

Board Office Use: Legislative File Info.	
File ID Number	24-0789
Introduction Date	4-24-2024
Enactment Number	24-0709
Enactment Date	4/24/2024 er



Memo

To Board of Education

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

Board Meeting Date April 24, 2024

Subject Agreement for Professional Design & Management Services – Shah Kawasaki Architects – Cal Fire Grant Manzanita Elementary School Implementation Project – Division of Facilities Planning and Management

Acton Requested Approval by the Board of Education to the Agreement for Professional Design & Management Services by and between the District and Shah Kawasaki Architects, Oakland, CA, for the latter to provide to provide architectural services which consists of administrative design planning management, during the design, planning and construction phases of a living schoolyard project for the Cal Fire Grant Manzanita Elementary School Implementation Project, in the not-to-exceed amount of \$226,925.00, which includes a not-to-exceed amount of \$20,402.50, for Basic Services, a not-to-exceed amount of \$20,402.50, for additional services, and a not-to-exceed amount of \$2,500.00 for reimbursable expenses, as the selected consultant, with work scheduled to commence on April 25, 2024, and scheduled to last until April 30, 2026, pursuant to the Agreement.

Discussion Shah Kawasaki Architects was chosen through an RFP (a) demonstrated competence and professional qualifications (Government Code §4526), and (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)

LBP (Local Business Participation Percentage) 100.00%

Recommendation Approval by the Board of Education to the Agreement for Professional Design & Management Services by and between the District and Shah Kawasaki Architects, Oakland, CA, for the latter to provide to provide architectural services which consists of administrative design planning management, during the design, planning and construction phases of a living schoolyard project for the Cal Fire Grant Manzanita Elementary School Implementation Project, in the not-to-exceed amount of \$226,925.00, which includes a not-to-exceed amount of \$20,402.50, for Basic Services, a not-to-exceed amount of \$20,402.50, for additional services, and a not-to-exceed amount of \$2,500.00 for reimbursable expenses, as the selected consultant, with work scheduled to commence on April 25, 2024, and scheduled to last until April 30, 2026, pursuant to the Agreement.

Fiscal Impact Fund 1 General Funds Cal Fire Grant Implementation

Attachments

- Contract Justification Form
- Agreement, including Exhibits

- Certificate of Insurance
- Routing Form



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 24-0789

Department: Facilities Planning and Management

Vendor Name: Shah Kawasaki Architects

Project Name: Cal Fire Grant Manzanita Elementary School Implementation

Project No.: 24103

Contract Term: Intended Start: April 25, 2024

Intended End: April 30, 2026

Total Cost Over Contract Term: \$226,925.00

Approved by: Preston Thomas

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

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

Shah Kawasaki Architects, was selected through an RFQ/P process, based on scores and specially trained services.

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

Shah Kawasaki Architects, will to provide architectural services which consists of administrative design planning management, during he design, planning and construction phases of a livings schoolyard project at Manzanita Elementary School Site.

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 RFQ/P process, which includes review/scoring of proposals. Shah Kawasaki Architects was selected based on the highest interview scores and because their prices were 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 (including sole source) – *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 RFQ/RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$109,300 or less (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- 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 \$109,300 (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

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

- Consultant is providing architectural services for the District at the Manzanita Elementary School site.

AGREEMENT
FOR
PROFESSIONAL DESIGN AND MANAGEMENT SERVICES
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND
SHAH KAWASAKI ARCHITECTS
FOR
CAL FIRE GRANT MANZANITA ELEMENTARY SCHOOL IMPLEMENTATION
PROJECT

April 25, 2024

OAKLAND UNIFIED SCHOOL DISTRICT
Facilities Planning & Management Department
955 High Street
Oakland, California 94601

