\$1,513.57	\$0.00	\$3,482.32
<b>Invoices to End of Oct.</b>	<b>\$20,531.25</b>	<b>\$17,800.00</b>	<b>\$1,602.59</b>	<b>\$0.00</b>	<b>\$39,933.84</b>
<b>Budget Remaining</b>	<b>\$24,306.75</b>	<b>\$0.00</b>	<b>\$2,777.41</b>	<b>\$11,170.00</b>	<b>\$38,254.16</b>

### A summary of budget spent so far includes:

- All design phase commissioning tasks.
- MEP Construction phase coordination and test preparation.
- All envelope commissioning tasks through construction. No further billings expected beyond October 2023.
- Note due to re-testing tasks, the envelope Cx used part of the contingency budget allocated for this project.

### Additional Fees Requested

Based on an estimated project end date of June 2024, kW is requesting an additional not to exceed fee of \$3,745.84 fees, for a new total of \$42,000 to finish the commissioning scope of work.

	<b>kW Budget</b>
<b>Budget Remaining</b>	\$38,254.16
<b>Requested Amount</b>	\$3,745.84
<b>New Contract Amount Requested</b>	\$42,000.00





## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Claremont Middle School MPR & Kitchen Project	<b>Site</b>	201
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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	KW Engineering, Inc.	Agency's Contact	Sean Harleman				
OUSD Vendor ID #	002451	Title	Principal				
Street Address	287 17th Stret, Suite 300	City	Oakland	State	CA	Zip	94612
Telephone	510-834-6420	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 #	15127						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	
		New Date of Contract End (If Any)	6-30-2024

### 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	\$3,745.84
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 9670	Fund 21, Measure Y	210-9655-0-9670-8500-6215-201-9180-9906-9999-15127	6215	\$3,745.84

### 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.

	<b>Division Head</b>	Phone	510-535-7038	Fax	510-535-7082
1.	<b>Executive Director, Facilities Planning and Management</b>				
	Signature	Date Approved	Dec 19, 2023		
	<small>Neelima Jhatman (Dec 19, 2023 14:42 PST)</small>				
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	Date Approved	12/19/23		
	Lozano Smith, Approved as to form				
3.	<b>Chief Systems &amp; Services Officer, Facilities Planning and Management</b>				
	Signature	Date Approved	Dec 20, 2023		
	<small>Thomas (Dec 20, 2023 00:35 PST)</small>				
4.	<b>Chief Financial Officer</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			



Board Office Use: <b>Legislative File Info.</b>	
File ID Number	22-0193
Introduction Date	2-23-2022
Enactment Number	22-0360
Enactment Date	2-23-2022 CJH



**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

## Memo

**To** Board of Education

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

**Board Meeting Date** February 23, 2022

**Subject** Amendment No. 1, Engineering Services Agreement – KW Engineering, Inc. – Claremont Middle School MPR & Kitchen 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 KW Engineering, Inc., Oakland, CA, for the latter to provide building envelope and enclosure commissioning services by providing advice on building envelope and enclosure issues during design & construction for the Claremont Middle School MPR & Kitchen Project, in an additional amount of **\$30,008.00**, which includes a contingency of **\$2,728.00** for additional services, increasing Agreement not-to-exceed amount from **\$48,180.00** to **\$78,188.00**, and extending the term of the Agreement from **December 31, 2022** to **October 31, 2023**, (an additional 304 calendar days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant, pursuant to the Amendment.

**Discussion** This Amendment is for building envelope and enclosure commissioning services for building envelope and enclosure issues during design & construction of the site and three hundred four (304) calendar days' extension to the term date.

**LBP** (Local business participation percentage) 100.00%

**Recommendation** Approval by the Board of Education of Amendment No.1, Engineering Services Agreement by and between the District and KW Engineering, Inc., Oakland, CA, for the latter to provide building envelope and enclosure commissioning services by providing advice on building envelope and enclosure issues during design & construction for the Claremont Middle School MPR & Kitchen Project, in an additional amount of **\$30,008.00**, which includes a contingency of **\$2,728.00** for additional services, increasing Agreement not-to-exceed amount from **\$48,180.00** to **\$78,188.00**, and extending the term of the Agreement from **December 31, 2022** to **October 31, 2023**, (an additional 304 calendar days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant, pursuant to the Amendment.

