

Board Office Use: <b>Legislative File Info.</b>	
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Enactment Number	21-1705
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**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** October 27, 2021

**Subject** Agreement for Architectural Services – Gelfand Partners Architects – Kaiser Child Development Center Outdoor Learning Environment Project – Division of Facilities Planning & Management

**Action Requested** Approval by the Board of Education of Agreement for Architectural Services between the District and Gelfand Partners Architects, San Francisco, California, for the latter to provide architectural services to include replacement of existing play area and play structure; installation of new turf and replace AC paving adjacent to school site between building and play yard for the Kaiser Child Development Center Outdoor Learning Environment Project, in the not-to exceed amount of \$206,000.00, which includes a not-to-exceed amount of \$6,000.00 for reimbursable expenses, with work scheduled to commence on October 28, 2021, and scheduled to last until October 1, 2022, pursuant to the Agreement.

**Discussion** Architect to provide replacement of existing play area and play structure; installation of new turf for the Kaiser Child Development Center. This Architectural Agreement was selected through a competitive RFP selection process. (Government Code §§4529.10 et. seq.)

**LBP (Local Business Participation Percentage)** 50.00%

**Recommendation** Approval by the Board of Education of Agreement for Architectural Services between the District and Gelfand Partners Architects, San Francisco, California, for the latter to provide architectural services to include replacement of existing play area and play structure; installation of new turf and replace AC paving adjacent to school site between building and play yard for the Kaiser Child Development Center Outdoor Learning Environment Project, in the not-to exceed amount of \$206,000.00, which includes a not-to-exceed amount of \$6,000.00 for reimbursable expenses, with work scheduled to commence on October 28, 2021, and scheduled to last until October 1, 2022, pursuant to the Agreement.

**Fiscal Impact** Fund 120 Child Development Fund

**Attachments**

- Agreement
- Proposal
- Insurance Certificate



**CONTRACT JUSTIFICATION FORM**

**This Form Shall Be Submitted to the Board Office With Every Agenda Contract.**

**Legislative File ID No.** 21-2317

**Department:** Facilities Planning and Management

**Vendor Name:** Gelfand Partners Architects

**Project Name:** Kaiser Child Development Center Outdoor Environment **Project No.:** 21112

**Contract Term:** Intended Start: 10-28-2021

Intended End: 10-01-2022

**Annual (if annual contract) or total (if multi-year agreement) Cost:** \$206,000.00

**Approved by:** Tadashi Nakadegawa

**Is Vendor a local Oakland Business or have they meet the requirements of the**

**Local Business Policy?**  Yes (No if Unchecked)

**How was this contractor or vendor selected?**

Gelfand Partners Architects was selected through an RFP process, based on scores. Given that Gelfand Partners Architects, has prior experience with similar projects and the level of complexity of the new project, the District selected it for the new project as the most qualified at the most reasonable price.

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

To provide architectural service for the replacement of the existing play area and play structure, to install new turf for the playground structure as well.

**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?

The District received proposals through an RFP process, which includes review/scoring of proposals. Gelfand Partners Architects was selected based on the highest interview scores and because their price was fair and reasonable compared to the prices submitted by the other responding consultants.

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:

- Gelfand Partners Architects submitted a Proposal, and the District scored their response to the RFP and interviewed the top two scoring architects.
- The proposal submitted by Gelfand Partners Architects was fair and reasonable based on its experience with similar projects and the level of complexity of the project, the District identified the chosen architect as the most qualified at the most reasonable price.

**AGREEMENT**  
**FOR**  
**ARCHITECTURAL SERVICES**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
**AND**  
**GELFAND PARTNERS ARCHITECTS**  
**FOR THE**  
**KAISER CHILD DEVELOPMENT CENTER OUTDOOR LEARNING**  
**ENVIRONMENT PROJECT**

October 28, 2021

OAKLAND UNIFIED SCHOOL DISTRICT  
955 High Street  
Oakland, California 94601

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**AGREEMENT  
FOR  
ARCHITECTURAL SERVICES**

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This Agreement for Architectural Services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and GELFAND PARTNERS ARCHITECTS, license number 17265 (the “Architect”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school(s).
- C. The Parties have negotiated the terms under which Architect 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 Architect and authorized in writing by the District, and as further defined in Article 6 below.

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

1.3 **Architect.** “Architect” shall mean Gelfand Partners Architects, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.4 **Basic Services.** Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.

1.5 **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 Owner 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.

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

1.7 **District.** “District” shall mean Oakland Unified School District, and its governing board members, 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 Architect's services thereon, as described in this Agreement.

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

1.10 **Wrongful Acts or Omissions.** “Wrongful Acts or Omissions” shall mean Architect’s acts or omissions in breach of this Agreement, the applicable standard of care, or law.

## **ARTICLE 2 RETENTION OF ARCHITECT; STANDARD OF CARE**

2.1 District retains Architect to perform, and Architect agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Architect 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 Architect 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 architects 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”). Architect shall be responsible for the completeness and accuracy of the plans and specifications.

## **ARTICLE 3 DESCRIPTION OF PROJECT AND TERM**

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

The scope of services associated with the design of a new Early Childhood Outdoor Learning



Environment at Kaiser Elementary School. Services may include but not limited to basic services in restroom upgrades, intrusion alarm upgrades, surveillance system upgrades, and provide an outdoor play-yard learning environment design and construction contract administration. Architectural basic services shall include the usual and customary civil, landscape architecture, structural, mechanical, and electrical engineering services. The Design Consultant shall also work with OUSD Building & Grounds department to coordinate the new Outdoor Learning Environment design with exterior upgrades. The Design Consultant shall also coordinate the project's scope with a District consultant in the construction of a new ramp from school site level to the playground level by providing assistance as required.

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

The Project is expected to be complete as of October 1, 2022, but may not be completed until later if delays in design or construction arise.

#### **ARTICLE 4 COMPENSATION**

**4.1 Basic Services.** For the Basic Services satisfactorily performed under this Agreement, Architect shall be compensated according to its hourly rate schedule (Section 4.8, below). Architect's total compensation for its Basic Services shall not exceed TWO HUNDRED THOUSAND DOLLARS AND NO/100 (\$200,000.00), which is Architect's estimate of the maximum total cost of its Basic Services on the Project, based on its September 3, 2021, fee estimate. However, Architect will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Architect 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.** Architect may invoice separately for Additional Services if provided by Architect under Article 6, and the total compensation for Additional Services shall not exceed      ZERO DOLLARS AND NO/100 (\$0). However, Architect 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 Architect's performance of Basic or Additional Services under this Agreement. Architect 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 Architect and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, reproductions requested by the District 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 Architect 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 Architect shall be reimbursed by District for its Reimbursable Expenses on the Project. Architect's total reimbursement for Reimbursable Expenses shall not exceed SIX THOUSAND DOLLARS AND NO/100 (\$6,000.00), which is Architect'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 TWO HUNDRED SIX THOUSAND DOLLARS AND NO/100 (\$206,000.00). 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 Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Architect'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 Architect of the dispute and, upon Architect's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Architect shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Architect shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Architect 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; Architect otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Architect'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 Architect to the extent (i) that the withholding is permitted by law, (ii) that Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, or (iii) that Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20. \$5,000.00 will be withheld from any Construction Phase payments until District receives certification of Field Act approval. If the total

amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect 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, Architect shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Architect'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 Architect's records and files regarding, or relating to, any of the work performed by Architect for District on this Project during or after the Project. Architect shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Architect will be responsible for Architect's consultants keeping similar records. District shall be given reasonable access to Architect's Project related records and files for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain those records and files for ten (10) years.