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS1

ARTICLE 2 – RETENTIONS OF CONSULTANT; STANDARD OF CARE2

ARTICLE 3 – DESCRIPTION OF PROJECT2

ARTICLE 4 – COMPENSATION 3

ARTICLE 5 – BASIC SERVICES TO BE RENDERED BY CONSULTANT..... 5

ARTICLE 6 – ADDITIONAL SERVICES TO BE RENDERED BY CONSULTANT17

ARTICLE 7 – RESPONSIBILITIES OF DISTRICT.....18

ARTICLE 8 – PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE19

ARTICLE 9 – WORKERS COMPENSATION INSURANCE21

ARTICLE 10 – ERRORS AND OMISSIONS INSURANCE 21

ARTICLE 11 – COMPLIANCE WITH LAWS 23

ARTICLE 12 – TERMINATION OF AGREEMENT 23

ARTICLE 13 – CONSULTANT AN INDEPENDENT CONTRACTOR 24

ARTICLE 14 – STANDARDIZED MANUFACTURED ITEMS 25

ARTICLE 15 – OWNERSHIP OF DOCUMENTS 25

ARTICLE 16 – LICENSING OF INTELLECTUAL PROPERTY 25

ARTICLE 17 – ACCOUNTING AND OTHER RECORDS OF CONSULTANT 26

ARTICLE 18 – INDEMNITY 26

ARTICLE 19 – TIME SCHEDULE27

ARTICLE 20 – MISCELLANEOUS PROVISIONS 28

**AGREEMENT
FOR
PROFESSIONAL DESIGN AND MANAGEMENT SERVICES**

This Agreement for Professional Design and Management Services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and Shah Kawasaki Architects (“Consultant”) with a Landscape Architect, license number C-29075 (the “Landscape 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 Landscape Architect.
- B. Consultant represents that Landscape Architect is licensed to provide landscape 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 Consultant will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

**ARTICLE 1
DEFINITIONS**

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

1.2 **Agreement.** “Agreement” shall mean this Agreement for Professional Design and Management Services.

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

1.4 **Basic Services.** Consultant’s Basic Services consist of the design services (including landscape architectural services and landscape irrigation design, and civil, structural, mechanical, and electrical engineering services) required by this Agreement and 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 landscape 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 the 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 and post-construction closeout thereof, including the Consultant'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 Consultant 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 Consultant’s and Landscape Architect’s acts or omissions in breach of this Agreement, the applicable standard of care, or law.

ARTICLE 2 RETENTION OF CONSULTANT; STANDARD OF CARE

2.1 District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the landscape architectural and engineering services specified in this Agreement and related incidental services. The Consultant agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The term for the performance of Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Consultant shall complete the Services within the Term. The Services shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by Landscape 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”). Landscape Architect shall be responsible for the completeness and accuracy of the plans and specifications.

**ARTICLE 3
DESCRIPTION OF PROJECT**

3.1 The Project concerning which such professional design and management services shall be provided is described as:

Cal Fire Grant Manzanita Elementary School Implementation Project

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

**ARTICLE 4
COMPENSATION**

4.1 **Basic Services.** For the Basic Services satisfactorily performed under this Agreement, Consultant shall be compensated according to its hourly rate schedule (Section 4.8, below). Consultant's total compensation for its Basic Services shall not exceed TWO HUNDRED FOUR THOUSAND TWENTY-TWO DOLLARS AND FIFTY CENTS (\$204,022.50), which is Consultant's estimate of the maximum total cost of its Basic Services on the Project, based on its March 7, 2024, fee estimate. However, Consultant will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Consultant acknowledges that the not-to-exceed fee for Basic Services, above, includes contingency compensation in the foreseeable event that more time and costs may be necessary to complete the Basic Services.

4.2 **Additional Services.** Consultant may invoice separately for Additional Services if provided by Consultant under Article 6, but the Consultant's total contingency compensation for Additional Services shall not exceed TWENTY THOUSAND FOUR HUNDRED TWO DOLLARS AND FIFTY CENTS (\$20,402.50). However, Consultant 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 Consultant's performance of Basic or Additional Services under this Agreement ("Reimbursable Expenses"). Consultant 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 Consultant and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Consultant 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 Consultant shall be reimbursed by District for its Reimbursable Expenses on the Project. Consultant's total reimbursement for Reimbursable Expenses shall not exceed TWO THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$2,500), which is Consultant'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 TWENTY-SIX THOUSAND NINE HUNDRED TWENTY-FIVE DOLLARS AND NO/100 (\$226,925.00). 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 Consultant'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 hours spent on the activity, the person performing it, and the person's rate of compensation. Consultant'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 Consultant of the dispute and, upon Consultant's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Consultant shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Consultant shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Consultant 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; Consultant otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Consultant'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 Consultant 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 Consultant is responsible under Section 5.7.20. \$1,000.00 will be withheld from any Construction Phase payments until District receives certification of Field Act approval. If the total amount invoiced by Consultant reaches the not-to-exceed Basic Services amount before Consultant's Basic Services under this Agreement are complete, Consultant 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, Consultant shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Consultant'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 Consultant's records and files regarding, or relating to, any of the work performed by Consultant for District on this Project during or after the Project. Consultant shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Consultant will be responsible for Consultant's sub-consultants keeping similar records. District shall be given reasonable access to Consultant's Project related records and files for audit purposes within ten (10) days of receipt of District's request. Consultant shall keep and maintain those records and files for ten (10) years.