**Fiscal Impact** Fund 21 Measure Y

**Attachments**

- Amendment No. 1
- Scope of work
- Insurance Certificate

## AMENDMENT NO. 1

### ENGINEERING SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **KW Engineering, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **July 1, 2021** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Claremont Middle School MPR & Kitchen Project** as follows and in the attached Exhibit A:

1.	<b>Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<b>If scope of work changed:</b> 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.			
The CONTRACTOR agrees to provide the following amended services: This amendment covers Building Envelope and Enclosure Commissioning Services by providing advice on building envelope and enclosure issues during design & construction, as described in the Proposal dated January 11, 2022, attached to this Amendment as part of Exhibit A.			
2.	<b>Terms (duration):</b>	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
<b>If term is changed:</b> The contract term is extended by an additional <b><u>Three Hundred Four days (304)</u></b> , and the amended expiration date is <b><u>October 31, 2023</u></b> . The current end date is <b><u>December 31, 2022</u></b> .			
3.	<b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<b>If the compensation is changed:</b> The not to exceed contract price is			
<input checked="" type="checkbox"/> Increased by: <u>Thirty thousand Eight dollars No/100 (\$30,008.00), which includes a not-to-exceed contingency of \$2,728.00 for Additional Services.</u>			
<input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).			
Prior to this amendment, the not-to-exceed contract price was <u>Forty-Eight Thousand One Hundred Eighty dollars and No/100(\$48,180.00)</u> and after this amendment, the not-to-exceed contract price will be: <u>Seventy-Eight Thousand One Hundred Eighty-Eight dollars and No/100 (\$78,188.00)</u>			

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.

**OAKLAND UNIFIED SCHOOL DISTRICT**

850.40  
\_\_\_\_\_  
Gary Yee, President, Board  
of Education

2-24-2022  
\_\_\_\_\_  
Date

[Signature]  
\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education

2-24-2022  
\_\_\_\_\_  
Date

[Signature]  
\_\_\_\_\_  
Tadashi Nakadegawa, Deputy Chief,  
Facilities Planning and Management

1/28/2022  
\_\_\_\_\_  
Date

**Approv ~~asab~~ form:**

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

1/27/22  
\_\_\_\_\_  
Date

**CONTRACTOR**

Sean Harleman January 26, 2022  
\_\_\_\_\_  
Contractor Signature Date

Sean Harleman, Principal, kW Engineering  
\_\_\_\_\_  
Print Name, Title

**EXHIBIT "A"**  
**Scope of Work for Amendment**

**Contractor Name: KW Engineering, Inc.**

1. Detailed Description of Services to be provided: This amendment covers Building Envelope and Enclosure Commissioning services by providing advice on building envelope and enclosure issues during design & construction, as described in the Proposal dated January 11, 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

## **OUSD Claremont Middle School Multi-purpose Building Addendum #1 – Add Building Envelope Commissioning**

kW Engineering, Inc. proposes to contract with sub-consultant, Morrison Hershfield (MH), to provide Building Envelope Commissioning services at the Claremont Middle School Multi-purpose Building and Kitchen. This is a proposed Addendum to kW Engineering's existing contract for MEP commissioning of the OUSD Claremont Middle School project.

### **1. PROJECT DESCRIPTION**

This proposal is based on the documents listed below as provided to us via email by Deshonnie Hall on December 15, 2021.

- Constructability Review Backcheck (75%DD) Drawing Set
- Constructability Review Backcheck (75%DD) Specification Set

The new Multi-Purpose Building and Kitchen is a single level building totaling approximately 9,544 square feet and consists of a cafeteria, kitchen, stage platform, and associated support storage rooms. The building is a steel framed structure with a combination glue-laminated and steel framed roof structure with a standing seam metal roofing as well as cement plaster and fiber board panel walls with batt insulation in the steel stud cavity and continuous insulation as well as aluminum framed storefronts, windows, and doors.

We understand that the project is California High Performance School (CHPS) designed. We understand this project has nearly completed the design development phase and will be entering the construction document phase.

# OUSD Claremont Middle School Multi-purpose Building

## Addendum #1 – Add Building Envelope Commissioning

### 2. SCOPE OF SERVICES

We have developed the following scope of work after reviewing the Constructability Review Backcheck Drawing and Specification documents. The quantities and fees for each of these services are itemized in the fee breakdown table shown in Compensation, Section 8.

