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Introduction Date	3-26-2014
Enactment Number	14-0535
Enactment Date	3/26/14



Memo

To Board of Education

From Dr. Gary Yee, Ed.D., Acting Superintendent and Secretary, Board of Education
 By: Vernon Hal, Deputy Superintendent, Business Operations *VEH*
 Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date March 26, 2014

Subject Small Design Contact - HY Architects - Elmhurst Middle School Paving Project

Action Requested Approval by the Board of Education of an Small Design Contract with HY Architects for Design Services on behalf of the District at the Elmhurst Middle School Paving Project, in an amount not-to exceed \$55,925.50. The term of this Agreement shall commence on March 26, 2014 and shall conclude no later than March 26, 2015.

Background This project is part of a district-wide paving effort.

Local Business Participation Percentage 100.00%

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of an Small Design Contract with HY Architects for Design Services on behalf of the District at the Elmhurst Middle School Paving Project, in an amount not-to exceed \$55,925.50. The term of this Agreement shall commence on March 26, 2014 and shall conclude no later than March 26, 2015.

Fiscal Impact

Attachments

- Small Design Contract including scope of work
- Certificate of Insurance

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

Elmhurst Middle School Paving Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **18th day of February, 2014** by and between the Oakland Unified School District, Oakland, California ("District") and **HY Architects** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

The scope of the project is to provide design services to replace all existing asphalt surfaces in parking lots and playgrounds including new base design and striping for parking lots, playgrounds and basketball court. Geotechnical report and underground facilities locations are services required upfront and have been issued by purchase order.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

The project will commence March 26, 2014 and conclude no later than March 26, 2015.

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Fifty-five thousand, nine hundred twenty-five dollars and fifty cents (\$55,925.50)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the

portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's

name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

- 11. Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. Termination.

- 12.1. Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 12.2. Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 12.3. With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.3.1. material violation of this Agreement by the Consultant; or
 - 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 13. Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any

and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.**

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 14.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.
- 14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
17. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as

follows:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601
ATTN: **Tadashi Nakadegawa,**
Director of Facilities

Consultant:

Marcus Hibser
HY Architects
300-27th Street, 2nd Floor
Oakland, CA 94612

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

29. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

30. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

33. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

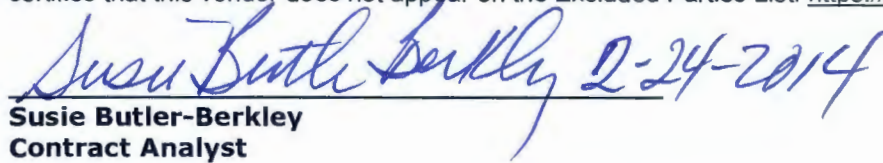
36. Signature Authority. Each party has the full power and authority to enter into and perform

this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37.Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

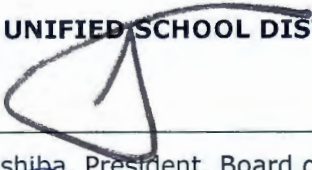
38.Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

 2-24-2014
Susie Butler-Berkley
Contract Analyst

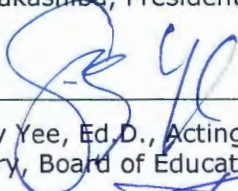
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



David Kakashiba, President, Board of Education

Date: 3/27/14



Dr. Gary Yee, Ed.D., Acting Superintendent
Secretary, Board of Education

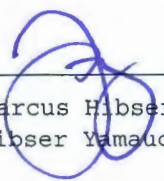
Date: 3/11/14



Timothy White, Associate Superintendent Facilities
Planning and Management

Date: _____

Contractors Name



Marcus Hibser, Principal
Hibser Yamauchi Architects, Inc.

2/21/14

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

3-7-14
Date: _____

Information regarding Consultant:

Consultant: Hibser Yamauchi Architects, Inc. 94-3170987 _____:
License No.: C27362 _____ Employer Identification and/or Social
Address: 300 27th Street _____ Security Number
Oakland, CA 94612 _____
Telephone: 510-446-2222 _____
Facsimile: 510-446-2211 _____
E-Mail: mhibser@hy-arch.com _____

Type of Business Entity:
☐ Individual
☐ Sole Proprietorship
☐ Partnership
☐ Limited Partnership
☒ Corporation, State: CA
☐ Limited Liability Company
☐ Other: _____

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date:

2/24/14

Proper Name of Consultant:

Hibser Yamauchi Architects, Inc.

Signature:



Print Name:

Marcus Hibser

Title:

Principal

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

 X The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

 Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

 Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its sub-consultants' employees is

Name: _____

Title: _____

 The Work on the Contract is at an unoccupied school site and no employee and/or sub-consultant or supplier of any tier of Contract shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: _____ 2/24/14

Proper Name of Consultant: Hibser Yamauchi Architects, Inc.