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

4.9 Consultant 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 CONSULTANT

5.1 General

5.1.1 Consultant's Basic Services consist of the design services, including landscape 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 Consultant's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Consultant shall expeditiously and diligently perform all of its work and obligations under this Agreement. Consultant 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 Consultant acknowledges that its priority is to complete the Project and the Consultant'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 Consultant shall review the estimate described more fully below at each phase of Consultant's services, also as defined below. If such estimates are in excess of the Project budget, the Consultant shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Consultant's services include the presentation to the District of Project Construction Cost, the Consultant 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 Consultant 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 Consultant and Consultant's Sub-consultants shall cooperate with District and the District's consultants in verifying that Consultant'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, Consultant shall attend those meetings.

5.1.6 The Consultant 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. Consultant's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Consultant shall provide a minimum of one (1) full-time employees before construction commences, and one (1) full-time employees after construction commences, to perform its duties and responsibilities under this Agreement. All personnel provided by Consultant shall be qualified to perform the services for which they are provided. Consultant shall obtain District's written approval of each employee of Consultant who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon five (5) days' written notice, cause Consultant 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, Consultant shall provide them immediately.

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

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

5.2 Consultants

5.2.1 Consultant's Sub-consultants. The Consultant shall employ or retain at Consultant's own expense, engineers and other consultants necessary to Consultant's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and Sub-consultants retained or employed by Consultant for this Project shall be approved by District prior to their commencement of work. The Consultant's Sub-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 Consultant's Sub-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. Consultant must disclose to District all such Sub-consultants employed or retained, and the compensation paid to those

retained.

5.2.2 District's Consultants. Consultant 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, including assistance to Consultant in performance of its duties under this Agreement.

5.2.3 The Consultant 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 Consultant any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 If required by District, Consultant 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 Consultant any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Consultant shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Consultant shall be responsible for all submittals required of the Consultant 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 Consultant shall perform a Project Assessment and Conceptual Design.

5.3.1.2 Consultant 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 Consultant 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 Landscape

Architect 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 Consultant's design document quality control process. District will provide Consultant and Sub-consultants with access to the site for these purposes.

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

5.3.1.7 Consultant 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, Consultant shall prepare modifications to the final Project Assessment Report for review and approval by the district.

5.3.1.9 Consultant 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 Consultant shall develop conceptual designs as required to obtain District approval of the project scope.

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

5.3.1.9.3 The Consultant 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 Consultant. Consultant 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 Consultant shall review all information concerning the Project delivered or

communicated by the District to the Consultant 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 Consultant 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 Consultant shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost and/or duration of the Project.

5.3.2.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Consultant 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, Consultant 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 Consultant 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. Consultant 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, Consultant shall provide all necessary landscape architect 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 landscape architect, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Consultant 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, Consultant 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 Consultant 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. Consultant 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 Consultant 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 Consultant 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. Consultant shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Consultant shall provide a copy of all such documents to the District.

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

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

5.4.6 Consultant 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 Consultant 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 landscape architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Consultant 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 the Landscape Architect and other sub-consultants or the Consultant; and Consultant may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Consultant 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, Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant's obligations under this Agreement.

5.5.4 After approval by the District's governing board and any constructability review, the Consultant shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval. At Consultant's expense, Consultant 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 Consultant shall give the District, at the time of DSA approval of the final form of the Contract Documents, Consultant'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 Consultant 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. Consultant 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 Consultant's final estimate of Project Construction Cost and construction schedule, Consultant shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Consultant shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Consultant 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 Consultant or its Sub-consultants, requested by the District in excess of five (5) shall be reproduced at District's expense.