MH's role in the project will be to perform Building Enclosure Commissioning Services by providing advice on building envelope issues during design and construction. The Architect's design team will prepare all construction drawings and specifications. We will provide review of the Architect's documents as outlined in our scope of work and provide our recommendations with respect to appropriate assemblies for the proposed use and exposure of the building. This proposal does not include preparation of standalone construction documents.

#### Construction Documents

- a. Owner's Project Requirements
  - i. MH will meet with the Owner and Architect to review and provide input to the Owner's Project Requirements (OPR) document for relevant information pertaining to Building Envelope Components.
- b. Drawing Reviews:
  - i. Review architectural drawings of the building envelope systems provided to us with regards to the design of roofing, waterproofing, cladding, and glazing assemblies interface details. These will take the form of markups.
- c. Specification Reviews:
  - i. Review specifications, CSI Divisions 7 (thermal/ waterproofing), 8 (doors and windows) relative to the Enclosures, and 9 (finishes) relative to the Enclosures. These will take the form of markups.
- d. Design Meetings:
  - i. Attend one (1) meeting via teleconference to discuss drawing review.
- e. Ongoing Consultation:
  - i. Provide ongoing consultation to review specific details, email correspondence or telephone calls, attend additional meetings, or other services outside the defined deliverables.

#### Construction Administration

- a. Attend the pre-construction conference:
  - i. Attend one (1) pre-construction conference to review Enclosure expected performance, contractor sequencing, and collaboratively kickoff the project.
- b. Review of Enclosure Material Submittals:
  - i. We will assist the architect in reviewing submittals for conformance to the Contract Documents. We have assumed four (4) submittals for all roofing and enclosure components. We assume review consists of initial submittal.
- c. Review of Glazing Shop Drawing Submittals:
  - i. We will assist the architect in reviewing glazing submittal for conformance to the Contract Documents. We assume review consists of one (1) initial submittal and one (1) re-submittal.



# OUSD Claremont Middle School Multi-purpose Building

## Addendum #1 – Add Building Envelope Commissioning

### d. Attend Site Mock-up

- i. Morrison Hershfield will perform limited site observations of selected initial building envelope assemblies/mock-ups.
- ii. This will be used to confirm that the construction of the building envelope components is in general conformance with the contract documents and the assemblies/mock-ups will serve to define the acceptable standard for the project.
- iii. Design issues identified through this observation process will be referred to the Architect's design team for resolution.

### e. Construction Site Visits

- i. One of the site visits will be used to attend a field performance (water) test for the glazing system.
- ii. Provide periodic field observations of the installations and finish to help confirm that the construction of the building envelope components is in general conformance with the standards established through the initial site observations and the contract documents.
- iii. We will provide written reports to the architect with itemized documentation of any observed deficiencies with support photographs.
- iv. We have indicated the number of site visits budgeted in our enclosed fee table. If additional trips are requested/required, we have provided optional additional service fees in our enclosed fee table and will provide an additional service request for review and approval.

### f. Ongoing Consulting:

- i. Provide assistance with RFIs, ASI and directives related to the façade and waterproofing systems.

### **Optional Additional Services**

#### a. Additional Construction Site Visits

- i. We will make additional site visits, as requested, consistent with terms of the Contingency Phase and kW standard rates, as shown in the 2022 Billing Rates table in the Compensation section.

### **3. ASSUMPTIONS AND LIMITATIONS**

1. All in-person meetings are assumed to occur in the San Francisco Bay Area.
2. Final approval over building envelope details and coordination of envelope issues with all other code requirements, such as fireproofing, remains with the Architect as Designer of Record.
3. Drawings and Specifications will be reviewed for water penetration, vapor diffusion, air leakage, thermal performance, and differential movement, with emphasis on water tightness.
4. Review of the enclosure for thermal performance is limited to the potential thermal bridging and condensation issues.
5. Assistance with respect to the structural aspects shall be considered additional consultation of the proposed building envelope systems (i.e. feasible spans, typical attachment methods, lateral displacement requirements, etc.).
6. Site visits, field observations and testing are based on a sampling of completed work, and work in progress at the time of each visit.
7. Field observations are performed as part of quality assurance and are not intended to be exhaustive and do not relieve the Contractor or trades of their responsibilities for quality control, conformance with project construction documents, and applicable codes.