Signature: _____

Print Name: Marcus Hibser

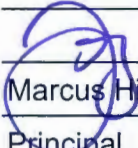
Title: Principal

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: 2/21/14

Proper Name of Consultant: Hibser Yamauchi Architects, Inc.

Signature: 

Print Name: Marcus Hibser

Title: Principal

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is not made part of this Agreement.

(See attached proposal from HY Architects)

Client#: 390

HIBSEYAMA

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YY)
12/09/2013

PRODUCER

Dealey, Renton & Associates
P. O. Box 12675
Oakland, CA 94604-2675
510 465-3090

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

Hibser Yamauchi Architects, Inc.
300 - 27th Street, 2nd Floor
Oakland, CA 94612

INSURER A: Hartford Casualty Insurance Co.

INSURER B: Travelers Property Casualty Co

INSURER C: U.S. Specialty Insurance Compan

INSURER D: Sentinel Insurance Co. LTD

INSURER E:

COVERAGES

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	57SBWLZ9809 GENERAL LIAB EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.	12/09/13	12/09/14	EACH OCCURRENCE \$2,000,000 FIRE DAMAGE (Any one fire) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COM/PROP AGG \$4,000,000
D	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	57UEGAT0886	12/09/13	12/09/14	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	57SBWLZ9809	12/09/13	12/09/14	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB7086Y501	09/01/13	09/01/14	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	OTHER Professional Liability	USS1323784	03/07/13	03/07/14	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

All operations of the named insured. Oakland Unified School District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named as Additional Insured's to General and Auto Liability per policy form wording. Insurance is Primary and Non-contributory

CERTIFICATE HOLDER

ADDITIONAL INSURED: INSURER LETTER:

CANCELLATION

Oakland Unified School District
955 High Street
Oakland, CA 94601-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~SEND BY MAIL~~ 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BY REGISTERED MAIL AND BY FIRST CLASS MAIL~~

~~BY REGISTERED MAIL AND BY FIRST CLASS MAIL~~
AUTHORIZED REPRESENTATIVE

Julie L. Nelson

Hibser Yamauchi Architects, Inc.

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (00) -

POLICY NUMBER: UB7086Y501

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

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

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization:

Oakland Unified School District
955 High Street
Oakland, CA 94601-0000

Job Description:

All operations of the named insured. ***Oakland Unified School District and the State and their agents representatives, employees, trustees, officers, consultants, and volunteers.

DATE OF ISSUE: 09/01/13

Insured: Hibser Yemauchi Architects, Inc.
Insurer: Hartford Casualty Insurance Co.
Policy Number: 57SBWLZ9809
Policy Effective Date: 12/09/13

Additional Insured: Oakland Unified School District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers

EXCERPTS FROM: Hartford Form SS 00 08 04 05

BUSINESS LIABILITY COVERAGE FORM

C. WHO IS AN INSURED

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit. A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury, "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products- completed operations hazard, but only if

- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to: "Bodily injury, "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including: inspection, or engineering

E.5. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

E.7.b.(7).(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

E.8.b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

EXCERPT FROM Hartford Form SS 04 38 06 01

HIRED AUTO AND NON-OWNED AUTO

B. With respect to the operation of a "non-owned auto", WHO IS AN INSURED is replaced by the following: The following are "insureds":

- d. Anyone liable for the conduct of an "insured", but only to the extent of that liability.

EXHIBIT A



HIBSER YAMAUCHI Architects, Inc.

November 15, 2013
Revised November 21, 2013

Colland Jang
Project Manager
Oakland Unified School District
955 High Street
Oakland, California 95601

Re: Elmhurst Middle School Repaving
Fee Proposal

Dear Colland:

Thank you for considering our consulting services for your project. We appreciate all opportunities to work with the Oakland Unified School District. Per your recent e-mail we are submitting this proposal for architectural and engineering services. Our understanding is that you will be replacing all of the AC paving at the Elmhurst Middle School including some restriping.

Specifically our scope will include the removal of all existing and placement of new asphalt paving (including base material). All paving areas shall be designed to parking lot standards. Scope will also include the striping for parking and playground areas (basketball courts).

SCOPE OF SERVICES

1. Architectural
 - a. Scoping
 - 1) Field survey and photograph existing conditions.
 - 2) Meet with the school to verify location of basketball courts and any special striping provisions.
 - 3) Prepare conceptual layout for signoff by the users and the District's project manager.
 - b. Construction Documents
 - 1) Perform standard construction documentation services in accordance with the terms of our contract with you.
 - 2) During the preparation of construction documents we anticipate 1 meeting with the project stakeholders.
 - c. Permitting
 - 1) We will submit to DSA.
 - 2) We anticipate an over-the-counter review of this project as access-only.
 - d. Bidding
 - 1) We will assist in the bidding of the project. We will be available to answer questions and to clarify the drawings and specifications.