5.6.2 Consultant'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 Consultant'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 Consultant'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%), Consultant shall, on request by District and as part of Consultant'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 Consultant will not be entitled to payment for any Basic Services related to making such changes and re-bidding the Project. In making such changes, Consultant will exercise Consultant'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 Consultant's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Consultant may, as an alternative, include in the Contract Documents one or more deductive alternatives so that Consultant and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Consultant's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the District, the Consultant 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 Consultant'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 Consultant 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 Consultant 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 Consultant unless otherwise directed by the District. The Consultant shall advise and consult with the District in the general administration of the Project. The Consultant 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 Consultant shall timely provide District with copies of all of its correspondence with the Contractor.

5.7.4 The Consultant shall provide prompt and timely direction to the District, Project inspectors and/or Contractor as to the interpretation of Contract Documents. Consultant 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 Consultant shall respond as soon as reasonably possible, if not immediately. If the Consultant is not able to take action within the time required due to reasons beyond Consultant's control, the Consultant may take action within a reasonable period of time under the circumstances; however, the Consultant 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 Consultant cannot take action within the time required, what the Consultant is doing to expedite its response, when the Consultant 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 Consultant's own knowledge of the Project (including documents in Consultant's possession or reasonably available to it), Consultant 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 Consultant cannot guarantee precise accuracy of such drawings, Consultant shall exercise

reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Consultant shall have no responsibility for their conformity to field conditions, except that in the event that the Consultant, consistent with standards of due care, becomes aware of non-conformity with field conditions, Consultant shall have a duty immediately to notify the District in writing. Consultant 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 Consultant 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 Consultant may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Consultant shall remain responsible for supervising such Contractor to ensure performance of this task. Consultant shall provide a copy of all such notifications to the District.

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

5.7.8 In the discharge of its duties of observation and interpretation, the Consultant 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 Consultant 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.

Unless assigned to another party (such as a construction manager) by the District in writing, Consultant has the primary responsibility for the Project to supervise, coordinate and manage the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District and Consultant itself, with the DSA Construction Oversight Process.

The Consultant 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 Consultant 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 Consultant'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 Consultant shall visit the site, both as the Consultant deems necessary and as requested by the District, but under no circumstances less than one weekly visit per site, 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 Consultant has agreed in writing to serve as the District's Project Inspector.

5.7.10 The Consultant 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. Consultant will exercise reasonable care in the discharge of Consultant's obligation to discover significant defects and faults.

5.7.11 The Consultant 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 Consultant shall take such action as soon as possible. If Consultant is not able to take such action within the required time due to reasons beyond Consultant's control, the Consultant may take action within a reasonable period of time under the circumstances; however, the Consultant 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 Consultant cannot take action within the time required, what the Consultant is doing to expedite its response, when the Consultant 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 Consultant will have the authority to reject work and materials which do not conform to the Contract Documents. The Consultant's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Consultant's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Consultant 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 Consultant will also recommend substitution of materials or equipment when, in the Consultant'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 Consultant 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 Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Consultant 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 Consultant, unless due to Wrongful Acts or Omissions.

5.7.14 The Consultant 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 Consultant will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Consultant 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 Consultant 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 Consultant 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. Consultant 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, Consultant shall provide such certification as to Hazardous Substances as is required of Consultants for such projects by the OPSC.

5.7.16 Based on the Consultant's observations, and an evaluation of each Project Application for Payment, the Consultant 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 Consultant's estimation of the amount of work completed by Contractor shall constitute representations by the Consultant to the District that the quality of the completed work is in accordance with the Contract Documents based upon Consultant'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 Consultant 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. Consultant agrees to toll all statutory periods of limitations for District's

claims, lawsuits or other proceedings against Consultant 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 Consultant, and after such termination, District may pursue claims, lawsuits or other proceedings against Consultant.

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

5.7.19 The Consultant shall recommend, prepare and process the necessary change orders. Payment of fees to the Consultant 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 Consultant'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 Consultant shall be paid for time spent on the proposed change order.

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

5.7.19.3 Change orders beyond District or Consultant 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 Consultant shall be responsible for the following:

5.7.20.1 In the event of such a change order, Consultant 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 Consultant'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, Consultant 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 Consultant 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 Consultant's request District and Consultant 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 Consultant as described above. If District and Consultant do not reach agreement on all four of these items when meeting and conferring, then District and Consultant shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Consultant can initiate a court action to resolve the dispute.