# OUSD Claremont Middle School Multi-purpose Building

## Addendum #1 – Add Building Envelope Commissioning

8. MH and kW Engineering may provide recommendations but are not responsible for the means and methods of construction or supervision of the installation by the Contractor. As such, MH and/or kW Engineering are not responsible for the outcome of the testing. The client understands that our completion of the above scope of work cannot guarantee a passing test result.
9. All submittals and drawings for review will be available in PDF format. All comments related to reviews will be provided electronically in PDF format.

### 5. EXCLUSIONS

1. Vertical access to test locations or areas requiring reviews by MH field personnel.
2. Lab testing or factory visits.
3. Tasks related to the Bid Negotiation Phase.
4. Energy Modeling.
5. Hygrothermal Analysis (WUFI).
6. LEED Consulting Services
7. Site specific safety training in excess of standard training maintained by MH Building Science personnel.

### 6. SCHEDULE

Based on the schedule we were provided we understand the project schedule as follows:

- The Project is currently at the 90% design milestone
- Assumed duration of envelope construction: 4 months

The following are the typical turn-around times for these deliverables. *If an accelerated schedule is required, kW Engineering and Morrison Hershfield would be pleased to discuss alternative arrangements.*

1. Attendance at in-person meetings: within five business days of receiving notice.
2. Attendance at web/conference call meetings: within two business days of receiving notice.
3. Architectural drawing review: within ten business days of receipt of drawings.
4. Specification review: within ten business days of receipt of specifications.
5. Shop drawing review: within ten business days of receipt of shop drawings.
6. Trade submittal review: within five business days of receipt of submittals.
7. Attendance at site visits: within two business days of receiving notice.
8. Site visit report: within four business days of site visit.
9. Action Item Lists: as appropriate.

# OUSD Claremont Middle School Multi-purpose Building Addendum #1 – Add Building Envelope Commissioning

## 8. COMPENSATION

We have provided a not-to-exceed fee, including expenses, for the services outlined in the above scope of work, as listed in the detailed **Table of Fees** below. The fee table outlines our fee schedule for each phase of Building Envelope Cx consulting services. The table defines the allowance for quantities for fixed deliverables (meetings, document reviews, site visits, etc.) and the number of staff hours associated with the ongoing consultation allowance or other services. Our complete proposal is formed by the written description of services, table of fees, and our standard terms and conditions.

This proposal is valid for 30 days.

### OUSD – Claremont MPR + Kitchen - Building Envelope

Table of Fees

	Quantity	Units	Phase Fee	Reimb. Expenses	Phase Fee (w expenses included)
<b>1. Construction Document Phase</b>					
Review Owners Project Requirement (OPR) + meeting	1	Meeting			
Drawing Reviews	1	Review			
Specification Review	1	Review			
Design Meeting - Web Meeting	1	Meeting			
On-going Consultation	5	hours			
<b>Phase Total</b>			<b>\$7,690</b>	<b>\$0</b>	<b>\$7,690</b>
<b>2. Construction Phase (assumed 4 months construction for envelope)</b>					
Pre-construction meeting	1	Meeting			
Roofing + Enclosure Material Submittal Review(s)	4	Submittals			
Glazing Shop Drawing Review(s)	1	Submittals			
Glazing Shop Drawings Review (re-submittal)	1	Submittals			
Initial Assemblies / Mock-up Reviews	1	Visit(s)			
Site Visits	5	Visits			
- 1 Observe Glazing Field Performance Water Test					
- 4 Periodic Construction Observations					
On-going Consultation	10	Hours			
<b>Phase Total</b>			<b>\$19,590</b>	<b>\$0</b>	<b>\$19,590</b>
<b>TOTAL FEES</b>			<b>\$27,280</b>		<b>\$27,280</b>
<b>10% CONTINGENCY</b>					<b>\$ 2,728</b>
<b>Total Fee – Building Envelope Cx</b>					<b>\$30,008</b>

<u>OPTIONAL ADDITIONAL SERVICES</u>	Quantity	Units	Phase Fee	Reimb. Expenses	Phase Fee (w expenses included)
<b>Construction Phase</b>					
Additional Site Visits	each	Visit	\$1,650	\$0	\$1,650

Note





## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Claremont Middle School MPR & Kitchen Project	<b>Site</b>	201
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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
----------------------	---