4.8 Architect's hourly rate schedule for its services is attached as *Exhibit A*.

4.9 Architect 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 ARCHITECT**

### **5.1 General**

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect 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 Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Architect shall review the estimate described more fully below at each phase of

Architect's services, also as defined below. If such estimates are in excess of the Project budget, the Architect shall revise the quantity, type or quality of construction to come within the budgeted limit.

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

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

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

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

5.1.7 Architect shall provide a minimum of two (2) full-time employees before construction commences, and one (1) full-time employees after construction commences, to perform its duties and responsibilities under this Agreement. All personnel provided by Architect shall be qualified to perform the services for which they are provided. Architect shall obtain District's written approval of each employee of Architect who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon seven (7) days' written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately.

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

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

## 5.2 Consultants

5.2.1 Architect's Consultants. The Architect shall employ or retain at Architect's own expense, engineers and other consultants necessary to Architect'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 Architect for this Project shall be approved by District prior to their commencement of work. The Architect'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 Architect'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. Architect must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

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

5.2.4 Architect shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect ("DSA"), OPSC and California Department of Education in connection therewith.

### **5.3 Project Assessment and Conceptual Design Phase; Schematic Design Phase**

### 5.3.1 Project Assessment and Conceptual Design Phase

5.3.1.1 Upon authorization by the District to proceed, the Architect shall perform a Project Assessment and Conceptual Design.

5.3.1.2 Architect shall receive from the District, all available reports, record documents, surveys and assessments.

5.3.1.3 Upon completing the assessment of the existing condition and site, the Architect shall provide documentation of existing conditions in the anticipated path of, or where affected by, construction. This work includes, but is not limited to, site visits by the architectural and engineering disciplines to visually observe existing conditions at the project inception and as required for design and documentation of the work and as part of the Architect's design document quality control process. District will provide Architect with access to the site for these purposes.

5.3.1.4 Architect shall review the District's Facility Condition Assessment (FCA) for the projects, and incorporate the scope of work into the program.

5.3.1.5 Architect shall meet with DSA and OUSD department representatives including, but not limited to, the Buildings and Grounds Department, Student Nutrition Services, OUSD Athletic League lead, Early Education Program (if required), and site representatives in order to document noted deficiencies and requested improvements.

5.3.1.6 Architect shall research and identify projects associated with the work that have not been certified with DSA.

5.3.1.7 Architect shall prepare a draft the Project Assessment Report addressing the District's established project priorities for review and publish a formal program recommendation subsequent to the District's review.

5.3.1.8 Based on the review comments and instructions by the District's PM, Architect shall prepare modifications to the final Project Assessment Report for review and approval by the district.

5.3.1.9 Architect shall prepare the Initial Conceptual Design:

5.3.1.9.1 Based upon the District's established project priorities, prepare initial conceptual designs to the extent necessary to define the major elements of the Project. The Architect shall develop conceptual designs as required to obtain District approval of the project scope.

5.3.1.9.2 The Architect shall submit conceptual drawings for the selected design to the District. The Architect shall develop conceptual designs as required to obtain District approval of the project scope.

5.3.1.9.3 The Architect and District PM shall meet at least once with DSA to review the project scope and identify potential design issues that will need to be addressed by the Architect. Architect shall take meeting minutes and distribute as directed.

5.3.1.10 Prepare the cost and scope document and provide an estimated cost of each item listed. Provide three hard copies of the Project Assessment Report in three ring binders and PDF format.

### **5.3.2 Schematic Design Phase**

5.3.2.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.2.3 The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.2.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's governing board's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the schematic design documents.

## 5.4 Design Development Phase

5.4.1 Following District's governing board's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work. The revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District.

5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.



5.4.6 Architect shall provide at no expense to the District one complete set of design development documents for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

## 5.5 Contract Documents Phase

5.5.1 Following the District's governing board's written approval of the design development documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Contract Documents for the written approval of District's governing board consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall ensure that the drawings and specifications are, among other things, complete, accurate, and coordinated so as to eliminate errors, omissions and conflicts, especially between the work of a (sub)consultant and other (sub)consultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Construction Cost for written approval of District's governing board. The Contract Documents shall conform to, comply with, and satisfy 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"). As part of the Contract Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with, and involve, the District in development of the bid documents and bid package, and shall forward them to the District for written approval prior to their use. If the District is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the District in identification and development of the bid documents and bid packages, and shall forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents, including the 100% complete working drawings and specifications, to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such

review by District is not required and does not affect Architect's obligations under this Agreement.

5.5.4 After approval by the District's governing board and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval. At Architect's expense, Architect shall arrange for the scanning of the DSA approved Contract Documents and for the return of the originals and an electronic copy to DSA.

5.5.5 The Architect shall give the District, at the time of DSA approval of the final form of the Contract Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by District's governing board along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for the Contract Documents, the Architect shall consult with, and involve, the District in the process to maximize accuracy and completeness. If the District is intending to enter multiple prime contracts, the Project Construction Cost shall include separate bid estimates for each bid package, plus a reasonable contingency; and the construction schedule shall reflect that multiple contractors will be performing separate bid packages, including a general conditions bid package. The revised Project Construction Cost estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's written approval of the Contract Documents.

## 5.6 Bidding and Negotiations Phase

5.6.1 Following DSA's and District's governing board's written approval of Contract Documents, and District's governing board's written acceptance of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Architect shall also assist the District in obtaining bids, and shall assist the District in evaluating contract proposals or bids and substitutions proposed by contractors, and in awarding the bids. All sets of Contract Documents, which does not include those for the use of the Architect or its consultants, requested by the District in excess of 5 shall be reproduced at District's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost, but Architect will not be entitled to payment for any Basic Services related to making such changes and re-bidding the Project. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Contract Documents one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the District, the Architect shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

## **5.7 Construction Phase**

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

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the

District only to the extent provided in the Contract Documents, unless District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractor.

5.7.4 The Architect shall provide prompt and timely direction to the District, Project

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

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

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* The Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

5.7.7 The Architect 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 Architect may perform its functions under the Agreement and Contract Documents.

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

The Architect must comply with the applicable requirements of the DSA Construction Oversight Process, including but not limited to (a) submitting the inspection card request form (DSA 102-IC), (b) providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card, and (c) directing and monitoring the IOR and laboratories of record, and (d) coordinating with the Owner, Contractor, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

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

5.7.9 The Architect shall visit the site, both as the Architect deems necessary and as requested by the District, but under no circumstances less than once a week, to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the District's Project Inspector.