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

5.7.22 The Consultant 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. Consultant shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Consultant shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted Consultant 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 Consultant 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 Consultant has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Consultant shall remedy the violation at its own cost. **Consultant 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 Consultant's negligence, recklessness or willful misconduct.** The Consultant 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 Consultant, nor shall Consultant 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 Consultant's design is reviewed by DSA. In the event that the Consultant is or becomes aware of possible non-compliance with the foregoing standards, Consultant 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 Consultant, whether supplied by District or by Consultant, which are relied upon, altered or otherwise utilized by Consultant, Consultant shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Consultant under this Agreement.

ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY CONSULTANT

6.1 “Additional Services” shall be provided by Consultant if authorized and directed in writing by District. Compensation for Additional Services shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement, unless otherwise agreed by the Parties in a Board-approved amendment. Any services performed by Consultant without such written authorization and direction 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 Consultant;

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 Consultant's or its Sub-consultants' alleged Wrongful Acts or Omissions;

6.2.9 providing services of sub-consultants for other than the normal landscape architect, 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 Landscape Architect 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 Consultant 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 Consultant and advise the Consultant of decisions thereon within a reasonable time after submission;

7.5 issue appropriate orders to Contractors through the Consultant;

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 Consultant;

7.7 furnish the services of a hydrologist or other sub-consultants not routinely provided by the Consultant when such services are reasonably required by the scope of the Project and are requested by the Consultant;

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 Consultant. 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 Consultant; 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 Consultant of Consultant'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 Consultant 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 Consultant 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 Consultant, or otherwise resulting directly or indirectly from the Consultant'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 Consultant and Sub-consultants 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 Two Million Dollars (\$2,000,000) general aggregate with One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage; 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) aggregate with One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit. If liability insurance is not reasonably available on an occurrence basis, Consultant and Sub-consultants 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, Consultant 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 Consultant's obligations to the District under any provision, including any duty to indemnify and defend the District.

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

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

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

8.9 Each of Consultant's Sub-consultants shall comply with this Article, and Consultant 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 Consultant shall furnish to the District satisfactory proof that the Landscape Architect and all engineers, experts, sub-consultants and subcontractors the Consultant 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 Consultant employs any engineer, expert, sub-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 Consultant is self-insured, the Consultant 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 Consultant shall furnish to the District satisfactory proof that the Landscape Architect and all engineers, experts, sub-consultants and subcontractors the Consultant intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Consultant's services, if Consultant ever intends to employ additional or different engineers, experts, sub-consultants or subcontractors, before so employing them Consultant 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 Consultant is self-insured, the Consultant 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 Consultant shall furnish to the District satisfactory proof that the Consultant and the sub-consultants has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000) aggregate with One Million Dollars (\$1,000,000) per occurrence, 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, Consultant and sub-consultants shall provide errors and omissions insurance on a claims-made basis.

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

10.5 Consultant and sub-consultants 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 Consultant and sub-consultants 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, Consultant shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Consultant 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 Consultant under this Agreement.

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

10.9 Each of Consultant's Sub-consultants shall comply with this Article, and Consultant 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 Consultant shall be familiar with, and Consultant and Consultant's services and 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, in whole or in part, for the District's convenience and without cause at any time immediately upon written notice to the Consultant. In such event, the Consultant 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, Consultant 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 Consultant, the District may also terminate the Agreement, in whole or in part, for cause by delivering written Notice of Intent to Terminate to the Consultant. 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 Consultant must cure such breach. In response to such Notice, if the Consultant 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 Consultant, which shall be effective upon such delivery. In such event, the Consultant 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, Consultant shall perform any and all services necessary to complete the work in progress as of the date of the termination.

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

ARTICLE 13 CONSULTANT AN INDEPENDENT CONTRACTOR

13.1 It is specifically agreed that in the making and performance of this Agreement, the Consultant 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 Consultant 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 Consultant and Sub-consultants 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 Consultant 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 Consultant 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 Consultant's files for a period of no less than fifteen (15) years. Consultant 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 Consultant 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 Consultant shall require any and all subcontractors and sub-consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or sub-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 Consultant and retains another certified Consultant or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Consultant and its sub-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 Consultant represents and warrants that Consultant 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 Consultant or its sub-consultants prepares or causes to be prepared under this Agreement. **Consultant 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 Consultant's negligence, recklessness or willful misconduct.** The Consultant 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 Consultant and provided to Consultant by the District.