### Contractor Information

Contractor Name	KW Engineering, Inc.	Agency's Contact	Sean Harleman		
OUSD Vendor ID #	002451	Title	Principal		
Street Address	287 17th Stret, Suite 300	City	Oakland	State	CA Zip 94612
Telephone	510-834-6420	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 #	15127				

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	
		New Date of Contract End (If Any)	10-31-2023

### 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	\$ 30,008.00
Other Expenses		Requisition Number	

### Budget Information

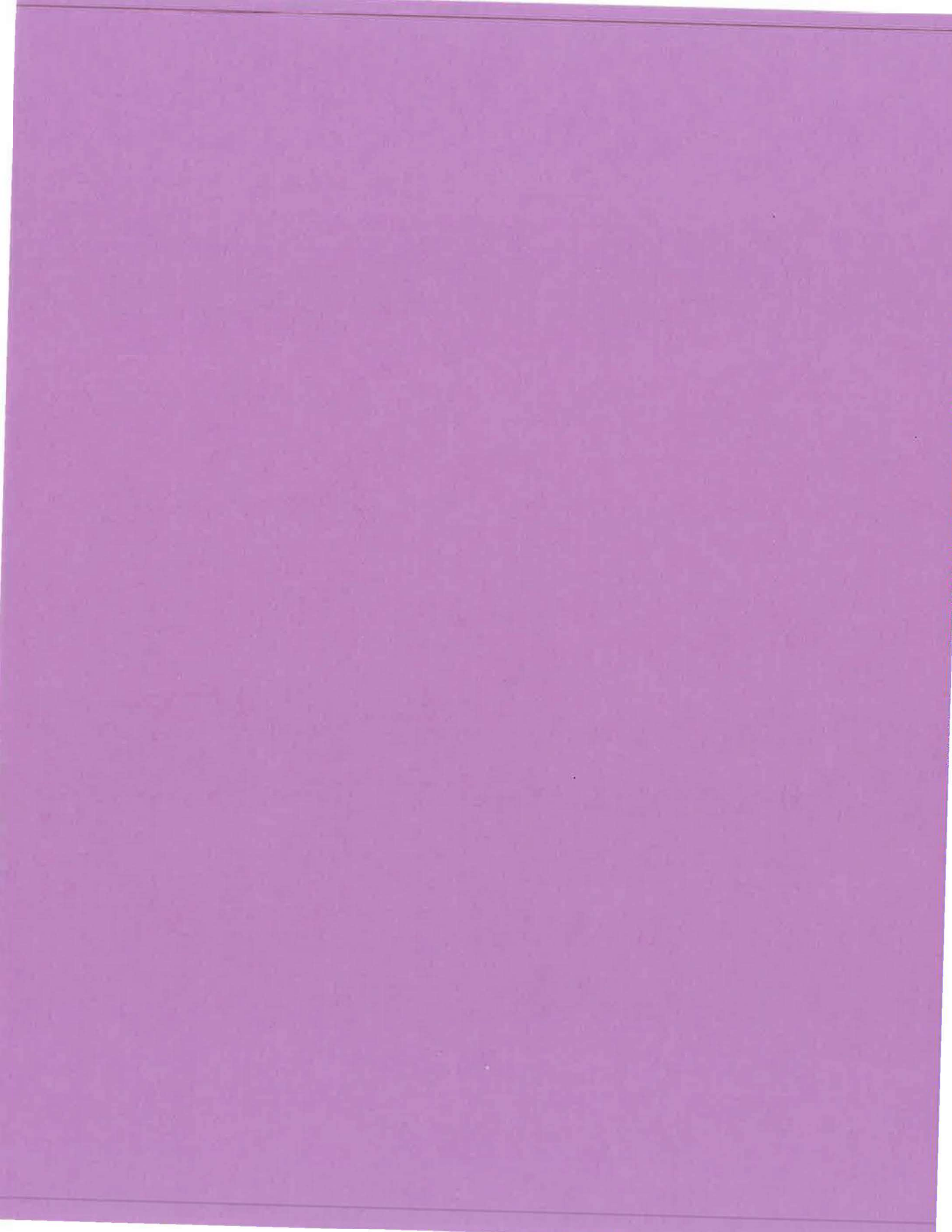
*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9655 9670	Fund 21, Measure Y	210-9655-0-9670-8500-6215-201-9180-9905-9906-9999-15127	6215	\$30,008.00