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

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

advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

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

5.7.13 The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Architect 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 Architect, unless due to Wrongful Acts or Omissions.

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

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

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

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will estimate the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the District that the quality of the completed work is in accordance with the Contract Documents based upon Architect's observations of the completed work, and that the Contractor is entitled to payment for the completed work.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Architect 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. Architect agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Architect 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 Architect, and after such termination, District may pursue claims, lawsuits or other proceedings against Architect.

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

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

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

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

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

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

5.7.20.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the contractor would have added to its original bid 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 Architect’s Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties’ intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Architect 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 Architect 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 Architect’s request District and Architect 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 Architect as described above. If District and Architect do not reach agreement on all four of these items when meeting and conferring, then District and Architect shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Architect can initiate a court action to resolve the dispute.

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

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

5.7.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.



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

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

## **ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT**

6.1 "Additional Services" shall be provided by Architect if authorized in writing by District. No additional compensation shall be paid to Architect for performing these Additional Services unless the District and the Architect 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 Architect without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

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

6.2.1 providing financial feasibility or other special studies;

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

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

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

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

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

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

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

6.2.9 providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 at the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

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

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

## **ARTICLE 8**

### **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

8.1 Prior to the commencement of services under this Agreement, the Architect 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 Architect 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 Architect, or otherwise resulting directly or indirectly from the Architect'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 Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than One Million Dollars (\$1,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than Two Million Dollars (\$2,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Architect 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, Architect 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 Architect's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Architect's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Architect 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. Architect 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 Architect 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, Architect shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Architect 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 Architect's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Architect under this Agreement.

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

8.9 Each of Architect's consultants shall comply with this Article, and Architect 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 Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect 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 Architect 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 Architect is self-insured, the Architect 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 Architect shall furnish to

the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Architect's services, if Architect ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Architect 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 Architect is self-insured, the Architect 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 Architect shall furnish to the District satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least One Million Dollars (\$1,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Architect shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Architect's professional sub-consultants (including consultants of Architect's) shall comply with this Article 10, and Architect 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, Architect 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 Architect's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Architect 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 Architect 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, Architect shall submit evidence

that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Architect 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 Architect under this Agreement.

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

10.9 Each of Architect's consultants shall comply with this Article, and Architect 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 Architect shall be familiar with, and Architect and Architect'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 Architect. In such event, the Architect 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, Architect 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 Architect, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Architect. 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 Architect must cure such breach. In response to such Notice, if the Architect 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 Architect, which shall be effective upon such delivery. In such event, the Architect 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, Architect shall perform any and all services necessary to complete the work in progress as of the date of the termination.

**12.2 Termination by Architect** – 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 Architect 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 Architect 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 Architect, Architect 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, Architect 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



Architect, 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. Architect 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 Architect or any of its agents under this Agreement shall immediately upon request by the District be delivered to the District. Architect 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 Architect may have against the District or a claim by the Architect to an ownership interest in the intellectual property embodied in the documents or materials.

### **ARTICLE 13 ARCHITECT AN INDEPENDENT CONTRACTOR**

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

### **ARTICLE 14 STANDARDIZED MANUFACTURED ITEMS**

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

### **ARTICLE 15 OWNERSHIP OF DOCUMENTS**

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Architect 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 Architect 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 Architect 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 Architect's files for a period of no less than fifteen (15) years. Architect 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 Architect 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 Architect 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 Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Architect 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 Architect represents and warrants that Architect 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 Architect or its consultants prepares or causes to be prepared under this Agreement. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 arising from, pertaining to, or related to Architect's negligence, recklessness or willful misconduct.** The Architect 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 Architect and provided to Architect by the District.

## **ARTICLE 17 ACCOUNTING AND OTHER RECORDS OF ARCHITECT**

17.1 Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles. District has the right to audit Architect's records and files regarding any of the work Architect performed for District on the Project during or after the Project. District shall be given reasonable access to Architect's records and files for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain these records and files for ten (10) years.

## **ARTICLE 18 INDEMNITY**

18.1 **Architect Indemnification.** To the fullest extent permitted by law, including California Civil Code section 2782.8, the Architect 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 Architect, the Architect's officers, employees, or consultants in performing or failing to perform any work, services, or functions under this Agreement.

**The Architect'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 Architect'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 Architect for any amount of Defense Costs paid by Architect in excess of the proportional fault of the Architect to the extent specified in a settlement agreement, arbitration award, or verdict; or Architect 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 Architect 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.

**This indemnification shall apply to all liability, as provided for above.**

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Architect and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Architect's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Architect shall be entitled to such indemnification only if each of the following conditions are met: (a) Architect actually re-draws or completes such other designs or contract documents; (b) Architect complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Architect with the previously prepared documents or materials; and (d) District expressly requests that the Architect 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 Architect 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 Architect and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Architect is delayed in the Architect'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 Architect. District shall not be liable for damages to the Architect 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 This Agreement shall be effective upon execution by the Architect and approval by the District's governing board. The Architect 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

**Architect:** Gelfand Partners Architects  
165 10<sup>th</sup> Street  
San Francisco, California 94103  
Attention: Lisa Gelfand, Managing & Design Principal

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Architect 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. No action or failure to act by the District shall constitute a waiver of any right or duty afforded the District under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach under this Agreement, except as may be specifically agreed to in a written amendment to this Agreement.

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 Architect.

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 Architect, by the execution of this Agreement, acknowledges that the Architect has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

20.10 Prior to executing this Agreement, and if not already done, the Architect 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 from the other party all of its reasonable litigation expense, costs, and fees actually incurred, 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 Architect for claims against the District by a contractor based on allegations of deficiencies in the Architect'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 Architect 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.

#### 20.15 [Not Used]

20.16 BIM. The Architect shall produce a Building Information Model, if the Parties so indicate by checking the adjacent box. The Building Information Model shall be created in accordance with Autodesk® BIM 360™ Building Information Modeling software and file format. The Architect shall utilize the Building Information Model to minimize costs of Services under this Agreement.

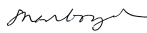
20.16.1 Model Requirements. The Architect shall make the Building Information Model in accordance to the current version of the “National BIM Standard – United States” (“NBIMS”) of the National Institute of Building Sciences. The Architect shall develop each BIM Element to the Level of Development in accordance with generally accepted industry practice by the end of each Project phase.


20.16.2 Model Management and Coordination. The Architect shall manage the Model and coordinate efforts with Consultants to detect and resolve all Clashes. The Architect must require all applicable Consultants engage in Clash detection. In management of the Model, the Architect is responsible for facilitating and establishing the following: the Model coordinate system and units; file storage locations; processes for transferring and accessing Model files; Clash detection procedures; and Model access rights. Furthermore, the Architect is responsible for the following: maintaining record copies of each file received for the Building Information Model; aggregating Building Information Model files; performing Clash detection in accordance with established procedures; maintain Building Information Model Archive and backups; manage Building Information Model access rights; and any additional responsibilities set forth in NBIMS. In the event a Clash is detected, the Architect shall timely resolve the Clash in the Building Information Model, and the Architect shall timely make corresponding corrections to any plan, specification, drawing, model, analysis, estimate, file, document, or item produced under the Services of this Agreement.