Colland Jang
Oakland Unified School District – Elmhurst MS Repaving
November 19, 2013

- e. Construction Administration
 - 1) We will provide construction administration support by answering RFI's reviewing submittals and attending construction meetings. We assume that there will be 4 (1-hour) meetings. 1 punch list and 1 final walk are also anticipated.
- 2. Civil
 - a. Attend an initial site meeting with HY Architects to review the school site and to determine a more defined scope of work including site layout for playground site furniture and parking areas which HY Architects will provide. Review problems with the site related to the storm drainage and pavement issues.
 - b. Review underground utility mapping and determine utility protection requirements for existing shallow utility.
 - c. Review hazardous soil analysis (if any) and geotechnical investigation report to determine type of pavement and pavement section at playground and parking areas.
 - d. Based on items 1 to 3 above and architect site plan, prepare pavement and drainage analysis and design with general site layout and design details.
 - e. Prepare civil engineering drawings based on the above design including a grading, paving and surface drainage plan for review by HY Architects. The drawings will include: (1) General construction notes and short form specifications; (2) New paving layout plan; (3) New grading plan; (4) New drainage utility plan; and (5) Drainage Details.
 - f. Update design phase drawings to provide construction drawings: (1) General construction notes and short form specifications; (2) New paving layout plan; (3) New grading plan; (4) New drainage utility plan; (5) Erosion control plan; (6) Paving details; (7) Drainage Details; (8) Utility trenching details; and (9) Standard details.
 - g. Prepare technical specifications as needed. District will provide the front end, nontechnical sections of the specifications.
- 3. Utility Locator
 - a. We will endeavor to locate underground utilities in the areas indicated, but for technical reasons cannot guarantee to do so, some short lengths of abandoned utilities may not be located. Location of utilities will be by electromagnetic field induction. Ground Penetrating Radar will also be used.
 - b. INCLUSIONS: Metallic utilities i.e. electric, telephone, gas and water. Non metallic utilities with tracer wire visible. Sewer and drain lines with minimum 4" cleanout or manhole access will be located by inserting a transmitter.
 - c. DEPTHS of utilities will be provided where possible. Instrument readings are deemed within 10% accuracy. Critical depths may require potholing (not included in this proposal, but available on request).
 - d. Utilities will be painted on the ground. These marks will be surveyed and plotted onto a drawing, by layers, in AutoCAD format
- 4. Soils Report
 - a. A reconnaissance of the site and portions of the immediate surrounding properties to evaluate general geotechnical and site conditions;
 - b. A review of published geotechnical materials with data relevant to the site;
 - c. A subsurface investigation program that would include drilling a total of seven borings (5 feet deep) at locations spaced across the existing pavement areas of the site in order to evaluate



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subsoil conditions. We would provide utility location clearance for our borings as needed, including USA markings and a private utility locator for boring location spot checks. The general utility mapping required as part of the overall project is not within our area of expertise and not within our scope. For purposes of this proposal we have assumed that we will be able to drill on a standard work day and will be able to move freely between drilling locations. We would set up barricades and caution tape in a work area perimeter around the drill rig as needed. Arrangements could be made for Saturday drilling, but would involve additional fees. Excess soil cuttings from the borings would be left on site spread out in a landscape area (minimal cuttings are anticipated). The existing asphalt at the boring locations would be patched upon completion of our drilling operations.

- d. We would collect representative soil samples from the borings and conduct laboratory index, classification and strength tests on representative samples. We would provide at least two R-value tests for pavement evaluation utilizing standard Caltrans pavement design methodology.
 - e. We would produce a written report with boring logs, results of laboratory testing and geotechnical recommendations for earthwork associated with the paving section (subgrade and baserock compaction) as well recommendations for trench backfill compaction. We would provide recommendations for the pavement section (thickness of asphalt and base layers) based on Caltrans standard design methodology if provided a traffic index.
 - f. See attached fee proposal dated 11/14/13 by Alan Kropp & Associates
5. **Waste Characterization**
- a. Sampling shall include a single waste characterization. Analyses will be completed by McCampbell Analytical, Inc.'s ELAP-certified laboratory #1644 in Pittsburg, CA for CAM-17 metals, VOCs, SVOC, PCBs, pesticides and TPH. ATEM Laboratories Inc.'s NVLAP-accredited laboratory in Berkeley, CA will complete the analyses for asbestos.
6. **Cost Estimating**
- a. Cost estimates will be provided in CSI format at the completion of Construction Documents (total 1 estimate)

CLARIFICATIONS AND ASSUMPTIONS

- 1. This project will be done in 1 phase.
- 2. This project will require 1 package for permitting and construction.
- 3. Site topographical and utility survey in the vicinity of the building location and surrounding areas in CAD format will be made available for our use in the development of the site plan.
- 4. Access will be granted to all places requiring admission for the purpose of tracking and identifying the utilities.
- 5. Any existing utility drawings will be made available.
- 6. Underground Service Alert will be notified prior to any future excavation.