### 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.

	<b>Division Head</b>	Phone	510-535-7038	Fax	510-535-7082
1.	<b>Executive Director, Facilities Planning and Management</b>				
	Signature	Date Approved	1/28/2022		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature  Lozano Smith, as to form only	Date Approved	1/27/22		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	Signature	Date Approved	1/28/2022		
4.	<b>Chief Financial Officer</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature  Gary Yee	Date Approved	2-24-2022		





<b>Board Office Use: Legislative File Info.</b>	
File ID Number	21-1510
Introduction Date	6-30-2021
Enactment Number	21-1278
Enactment Date	6/30/2021 er



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

## Memo

**To** Board of Education

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

**Board Meeting Date** June 30, 2021

**Subject** Engineering Services Agreement - KW Engineering – Claremont Middle School New Multi-Purpose Building Project - Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Engineering Services Agreement between the District and KW Engineering, Oakland, California, for the latter to provide consulting services to include design documents for commissioning work to ensure that all systems and controls operate and communicate properly to save operational costs, for the Claremont Middle School New Multi-Purpose Building Project, in the amount of **\$48,180.00, which includes a contingency fee of \$4,380.00**, as the selected consultant, with work scheduled to commence on **July 1, 2021**, and scheduled to last **December 31, 2022**, pursuant to the Agreement.

**Discussion** Vendor to provide commissioning engineering services, and cost-effective and thorough commissioning work and submittals. (Government Code §4529.10 et seq.)

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of Engineering Services Agreement between the District and KW Engineering, Oakland, California, for the latter to provide consulting services to include design documents for commissioning work to ensure that all systems and controls operate and communicate properly to save operational costs, for the Claremont Middle School New Multi-Purpose Building Project, in the amount of **\$48,180.00, which includes a contingency fee of \$4,380.00**, as the selected consultant, with work scheduled to commence on **July 1, 2021**, and scheduled to last **December 31, 2022**, pursuant to the Agreement.

**Fiscal Impact** Fund 21, Measure J

**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. 21-1510**

**Department: Facilities Planning and Management**

**Vendor Name: KW Engineering**

**Project Name: Claremont MS New Multi-Purpose Building**

**Project No.: 15127**

**Contract Term: Intended Start: July 1, 2021**

**Intended End: 12-13-2022**

**Total Cost Over Contract Term: \$48,180.00**

**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?**

This Consultant 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. The District issued an RFQP on February 10, 2021, and selected this consultant based on its response.

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

Consultant will provide review and deployment of design documents for commissioning work that ensures all systems and controls operate and communicate properly to save operational costs.

**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?

Consultant has done and is currently working for the District. Based on their experience of 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:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of 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 \$96,700 or less (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- 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 \$96,700 (as of 1/1/21)
- 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:

Consultant is providing commissioning services associated with the New Multi-Purpose Building, for the District through the scope of their engineering services.

**AGREEMENT**  
**FOR**  
**ENGINEERING SERVICES**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
**AND**  
**KW ENGINEERING**  
**FOR THE**  
**CLAREMONT MIDDLE SCHOOL NEW MULTI-PURPOSE BUILDING PROJECT**

July 1, 2021

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 **KW Engineering** (the “Engineer”), with respect to the following recitals:

- A. District proposes to undertake a project which requires 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.
- 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 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. In the event of a conflict between the body of the Agreement and Exhibit C, the body of the Agreement shall control.

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 **KW Engineering**, 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 thereof, including the Engineer's services thereon, as described in this Agreement.

1.9 [Not Used.]

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. All services performed by the Engineer under and required by this Agreement 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:

KW Engineering, Inc. to provide review and deployment of design documents for commissioning work that ensures all systems and controls operate and communicate properly to save operational costs.

## **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 FORTY-THREE THOUSAND EIGHT HUNDRED DOLLARS AND NO/100 (\$43,800.00), which is Engineer's estimate of the maximum total cost of its Basic Services on the Project, based on its March 10, 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 FOUR THOUSAND THREE HUNDRED EIGHTY DOLLARS AND NO/100 (\$4,380.00). 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 **\$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 FORTY-EIGHT THOUSAND ONE HUNDRED EIGHTY DOLLARS AND NO/100 (\$48,180.00). 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 doc-

umented 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, liquidated damages, 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 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 Engineer is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.3 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 for the Basic Services, 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, if required for the Basic Services. 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.

### **5.3 Performance of Services.**

5.3.1 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.

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

5.3.3 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.