20.16.3 Building Information Model Archive. At the end of each Project phase, the Architect is responsible for and shall produce a Building Information Model Archive that cannot be altered for any reason. Each Building Information Model Archive shall consist of two sets of files. The first set shall be a collection of all files the Architect received for the Building Information Model during that Project phase, in both the file format received and all converted file formats. The second set shall consist of the Building Information Model as developed at the end of that Project phase. In the event this Agreement is terminated, the Architect shall create a Building Information Model Archive for the current Project phase up to the date of termination.

\*\*\*\*\*

**DISTRICT:  
OAKLAND UNIFIED SCHOOL DISTRICT**

 10/28/2021  
Shanthi Gonzales, President, Date  
Board of Education

 10/28/2021  
Kyla Johnson-Trammell, Superintendent Date  
and Secretary, Board of Education

 10/1/21  
Tadashi Nakadegawa, Deputy Chief, Date  
Facilities Planning & Management

**ARCHITECT:  
GELEAND PARTNERS ARCHITECTS**

 9/28/2021  
Signature Date

PREIDENT  
Title

**Approved As To Form:**

 9/27/21  
OUSD Facilities Legal Counsel Date



**Exhibit A**  
**RATE SCHEDULE**

<b>Gelfand Partners Hourly Rates</b>	June 2021
Managing Principal Architect.....	\$250
Principal Architect .....	\$210
Landscape Architect.....	\$210
Project Manager .....	\$185
Senior Project Architect .....	\$185
Project Architect .....	\$155
Job Captain.....	\$130
Interior Designer.....	\$130
Technical/Design Staff.....	\$115
Administrative/Clerical Staff .....	\$90
Consultants.....	rate x 1.1
Expenses.....	cost x 1.1

**CONSULTANTS BILLING RATES**

**CaliChi Design Group • Civil**

Principal.....	\$215
Project Manager .....	\$165
Project Engineer.....	\$145
Designer.....	\$120
Administrative / Accounting.....	\$ 65
Clerical/Administrative Assistant.....	\$70

**IDA Structural Engineers • Structural**

Principal.....	\$210-245
Associate / Structural Engineer .....	\$190
Senior Structural Engineer .....	\$190
Structural Engineer .....	\$160-190
Civil Engineer .....	\$125-170
Structural Designer .....	\$120-160
BIM Manager .....	\$120-145
Revit Modeler .....	\$90-135
Administrative Staff .....	\$75-110

**PGA • Landscape Architects**

Principal.....	\$250
Sr. Landscape Architect.....	\$190
Landscape Architect.....	\$160
Senior Associate .....	\$160
Associate.....	\$140-150
Technician/CAD.....	\$120-145
Irrigation Designer.....	\$160
Financial Manager.....	\$175
Administration .....	\$90

**YEI Engineers, Inc • MEP**

Principal.....	\$237
Project/Lead Engineer .....	\$227
Senior Engineer .....	\$204
Engineer .....	\$188
Designer Engineer .....	\$178
AutoCAD/Draftsperson.....	\$116
Administrative Support.....	\$82

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

Contract Term: Intended Start: October 28, 2021  
Intended End: October 1, 2022

Procurement for Architectural Services for Kaiser ES  
for the Early Childhood Outdoor Learning Environment

# Oakland Unified School District

September 3, 2021



DESIGN PRINCIPAL:

LISA GELFAND

PRINCIPAL-IN-CHARGE:

LARRY SCHADT

LEAD ARCHITECT :

MARY RUPPENTHAL

GELFAND PARTNERS ARCHITECTS

165 10TH STREET, SUITE 100 | SAN FRANCISCO, CA 94103 | 415.346.4040

MAIL@[GELFAND-PARTNERS.COM](mailto:GELFAND-PARTNERS.COM)



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## A. COVER LETTER



G E L F A N D  
P A R T N E R S  
A R C H I T E C T S

September 2, 2021

Tadashi Nakadegawa  
Deputy Chief of Facilities Planning and Management  
**Oakland Unified School District**  
955 High Street  
Oakland, CA 94601

**Re: Architectural Services for the Kaiser ES Early Childhood Outdoor Learning Environments**

Dear Mr. Nakadegawa and Members of the Selection Committee:

Gelfand Partners Architects greatly appreciates the opportunity to collaborate with you and your District on this important project to expand and increase access of quality and inclusive early educational spaces at Kaiser ES. We congratulate you on being awarded CDE's Inclusive Early Educational Expansion Program Grant and are excited to partner with you to construct an outdoor play-yard for children with special needs, using nature as a precedent to create an interactive play yard and shade structure including creating more inclusive classroom and restroom environments. **We have similar project experience, including a new Kindergarten Play yard at Addison Elementary School in Palo Alto and a new Child Development Center for the non-profit, Good Samaritan Family Resource Center in San Francisco that you may learn more about in Section C.**

**Oakland Unified School District's mission to build a Full Service Community District focused on high academic achievement while serving the whole child, eliminating inequity and your vision that OUSD students will find joy in their academic experience while graduating with the skills to ensure they are caring, competent, fully-informed, critical thinkers who are prepared for success aligns with our expertise and passion in shaping educational environments that support interactive learning opportunities, student engagement and achievement, collaboration and community to maximize the positive impact and influence of your OUSD facilities for this and future generations.**

Gelfand Partners, a woman-led, full service San Francisco design firm founded in 1997, has been in operation for 24 years. We are a California S Corporation and a Certified B Corporation, with seven licensed architects and 11 other design staff. **Our Team, including consultants, brings forth commitment, passion and experience working both in your community and also similar Early Childhood Outdoor Learning Environments in an integrated design process that ensures an interactive, inclusive and best-value solution.**

Gelfand Partners has worked throughout the Bay Area in advancing the design of schools, affordable housing and civic facilities and extends the benefits of sustainability in alignment with Oakland Unified School District's commitment to maximizing positive outcomes for all. **Gelfand Partners has a successful track record in collaborating with Oakland Unified School District on the Greenleaf TK-8 School and in providing healthy, interactive, inclusive and aspirational Early Childhood Indoor and Outdoor Environments.**

We hope that you will find that Gelfand Partners Architects depth of Early Childhood Education project experience, professional reputation, past work, and overall qualifications and responsiveness align with the needs of Oakland Unified School District in this exciting and important Kaiser ES project.