ARTICLE 17 ACCOUNTING AND OTHER RECORDS OF CONSULTANT

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

ARTICLE 18 INDEMNITY

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

The Consultant’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 Consultant’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 Consultant for any amount of Defense Costs paid by Consultant in excess of the proportional fault of the Consultant to the extent specified in a settlement agreement, arbitration award, or verdict; or Consultant 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 Consultant 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 Consultant and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Consultant's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Consultant shall be entitled to such indemnification only if each of the following conditions are met: (a) Consultant actually re-draws or completes such other designs or contract documents; (b) Consultant complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Consultant with the previously prepared documents or materials; and (d) District expressly requests that the Consultant utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

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

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Consultant and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Consultant is delayed in the Consultant'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 Consultant. District shall not be liable for damages to the Consultant 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 Consultant and approval by the District's governing board. The Consultant 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 Hyde Street
Oakland, CA 94601
Attention: Preston Thomas, Chief Systems & Services Officer, Division of
Facilities Planning and Management

Architect: Shah Kawasaki Architects
570 10th Street
Oakland, CA 94607
Attention: Philip Luo

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Consultant 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 Consultant.

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

20.9 The Consultant shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Consultant's professional materials. The Consultant's materials shall not include the District's confidential or proprietary information if the District has previously advised the Consultant 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 Consultant 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 Consultant for claims against the District by a contractor based on allegations of deficiencies in the Consultant'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 Consultant shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1 for its employees, including the Consultant as a sole proprietor (if applicable). Before performing

any Services, Consultant shall execute and return the District’s Fingerprinting Notice and Acknowledgement form and the required certification (see *Exhibit C*).

Consultant further agrees and acknowledges that if at any time during the Term of this Agreement Consultant learns or becomes aware of information which differs in any way from the information learned as a result of compliance with the above requirements, or Consultant adds personnel who will provide Services under this Agreement, Consultant shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

20.14 Before performing any Services, Consultant shall prepare, execute, and submit all forms that may be required by law for this Agreement, including but not limited to a roof project certification (Public Contract Code §3006), disabled veteran business enterprises (“DVBE”) certification (Education Code §17076.11), and an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Consultant shall use the District’s versions of these forms, which the District shall make available upon request.


20.15 [Not Used]

20.16 Sanctions in Response to Russian Aggression. The District requires Consultant to comply with the Governor’s March 4, 2022, Executive Order N-6-22 (“Order”) relating to any existing sanctions imposed by the United States government and the State of California in response to Russia’s actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

* * * * *


**DISTRICT:
OAKLAND UNIFIED SCHOOL DISTRICT**

**ARCHITECT:
Shah Kawasaki Architects**




Benjamin Davis, President,
Board of Education

4/25/2024
Date



Signature Date


Philip Luo / Principal



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

4/25/2024
Date

Name & Title



Preston Thomas, Chief Systems &
Services Officer, Facilities Planning and Management

Apr 5, 2024
Date

Preston Thomas (Apr 5, 2024 17:51 PDT)

Approved As To Form:



3/28/24

OUSD Facilities Legal Counsel

Date

Exhibit A
RATE SCHEDULE



Fee Summary

Proposed Fee:	\$204,022.50
Reimbursables:	\$2,500.00
10% Contingency:	\$20,402.50
Not to Exceed Fee:	\$226,925

Assumptions

The following assumptions are made as part of this fee proposal:

- This fee proposal is based on a \$1.5 million budget for a single school site.
- This fee proposal is based on the project duration shown on the Detailed Work Plan.
- Design services and consultants not identified in this proposal are excluded from this project but can be added for an additional service.
- SKA shall attend live meetings noted in the Tasks and Associated Costs page. Additional meetings shall be scheduled as Zoom or virtual meetings. Regular meetings with design consultants shall be scheduled as virtual meetings.
- Unless otherwise noted, all drawings and reports for District review will be submitted in PDF format.