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Oakland Unified School District – Elmhurst MS Repaving
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EXCLUSIONS

1. Cost estimating.
2. Site topographic surveys.
3. Structural Engineering or specifying
4. Electrical Engineering or specifying
5. Landscape design, architecture or specifying.
6. Change orders to the construction contract which require submittal to DSA and which were not caused as a result of our documents will be charged as an additional service.
7. ADA upgrades which may be required by the DSA as a contingent to this project have not been identified and are therefore excluded.
8. Bid Alternates.
9. Plan check and/or permit fees

BASIS OF PROPOSAL

1. Email from Colland Jang and subsequent Q&A

ANTICIPATED SCHEDULE

After receipt of the written approval of this Contract and the receipt of all required information, our work will be performed per the time durations indicated in the initial email from Colland Jang. This schedule is predicated on receipt of all appropriate information in a timely fashion. Review times by various parties (i.e. users, building departments, etc.) can vary and may have an impact on this schedule. If the construction schedule exceeds the estimated time we may adjust this proposal to account for additional CA support and meetings.

PROJECT TEAM

1. Architect: Hibser Yamauchi Architects, Inc.
Principal: Marcus Hibser
Project Manager: Craig Durand
2. Civil Engineer: Baseline Engineering
3. Utility Locator: Subtronic
4. Soils Engineer: Alan Kropp & Associates
5. Waste Characterization: SCA Environmental



Colland Jang
Oakland Unified School District – Elmhurst MS Repaving
November 19, 2013

PROPOSED FEE

For the above work we herein propose a lump sum fee as follows:

Design Services:	\$61,490
Soils Report	\$9,500
Underground Utility Locator	\$10,160
Waste Characterization	\$2,300
Reimbursable Expenses (10%):	\$8,345
<u>Total proposed Basic Services</u>	<u>\$91,795</u>
Additional Services (concrete encasement)	\$4,500
Design Contingency (10%)	\$9,629.50
<u>Total Proposed Fee</u>	<u>\$105,924.50</u>

Our project schedule and fee is based on the scope of work as described above. For any additional scope of work beyond what is described above we may submit a contract modification prior to commencement of the addition scope of work.

I hope that this proposal meets with your expectations. If you have any additional questions, please do not hesitate to call. Our current billing rates are attached for your reference. This proposal is valid for the next 60 days. We are available to begin work immediately upon receipt of your written approval. I look forward to working with you.

Very Truly Yours,



Marcus Hibber, Principal

/Enclosures: Current Billing Rates



Colland Jang
Oakland Unified School District – Elmhurst MS Repaving
November 19, 2013

2013 Billing Rates

Architectural

Principal	\$275 per hour
Architect 3	\$170 per hour
Architect 2	\$160 per hour
Architect 1	\$150 per hour
Job Captain	\$130 per hour
Senior Draftsperson	\$120 per hour
Draftsperson	\$115 per hour
Jr. Draftsperson	\$105 per hour

Interiors

Project Designer	\$130 per hour
Staff Designer	\$110 per hour

Administrative Staff	\$85 per hour
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(rates subject to change annually)

SMALL DESIGN CONTRACT ROUTING FORM

Project Information			
Project Name	Elmhurst MS Paving Project	Site	202
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information					
Contractor Name	HY Architects	Agency's Contact	Marcus Hibser		
OUSD Vendor ID #	V015480	Title	Architect of Record		
Street Address	300-27 th Street, 2 nd Floor	City	Oakland	State	CA Zip 94612
Telephone	510-446-2222	Policy Expires	10-9-2014		
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No		
OUSD Project #	13130				

Term			
Date Work Will Begin	3-26-2014	Date Work Will End By (not more than 5 years from start date)	3-26-2015

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$55,925.50
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
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
9350	General Obligation Bond	2029905890	6215	\$55,925.50

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.	Director, Facilities Planning and Management			
	Signature	Date Approved	2/27/14	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved	3-4-14	
	Associate Superintendent, Facilities Planning and Management			
3.	Signature	Date Approved		
	Deputy Superintendent, Business Operations			
4.	Signature	Date Approved		
	President, Board of Education			
5.	Signature			