**Our combination of vision and practicality is unique. Thank you for the opportunity to be of service.**

GELFAND PARTNERS ARCHITECTS

Lisa Gelfand, FAIA, LEED AP  
Managing and Design Principal  
[lisa@gelfand-partners.com](mailto:lisa@gelfand-partners.com)

Mary Ruppenthal, AIA, LEED AP  
Principal Architect, Main Point of Contact  
[mary@gelfand-partners.com](mailto:mary@gelfand-partners.com), cell: 415-640-1479

## B. PROJECT TEAM

### 1. KEY TEAM MEMBERS AND QUALIFICATIONS

**Lisa Gelfand, FAIA, LEED AP**  
**Managing and Design Principal**



Lisa will be heavily involved with your team throughout planning, programming and design for the OUSD projects. She has over 42 years experience in architecture, mostly in the public sector. Lisa's projects include Pre-K through community college educational facilities, a variety of residential, community and commercial facilities, and community based planning projects. Her successful practice of sustainable design led to a seat on the green advisory committee to DSA, participation in the current DSA Getting to Zero cohort, participation on the technical committee for the Collaborative for High Performance Schools (CHPS), and numerous writing and speaking opportunities.

- M.Arch., Yale School of Architecture, BA Yale University, cum laude, distinction in Architecture
- CA Registered Architect #17265
- NY Registered Architect

**Lawrence Schadt, AIA, ASLA, LEED**  
**Principal-in-Charge**



Larry has over 25 years of professional design experience, with 20 in architecture. He has been the project manager for all of Gelfand Partners projects for UC Berkeley. He was the project manager for modernization and new construction of Greenleaf K-8 School for Oakland Unified School District. Previously he was project manager for modernization and expansion of

green design award-winning Loyola and Oak Elementary Schools for Los Altos School District, Fairmeadow and Duveneck Elementary Schools for Palo Alto Unified School District, and C.A.S.H. Merit Award winning Vanden High School for Travis Unified School District. He has served as a contract accessibility plan checker for Oakland DSA, and is experienced in campus design.

- M.Arch., BA Landscape Arch., UC Berkeley
- CA Registered Architect #29266
- CA Registered Landscape Architect #6190

**Mary Ruppenthal, AIA, LEED AP, DBIA**  
**Principal, Lead Architect, Project Manager**



Mary is a licensed architect who brings a swiss army knife skillset in educational planning, design, construction, project management, firm leadership and mentoring experience with over 25 years of professional architectural practice and expertise, specializing in California educational projects. Mary was the Lead Project Architect for many award winning projects, including

Chico USD's \$22M Neal Dow ES, SFUSD's \$35M Abraham Lincoln HS New Classroom Building and Modernization as well as several LAUSD award winning projects, including the \$26M Bell Education and Career Center and \$48M Garfield High School. She is passionate about providing innovative, sustainably responsible, high performance, integrated environments that elevate and enhance user engagement and maximize community outcomes.

- M.Arch., UC Berkeley, BS Arch., UW-Milwaukee
- CA Registered Architect #30908

**Susan Herrington, MLA**  
**Landscape Architect, Landscape Arc. Professor**



Since designing the Infant Garden on the University of California Davis campus eighteen years ago Susan has advocated and designed play spaces for children that incorporate natural elements and bring the magic and mystery of the natural world to the experiences of play. With a joint appointment in Landscape Architecture and Architecture at the University of British Columbia, and with a ten-year collaboration with Gelfand Partners Architects on schools and child care centers, Susan has also helped communities reconsider standardized playgrounds as interactive landscapes. The findings from her study, Seven Cs, have been used by child care licensing officers, landscape architects, park technicians, child care providers, and parents.

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- M.Landscape Arch., Harvard University, BA State University of New York
- CT Registered Landscape Architect
- Author of *Landscape Theory in Design* (2017), *Cornelia Hahn Oberlander: Making the Modern Landscape* (2014), *On Landscapes* (2008) and *Schoolyard Park: 13-acres International Design Competition* (2002)



## 2. STAFFING

Gelfand Partners is organized on the studio system, with project teams formed during the programming stage and remaining consistent through construction. The same principal, project manager, project architect or job captain and consultant team members will remain involved throughout the life of the project.

## 3 CONSULTANT QUALIFICATIONS

### Civil Engineers

#### **CaliChi Design Group - SLBE #7402**

- Reco Prianto, P.E., QSP+QSD, LEED AP  
Principal/Project Manager

CaliChi has an extensive portfolio in the K-14 market over the last 20 years and have a proven DSA track record of successful design, plan, and review services. Their portfolio includes numerous public and private educational clients, including OUSD, covering both renovation and new construction projects and have extensive experience working within occupied campuses during phased construction. They approach every project holistically and believe we are in this as a cohesive team and maintain a vested interest in successful projects outcomes and dedicated focus on opening projects on time and under budget. *A key strength is that they understand the capital improvement and District process, are knowledgeable of the statutes and regulations for building and site design ADA compliance, and are proud of our successful track record with DSA working within project schedules and deadlines.*

### Structural Engineers

#### **IDA Structural Engineers- SLBE #7053**

- Jason M. Lee, SE - Principal
- John Kiland, SE, SECB, F. SEAOC - Associate

IDA Structural Engineers, Inc. is a full-service consulting structural engineering firm originally established in 1986. In our 35 years of business, IDA has developed a reputation for exceptional professional engineering service based on providing technical expertise, sound professional judgment, and prompt, reliable, personal service to our clients. IDA's experience includes new buildings, building studies, seismic assessments, and rehabilitation of a variety of projects.

*IDA is certified as a Small, Local Resident Business Enterprise (SLRBE) by OUSD, expiration date of September 1, 2021, and as a Small Local Business Enterprise (SLBE) by the City of Oakland, #7053, expiration date of August 31, 2021.*

### Landscape Architecture

#### **PGA Design- SLRBE - #003-2019**

- Karen Krolewski, ASLA, CLA #4347- Principal

PGA design is an award-winning landscape architectural studio that creates enduring, and vibrant environments. With a majority of our work being in the public realm, PGA design has accumulated a rich history and portfolio of projects involving the community and various outreach programs. Woven deeply within our projects are inspiring and purposeful designs that enrich the communities in which we live and work. We pride ourselves on possessing core strengths that greatly enhance a project's process such as thorough and attentive communication skills and the development of distinctive design concepts that skillfully navigate the challenges of a community's concerns and city agency conditions to generate consensus and successfully translate a project's vision into reality.

*PGA design is a certified small business (SLBE) with multiple Bay Area agencies in Alameda County, a Micro-Small Business Enterprise with the State of California and an Equal Opportunity Employer.*

### MEP Engineers

#### **YEI Engineers, Inc. - SLBE #2223**

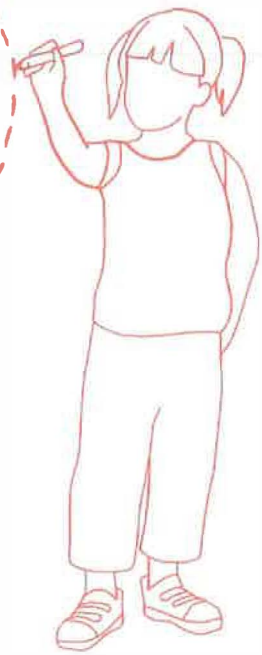
- Patrick Mallillin, PE, LEED AP- Lead Mechanical
- George Cheung, PE., LEED AP - Lead Electrical

YEI Engineers, Inc. (YEI) has been providing mechanical, electrical, and plumbing services to both private and public sector clients since the company was established in July 1975. YEI currently employs a staff of 25 professional engineers, designers, CAD operators, and administrative personnel. Over 75% of our engineers are registered in electrical or mechanical engineering in the State of California. YEI is a certified Small, Local and Emerging Business (SLEB) through City of Oakland.