Hourly Rates

Shah Kawasaki Architects

Principal.....	\$265
Architect 3.....	\$210
Architect 2.....	\$185
Architect 1.....	\$160
Architectural Staff 3.....	\$190
Architectural Staff 2.....	\$165
Architectural Staff 1.....	\$145
Recent Graduate.....	\$130
Administrative Staff.....	\$130

Siegfried

Managing Principal	\$274
Principal	\$245
Design Principal	\$235
Senior Associate	\$216
Associate	\$192
Project Engineer	\$182

Engineer II	\$167
Engineer I	\$149
Project Landscape Architect	\$180
Landscape Architect II	\$155
Landscape Architect I	\$129
Project Land Surveyor	\$182
Surveyor II	\$165
Surveyor I	\$145
Survey Crew, 2 Person	\$295
Survey Crew, 1 Person	\$195
Survey Party Chief	\$222
Instrumentman	\$189
Chainmen/Rodman	\$160
BIM Manager	\$163
Senior Technician	\$145
Technician III	\$129
Technician II	\$110
Technician I	\$ 95
Expert Witness	\$418
Clerical	\$ 84

Pine House Edible Gardens

Leslie Bennett.....	\$250
Holly Kuljian.....	\$250
Anna Oznowicz.....	\$200

Interface Engineering

Senior Principal.....	\$375
Principal.....	\$325
Associate Principal.....	\$265
Associate / Project Manager.....	\$250
Sr. Engineer / Designer.....	\$220
Engineer / Designer.....	\$175
Project Designer / Drafter.....	\$155
Administrative.....	\$125

Moore Twinning Associates, Inc.

Principal Engineer.....	\$184
Registered Geotechnical Engineer.....	\$158
Registered Civil Engineer.....	\$137
Certified Engineering Geologist.....	\$132
Professional Geologist.....	\$100
Project Engineer / Geologist.....	\$90
Staff Engineer / Geologist.....	\$79
Project Manager.....	\$90

* The fee proposal is a fixed fee. The rates are provided for information purposes as a basis for additional services calculations. The rates are applicable to the four years of the agreement and will be adjusted should there be an amendment for contract extension.

Tasks and Associated Costs			SKA	PINE HOUSE	SIEGFRIED	SIEGFRIED	SIEGFRIED
			ARCH	EDIBLE GARDENS	ESA (SOILS)	GEOTECH*	CIVIL/SURVEY
1.00	Initiation	HR	16	10.5	95	37	56
1.01	Kick-off meeting / site tour	HR	4	6			3
1.02	Project mobilization, review existing documents	HR	2	1.5			6
1.03	Topographic field survey	HR					42
1.04	ESA soils testing	HR			95		
1.05	Geotech report	HR				37	
1.06	Meetings - Program confirmation meetings with key staff	HR	8				3
1.07	Prepare program (for owner review)	HR	2	3			2
	Initiation	FEE	\$3,520	\$2,363	\$16,000	\$6,300	\$9,450
2.00	Design	HR	59.5	29	12.5	4	34
2.01	Prepare code and accessibility analysis	HR	2	0	0	0	5
2.02	Develop schematic design	HR	2	15	0	0	6
2.03	Meeting - Review schematic design (programming/design meeting)	HR	4	0	0	0	1
2.04	50% Design	HR	10	7	0	0	10
2.05	Meeting - 50% Design review	HR	4	0	0	0	1
2.06	Prepare & issue 100% Design Submittal	HR	4	7	0	0	3
2.07	Preliminary DSA review	HR	20	0	0	0	1
2.09	Detailed cost estimate	HR	1	0	0	0	2
2.08	Prepare final geotech reports	HR	0	0	0	4	0
2.09	Prepare final ESA reports	HR	12.5	0	12.5	0	0
2.10	Finalize topographic survey	HR	0	0	0	0	5
2.11	Owner review	HR	8	4	0	0	0
	Design	FEE	\$13,090	\$6,525	\$2,000	\$700	\$6,800
3.00	Construction Documents	HR	82	5	0	0	32
3.01	Consultant coordination meeting	HR	2	0	0	0	2
3.02	Prepare & issue 75% Construction Documents	HR	2	5	0	0	7
3.03	Owner review	HR	0	0	0	0	0
3.04	Meeting - 75% CD review meeting	HR	4	0	0	0	1
3.05	Prepare & issue 95% Construction Documents	HR	2	0	0	0	12
3.06	Owner review	HR	4	0	0	0	0
3.07	Meeting - 95% CD review meeting	HR	4	0	0	0	2
3.08	Prepare & issue 100% Construction Documents (DSA)	HR	60	0	0	0	4
3.09	Detailed cost estimate	HR	0	0	0	0	2
3.10	DSA review	HR	4	0	0	0	2
	Construction Documents	FEE	\$18,040	\$1,125	\$0	\$0	\$5,250
4.00	Bidding	HR	25	0	0	0	2
4.01	Bidding & negotiations	HR	25	0	0	0	2
	Bidding	FEE	\$5,500	\$0	\$0	\$0	\$750
5.00	Construction Administration	HR	44	2	0	0	4
5.01	Construction administration	HR	24	1.5	0	0	3
5.02	Project closeout	HR	20	0	0	0	1
	Construction Administration	FEE	\$9,680	\$338	\$0	\$0	\$2,250
	Subtotal of Hours	HR	226.5	46	108	41	128
	Average Blended Rate		\$220.00	225			\$191.41
	Net Fees		\$49,830.00	\$10,350.00	\$18,000.00	\$7,000.00	\$24,500.00
	SKA Markup (5%)			\$517.50	\$900.00	\$350.00	\$1,225.00
	PROPOSED FEE		\$49,830.00	\$10,867.50	\$18,900.00	\$7,350.00	\$25,725.00
7.00	Additional Costs						
7.01	Contingency (10%)	0.06					
7.02	Reimbursable Budget (printing, delivery, & out of state travel only)	0.06					
NOT TO EXCEED							