5.3.4 The Engineer shall make such regular reports as shall be required by agencies having jurisdiction over the Project. 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.

5.3.5 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.

5.3.6 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:

5.3.6.1 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.

5.3.6.2 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.

## **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 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;

6.2.6 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 review all documents submitted by the Engineer and advise the Engineer of decisions thereon within a reasonable time after submission;

7.4 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;

7.5 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;

7.6 provide asbestos review and abatement, identifying materials which may qualify for same;

7.7 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; and

7.8 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

## **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 One Million Dollars (\$1,000,000) 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 Two Million Dollars (\$2,000,000) 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  
[Not Used]**

**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 fifteen (15) 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 of this Agreement. The Engineer shall timely complete its Basic and Additional 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:** KW Engineering, Inc.  
287 17<sup>th</sup> Street, Ste. 1000

Oakland, CA 94612  
Attention: Sean Harleman, Principal

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 Engineer shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."

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, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.


\*\*\*\*\*

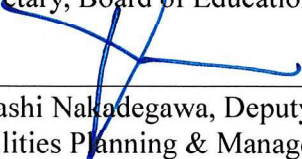
ENGINEER:  
KW Engineering

By:  June 1, 2021  
Sean Harleman, Principal Date

DISTRICT:  
OAKLAND UNIFIED SCHOOL DISTRICT

 7/1/2021  
Shanthi Gonzales, President Date  
Board of Education

 7/1/2021  
Kyla Johnson-Trammell, Superintendent Date  
Secretary, Board of Education

 6/4/21  
Tadashi Nakadegawa, Deputy Chief, Date  
Facilities Planning & Management

Approved As to Form:  6/3/21  
\_\_\_\_\_  
OUSD Facilities Legal Counsel      Date



*Exhibit A*  
**RATE SCHEDULE**

### Hourly Rate Schedule

**EXHIBIT A**

Below is the fully-loaded hourly rate table for kW Engineering by staff title.

<b>kW Engineering 2021 Rate Table</b>	
<b>Title</b>	<b>Hourly Fees</b>
Principal	\$275
Director	\$246
Engineering Manager / Data Scientist	\$225
Senior (Engineer/Consultant/Data Analyst) II	\$215
Senior (Engineer/Consultant/Data Analyst)	\$205
Project Engineer / Data Analyst II	\$196
Engineer / Data Analyst	\$186
Technician	\$140

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***Exhibit B***  
**PROJECT SCHEDULE**

Contract Term: Intended Start: July 1, 2021  
Intended End: December 31, 2022

***Exhibit C***  
**SCOPE OF SERVICES**

The Scope of services for this Agreement shall be performed at the Claremont Middle School New Multi-Purpose Building Site. The Consultant will provide review and deployment of design documents for commissioning work that ensures all systems and control operate and communicate properly to save operational costs. This work specifically includes review, comment & advise of design narratives, design & construction documents. Prepare commissioning specifications for bidding. Prepare commissioning plans. Conduct functional verification and acceptance testing of mechanical, plumbing, electrical and lighting systems.



### DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information			
<b>Project Name</b>	Claremont Middle School New Multi-Purpose Bldg. Project	<b>Site</b>	201
Basic Directions			
<b>Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board.</b>			
<b>Attachment Checklist</b>	<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	KW Engineering	Agency's Contact	Sean Harleman				
OUSD Vendor ID #	002451	Title	Principal				
Street Address	287 17th Stret, Suite 300	City	Oakland	State	CA	Zip	94612
Telephone	510-834-6420	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 #	15127						

Term of Original/Amended Contract			
Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	12-31-2022
		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)	\$48,180.00
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
9650 9670	Fund 21, Measure J	210-9650-0-9670-8500-6215-201-9180-9905-9905-9999-99999	6215	\$48,180.00

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.				
	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b> 510-535-7082
1.	<b>Director, Facilities Planning and Management</b>			
	Signature	Date Approved	6/4/21	
2.	<b>General Counsel, Department of Facilities Planning and Management</b>			
	Signature  Lozano Smith, as to form only	Date Approved	6/3/21	
3.	<b>Deputy Chief, Facilities Planning and Management</b>			
	Signature	Date Approved	6/4/21	
4.	<b>Chief Financial Officer</b>			
	Signature	Date Approved		
5.	<b>President, Board of Education</b>			
	Signature	Date Approved		