YEI has provided design and construction support services for a number of unified school districts including OUSD.



### 4. ORGANIZATION CHART



#### A Force for Good

Gelfand Partners Architects is one of just 12 architecture firms in the United States to become a Certified B Corporation, and one of just 4 in California. B Corporations are businesses that meet the highest standards of verified social and environmental performance and work towards reduced inequality, lower levels of poverty, a healthier environment, stronger communities.





## C. EXPERIENCE

### Similar Early Childhood Works Projects

Since K-12 design has been the core of our practice from our founding in 1997, Gelfand Partners has great depth in developing similar modernizations, including those geared towards Early Childhood Education, that extend the influence of proposed interventions. Examples of similar projects:

#### GOOD SAMARITAN CHILD DEVELOPMENT CENTER

The Good Samaritan Family Resource Center's mission is to help vulnerable families, including immigrant families, access needed services, develop self-sufficiency and participate fully as members of the San Francisco Community. The Early Education Childcare Center offers a warm, safe and engaging environment for children ages 2-5 including two childcare classrooms, an outdoor courtyard and administrative support spaces.

Owner:	Good Samaritan Family Resource Center
Location:	San Francisco, CA
Completed:	2021
Final Cost:	\$2,000,000
Principal-in-charge:	Mary Ruppenthal



#### ADDISON KINDERGARTEN PLAY YARD

This playground was part of a much larger school renovation for the Palo Alto Unified School District. When the existing multi-use building was removed, a small area next to the kindergarten classrooms was opened up. Through several meetings with the teachers, we arrived at a plan with a tricycle track surrounding a flat and "bermed" area covered in artificial, padded play turf. Various climbing features were introduced to the small berm. A "playground in a box" was specified that could be rolled out from a storage locker and used in the flat area for children to create play structures from their imagination.

Owner:	Addison Elementary School
Location:	Palo Alto, CA
Completed:	2020
Final Cost:	part of a \$10,000,000 renovation
Principal-in-charge:	Larry Schadt



#### LOS ALTOS STEPPING STONES

Each elementary school in the Los Altos School District has an associated day care area. Gelfand Partners was asked to collaborate with members of the school community to design an outdoor playground with various features. Two age-appropriate play structures were deployed as well as a tricycle track, swings of various configurations, and a variety of play surfaces from artificial turf to spongy paving. The site was very exposed, so a DSA-approved shade structure was installed over a quarter of the play area.

Owner:	Day Care at Covington Elementary School
Location:	Los Altos, CA
Completed:	2015
Final Cost:	\$500,000
Principal-in-charge:	Larry Schadt



### MNC CHILDCARE & PRE-SCHOOL

Gelfand Partners helped MNC create new Headstart and other child development centers across the city. At 1337 Evans Avenue, Gelfand Partners transformed MNC's former Family Resource Center into a new infant and toddler classroom, reconfiguring and opening up the existing spaces. The renovation included the addition of a new kitchen, changing station, and bathroom, in addition to new finishes.

Owner: Mission Neighborhood Centers  
 Location: San Francisco, CA  
 Completed: 2017/2019  
 Final Cost: \$150,000  
 Principal in-charge: Lisa Gelfand



### TENDERLOIN CHILDCARE

The Tenderloin Childcare Center serves 72 children from homeless and formerly homeless families. It offers all-day care, meals and support services for infants, toddlers/pre-schoolers under five, and their families. The building, a conversion of a former boxing gymnasium, houses core educational space, parent resource rooms, counseling spaces, a rooftop garden and play area, and an interior recreation room. The approach toward the project encompassed a feeling of security, shelter and respite from the stresses of family life in San Francisco's Tenderloin neighborhood.

Owner: Compass Family Services  
 Location: San Francisco, CA  
 Completed: 2002  
 Final Cost: \$2,770,715  
 Principal-in-charge: Lisa Gelfand  
 Play Consultant: Susan Herrington



### LAUREL HILL CHILD CARE AND OUTDOOR

Construction at Laurel Hill included a new pre-kindergarten and family resource center building completed in 1995, and a new playground completed in 2001. The new, freestanding 1200 sq. ft. building on the site of the existing cooperative nursery school serves a new program for pre-kindergarten children and as a resource center for parents and staff of the cooperative. In the evenings, the building is used by community groups. The yard design makes the most of the steeply sloping site to create a variety of areas for children's activities. Play spaces occur above, below and next to trees, decks and bridges for a three-dimensional experience.

Owner: Laurel Hill Cooperative Nursery School  
 Location: San Francisco, CA  
 Completed: 2001  
 Final Cost: \$180,000  
 Principal-in-charge: Lisa Gelfand  
 Job Captain: Mary Ruppenthal  
 Landscape Architect: Susan Herrington



Similar Elementary School Works Projects

Education experience of the firm also includes (but is not limited to) new facilities and modernizations for Elementary Schools:

- Lillienthal Elementary
- Cambridge Elementary
- Fair Oaks Elementary School
- Ygnacio Valley Elementary School
- Bryant Elementary Modernization
- Bullis Elementary School
- Chinese Education Center
- SFUSD Clarendon Elementary School
- West Portal Elementary School
- Rosa Parks Elementary School
- SFUSD Alvarado Elementary School
- OUSD Whittier Elementary School

Other relevant school projects above \$5M

- Addison Elementary
- Gordon Lau Elementary School
- Greenleaf K-8 School
- BUSD Silvia Mendez Master Plan
- George Washington High School Seismic
- UCB Valley Life Science Building

Thought leadership in Early Educational Design

Our design team incorporates primary research and proven experience in outdoor play environments that are focused on inclusivity. Below is from a study on outdoor play environments from our outdoor play expert, Susan Herrington:

**seven cs**

Seven Cs links physical conditions of outdoor play environments with what we know about the development of young children.

The Seven Cs includes character, context, connectivity, change, chance, clarity, and challenge.

Each C builds upon another to define the key elements that should be considered by the design team. While our research primarily addresses children age two to five years old, we believe that many of these elements are relevant to play spaces for older children as well.



Greenleaf TK-8 School, CASH/AIA California Honor Award. ©USD



Laurel Hill Nursery School Play Yard, San Francisco



## D. WORK PLAN AND SCHEDULE

Our team is led by senior architects with extensive experience in Bay Area school construction including Lisa Gelfand, Larry Schadt, Mary Ruppenthal and our Early Childhood and Outdoor Environment expert, Susan Herrington; our initial strategy is to design an engaging and inclusive educational environment both to suit the current needs and to give flexibility for future changes. The particular work proposed at Kaiser ES can be divided into technical solutions to existing problems and aesthetic improvements that breathe new life into the facility; both provide opportunities to employ environmentally sensitive responses that support the Early Childhood educational program.