* Siegfried will be subcontracting Moore Twinning Associates (DVBE) for Geotech scope.

Exhibit B

PROJECT SCHEDULE

Contract Term: **Intended Start:** April 25, 2024
 Intended End: April 30, 2026

Exhibit C

FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT FORM

FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT
FOR ALL CONTRACTS EXCEPT WHEN CONSTRUCTION EXCEPTION IS MET
(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:

1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a).

(Education Code §45125.1(h).)

I, as Philip Luo, Principal *[insert "owner" or officer title]* of Shah Kawasaki Architects, Inc.
[insert name of business entity], have read the foregoing and agree that Shah Kawasaki Architects, Inc.
[insert name of business entity] will comply with the requirements of Education
Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: 3/25/2024

Name: Philip Luo

Signature: *Philip Luo*

Title: Principal

ATTACHMENT A

Violent and Serious Felonies

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

ATTACHMENT B

Form for Certification of Lack of Felony Convictions

Note: This form must be submitted by the owner, or an officer, of the contracting entity before it may commence any work or services, and before it may be present on District property or be within the vicinity of District pupils.

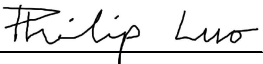
Entity Name: Shah Kawasaki Architects
Date of Entity's Contract with District: 3/25/2024
Scope of Entity's Contract with District: Architectural & Landscape Design

I, Philip Luo *[insert name]*, am the Principal *[insert "owner" or officer title]* for Shah Kawasaki Architects, Inc. *[insert name of business entity]* ("Entity"), which entered a contract on March 25, 2024, with the District for Design Consulting.

I certify that (1) pursuant to Education Code section 45125.1(f), neither the Entity, nor any of its employees who are required to submit fingerprints and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1; and (2) the Entity is in full compliance with Education Code section 45125.1, including but not limited to each employee who will interact with a pupil outside of the immediate supervision and control of the pupil's parent or guardian having a valid criminal background check as described in Education Code section 44237.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: March 25, 2024

Signature: 
Typed Name: Philip Luo
Title: Principal
Entity: Shah Kawasaki Architects, Inc.



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

Project Name	Cal Fire Grant Manzanita Elementary School Implementation Project	Site	179
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Basic Directions

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

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

Contractor Name	Shah Kawasaki Architects	Agency's Contact	Allan Kawasaki		
OUSD Vendor ID #	003881	Title	President		
Street Address	570 10 th Street, Suite 201	City	Oakland	State	CA
Telephone	510-663-6090	Policy Expires			
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	24103				

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	4-25-2024	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	4-30-2026
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$ 226,925.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
7822/9000	Fund 1 Cal Fire	010-7822-0-9000-8500-6215-179-9180-7822-9999-24103	6215	\$226,925.00

Approval and Routing (in order of approval steps)

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

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities Planning and Management				
	Signature <small>Ketwa Matman (Apr 5, 2024 15:05 PDT)</small>	Date Approved	Apr 5, 2024		
2.	Facilities General Counsel				
	Signature	Date Approved	3/28/24		
3.	Chief Systems & Services Officer, Facilities Planning and Management				
	Signature <small>Preston Thomas (Apr 5, 2024 17:51 PDT)</small>	Date Approved	Apr 5, 2024		
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			