We will work with you and your District staff, users and stakeholders in a collaborative and transparent process to ensure we are meeting all goals with the aim to maximize positive outcomes in inclusivity in process and the educational spaces we are creating.

### Architectural Approach

We use integrative whole building design to create sustainable, exciting, and practical projects.

- Schematic design scopes out the project in existing conditions verifications, analysis of as-built drawings and surveys, input from the District and users to develop options for final selection and cost alignment. We meet with DSA in a Pre-Application meeting in this phase for confirmation of scope and DSA approvals process. Where small projects allow, we seek to submit to DSA via the expedited Over the Counter (OTC) process and will explore this with them in this project.
- Design development refines materials and spaces for flexible, cost effective, and durable facilities
- Construction documents clearly define and coordinate the required work for on time on budget construction
- Construction administration services support achievement of the design intent, schedule adherence, and pride of workmanship.

Our team members roles are identified in Section B, tasks and calendar duration identified in the following schedule and anticipated staff hours as required to support the project.

**See following page for detailed schedule**



Ohlone Elementary School, Palo Alto Unified School District



Fairmeadow Elementary School, Palo Alto Unified School District



Oakland Unified School District - Kaiser Elementary School																											
Proposal Item D: DRAFT Schedule and Potential Project Duration															2021				2022								
													Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	
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<b>4. 100% Construction Documents:</b>																											
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f. Occupancy - Start of School Early August 2022																											
g. Closeout & Certification:																											



**Cost Estimating & Construction Cost Reduction**

As responsible stewards of public dollars for the work that is needed in K-12 school facilities, we are keenly aware of the importance of prioritizing needs vs wants and building in 'relief valves' in project scope as a pre-emptive measure for reducing scope without design change in the event of unforeseen escalations in costs, as we have seen in recent years. Through ongoing cost estimating, a clear understanding of the possibilities, and careful prioritization, we develop a consensus-based approach to project improvements. Our strong track record in these areas is undoubtedly a major reason for our continuing stream of return work from our clients. Components of a successful strategy for staying on budget:

- Detailed discovery phase for existing problems
- Reviews, and sign-offs at decision points for scope control
- Ongoing cost estimating
- Bids with alternates to meet market conditions
- Tight construction documents for change order control
- Active construction administration and monitoring

**Quality Control**

Gelfand Partners' quality control process begins in the earliest phases and continues through project close-out. Close communication among all members of the design team, consultants, owner, contractor and the Division of the State Architect keeps scopes clear, code complying, and accurate. Collaboration with DSA in the Pre-phase is key to avoiding surprises later. Our design process has employs feedback loops confirming the correctness and thoroughness of scope. At milestones, we utilize 'fresh eyes' from a seasoned in-house principal to provide QA/QC review. The techniques identified by CHPS as "integrated design" are part of our standard process. We quantify performance parameters at early stages to align with priorities avoid later changes. Dedicated project staff remain on a project from beginning to end so that their understanding of issues ensures the accuracy of design decisions and associated documents.

**Sustainable Design. Energy LEED & CHPS**

Gelfand Partners is a leader in sustainable design for the public and non-profit clients. Principal Lisa Gelfand, FAIA, LEED AP, has served on the Green Committee of the Advisory Board to DSA, and is author of Sustainable School Architecture, published in 2010. She and Principal Chris Duncan, AIA, LEED AP, coauthored Sustainable Renovation in 2011. Chris also has served on the CHPS Technical Committee developing the criteria for the CHPS program and coordinating them with LEED for Schools. Sustainability is integral to our design process. Our Blach Intermediate School, built in 2001, was the first CHPS school in Northern California. Ten years later, the Public Interest Energy Research study by the New Buildings Institute found that Blach still outperforms 98% of similar schools.

Truly successful sustainable design is also successful in more conventional ways – sustainable buildings require good coordination across the engineering disciplines, an economy of materials and means, appropriate orientation on the site, and a rigorous understanding of the client's requirements. We have been able to design sophisticated green systems for our projects with no additional budget. Our high performance Blach Intermediate School in Los Altos was less expensive than its non-green twin across town. We use smart systems carefully, with awareness of the need to avoid finicky controls. Recent work addresses both additional ventilation required to address Covid-19 and filtration needed to fight smoky skies during fire season.

**CHPS Verified Projects**

- Greenleaf Elementary School, OUSD
- Blach Intermediate School, Los Altos  
First CHPS school to open in Northern California
- Loyola Elementary School, Los Altos  
First CHPS Modernization - CHPS Green Apple Award
- Almond Elementary School, Los Altos
- Ohlone Elementary School, Palo Alto
- Fairmeadow Elementary School, Palo Alto
- Reach Academy (K-5), Oakland



Duveneck Elementary School Palo Alto Unified School District



## E. PROPOSED FEES

Our attitude toward fee proposals is to provide a reasonable fee based on comprehensive services aiming toward a fixed budget rather than developing a low-ball fee based on the bare bones scope requested, then requesting add services when other items get added to a project. We assume that uncertainties in scope and the bidding environment will result in changes in scope up until the time of receipt of bids. We understand that we may develop scope and documentation that is set aside if pricing goes up, but we also expect to develop documentation for scope that initial request might not imagine, but that would greatly benefit the facility. We want to work with the District to provide the most we can for the money available, fulfilling both the basic project scope and providing for other improvement opportunities that might arise. We don't expect to return to the District for additional services unless unexpected circumstances out of our control appear late in our process and require significant re-work.

We propose a fixed fee of 10.0% of the construction cost or \$200,000. We advocate adding an additional 3% of the fee of \$6,000 as a Reimbursable Expenses allowance for items detailed below.

We are open to discussion on the proposed fees.

<b>Gelfand Partners Hourly Rates</b>		June 2021
Managing Principal Architect.....		\$250
Principal Architect.....		\$210
Landscape Architect.....		\$210
Project Manager.....		\$185
Senior Project Architect.....		\$185
Project Architect.....		\$155
Job Captain.....		\$130
Interior Designer.....		\$130
Technical/Design Staff.....		\$115
Administrative/Clerical Staff.....		\$90
Consultants.....	rate x 1.1	
Expenses.....	cost x 1.1	

### Reimbursable Expenses

Reimbursable expenses are in addition to compensation for our Pre-Design Services and Additional Services and include expenses incurred by the Architect and the Architect's employees and consultants in the interest of the Project. Reimbursable expenses generated by additional services will be billed separately.

Reimbursable expenses include (or as otherwise negotiated): ground transportation; electronic and hard copy reproduction costs, including large format scanning; mailing and shipping; additional consultants; permits and fees; renderings, models; and costs of photography; consultant fees not included in the Basic Fees.



Loyola Elementary School, Los Altos School District

## CONSULTANTS BILLING RATES

### CaliChi Design Group · Civil

Principal.....	\$215
Project Manager.....	\$165
Project Engineer.....	\$145
Designer.....	\$120
Administrative / Accounting.....	\$ 65
Clerical/Administrative Assistant.....	\$70

### IDA Structural Engineers · Structural

Principal.....	\$210-245
Associate / Structural Engineer.....	\$190
Senior Structural Engineer.....	\$190
Structural Engineer.....	\$160-190
Civil Engineer.....	\$125-170
Structural Designer.....	\$120-160
BIM Manager.....	\$120-145
Revit Modeler.....	\$90-135
Administrative Staff.....	\$75-110

### PGA · Landscape Architects

Principal.....	\$250
Sr. Landscape Architect.....	\$190
Landscape Architect.....	\$160
Senior Associate.....	\$160
Associate.....	\$140-150
Technician/CAD.....	\$120-145
Irrigation Designer.....	\$160
Financial Manager.....	\$175
Administration.....	\$90

### VEI Engineers, Inc · MEP

Principal.....	\$237
Project/Lead Engineer.....	\$227
Senior Engineer.....	\$204
Engineer.....	\$188
Designer Engineer.....	\$178
AutoCAD/Draftsperson.....	\$116
Administrative Support.....	\$82



**G. OTHER CONTRACT DOCUMENTS**

**LOCAL BUSINESS PARTICIPATION WORKSHEET**

Prime Consultant: Gelfand Partners Architects

RFQ/P: Architect Services for Various Project under \$5M in Construction Cost

Date: 6.16.21

Team Member	Projected Percent of Total Fee Per Team Member	LBE %	SLBE %	SLRBE %	City of Oakland or other approved agency. Certification Number and Expiration Date.
<b>Prime Company:</b> Address: Gelfand Partners Architects 165 10th St, Suite 100 Phone: (415) 346-4040 Email: mail@gelfand-partners.com	50%				
<b>Company:</b> Calichi Design Group Address: 3240 Peralta St. #3 Phone: (510) 250-7877 Email: louise@calichi.com	5%		YES		SLBE #7402 Expiration: 2022-03-31
<b>Company:</b> PGAdesign, Inc Address: 444 17th Street Phone: (510) 465-1284 Email: admin@pgadesign.com	5%		YES	YES	SLRBE #003-2019 Expiration: 2021-09-01
<b>Company:</b> IDA Structural Engineers Address: 1629 Telegraph Ave, Suite 300 Phone: (510) 834-1629 Email: info@ida-se.com	20%		YES	YES	SLBE #7053 Expiration: 2021-08-31  SLRBE # Expiration: 2021-08-01
<b>Company:</b> YEI Engineers, Inc. Address: 7677 Oakport Street, Suite 200 Phone: (510) 383-1050 Email: yei@heiengineers.com	20%		YES		SLBE #2223 Expiration: 2022-08-31
<b>Company:</b> Address: Phone: Email:					
<b>TOTAL PARTICIPATION</b>	100%		50%	25%	

Approval – LBU Compliance Officer



Oakland Unified School District - Kaiser Elementary School				2021			2022								
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g. Closeout & Certification:															





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/14/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549	<b>CONTACT NAME:</b> Doris A Chambers <b>PHONE (A/C. No. Ext):</b> 510-465-3090 <b>E-MAIL ADDRESS:</b> Doris.Chambers@AssuredPartners.com	<b>FAX (A/C. No.):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
License#: 6003745 GELFAPART	<b>INSURER A:</b> Aspen American Insurance Company	<b>NAIC #</b> 43460
<b>INSURED</b> Gelfand Partners Architects 165 Tenth Street, Suite 100 San Francisco CA 94103	<b>INSURER B:</b> Travelers Property Casualty Company of America	25674
	<b>INSURER C:</b> The Travelers Indemnity Company of Connecticut	25682
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 974423350

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	6806S421239	8/24/2021	8/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<input type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BA6S423614	8/24/2021	8/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	Y	Y	CUP6S425484	8/24/2021	8/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	<input type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB6S422979	8/7/2021	8/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	<input type="checkbox"/> Professional Liability <input type="checkbox"/> Claims Made			AAAE10000703	8/1/2021	8/1/2022	\$2,000,000 per Claim \$4,000,000 Annl Aggr

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

REF: KAISER CHILD DEVELOPMENT CENTER OUTDOOR LEARNING ENVIRONMENT PROJECT. GENERAL LIABILITY/AUTOMOBILE LIABILITY  
 ADDITIONAL INSURED: Oakland Unified School District, its directors, officers, employees, and representatives are named as Additional Insured as respects General Liability and Auto Liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation. 30 Day Notice of Cancellation.

**CERTIFICATE HOLDER****CANCELLATION** 30 Day NOC/10 Day for NonPay of Prem

Oakland Unified School District Facilities Planning & Mgmt. Attn: Juanita Hunter 955 High Street Oakland CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Names of Additional Insured Person(s) or Organization(s):**

Any person or organization that you agree in a written contract, on this Coverage Part, provided that such written contract was signed and executed by you before, and is in effect when the "bodily injury" or "property damage" occurs or the "personal injury" or "advertising injury" offense is committed.

#### **Location of Covered Operations:**

Any project to which an applicable written contract with the described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

**A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

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

This insurance does not apply to "bodily injury" or "property damage" occurring, or "personal injury" or "advertising injury" arising out of an offense committed, after:

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

#### **Name Of Additional Insured Person(s) Or Organization(s):**

Any person or organization that you agree in a written contract to include as an additional insured on this Coverage Part for "bodily injury" or "property damage" included in the "products-completed operations hazard", provided that such contract was signed and executed by you before, and is in effect when, the bodily injury or property damage occurs.

#### **Location And Description Of Completed Operations**

Any project to which an applicable contract described in the Name of Additional Insured Person(s) or Organization(s) section of this Schedule applies.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the

location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



**WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY**

**ENDORSEMENT WC 99 03 76 ( A) –**

**POLICY NUMBER:** UB6S422979

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS  
ENDORSEMENT – CALIFORNIA  
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' compensation premium.

**Schedule**

**Person or Organization**

**Job Description**

Any Person or organization for which the insured has agreed by written contract executed prior to loss to furnish this waiver.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Insurance Company  
Travelers Property Casualty Company of America

Countersigned by \_\_\_\_\_



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Kaiser CDC Outdoor Learning Environment Project	<b>Site</b>	910
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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.**

<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
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### Contractor Information

<b>Contractor Name</b>	Gelfand Partners Architects	<b>Agency's Contact</b>	Lisa Gelfand
<b>OUSD Vendor ID #</b>	001809	<b>Title</b>	Principal
<b>Street Address</b>	165 10 <sup>th</sup> Street	<b>City</b>	San Francisco
<b>Telephone</b>	415-346-4040	<b>State</b>	CA
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Zip</b>	94103
<b>OUSD Project #</b>	21112	<b>Worked as an OUSD employee?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	10-28-2021	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	10-1-2022
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$206,000.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### 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
6128	Fund 120 CDE	120-6128-0-8500-1000-5825-910-9100-8500-9999-99999	5825	\$206,000.00

### 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>Acting Director, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	10/1/21		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b> Lozano Smith, as to form only	<b>Date Approved</b>	9/27/21		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	10/1/21		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b> Shanthi Gonzales				
	<b>Signature</b>	<b>Date Approved</b>	10/28/2021		