

Board Office Use: Legislative File Info.	
File ID Number	16- 1477
Introduction Date	6-22-16
Enactment Number	16-1047 4
Enactment Date	6-22-16



OAKLAND UNIFIED SCHOOL DISTRICT  
Community Schools. Thriving Students

# Memo

To Board of Education

From Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer   
Joe Dominguez, Deputy Chief, Facilities Planning and Management

Board Meeting Date June 8, 2016

Subject Agreement for Architectural Services - Allana Buick & Bers, Inc. - Lincoln Water Intrusion Project

**Action Requested** Approval by the Board of Education of an Agreement for Architectural Services between the District and Allana Buick & Bers, Inc., Palo Alto, CA., for the latter to provide partial building enclosure investigation and field testing, testing includes a small flood test at the parapet and roof juncture above the afflicted area as well as a spray test of the Portland cement plaster exterior finish, in conjunction with the Lincoln Water Intrusion Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing Upon Board Approval and concluding no later than December 31, 2016, in an amount not-to exceed \$52,050.00.

**Discussion** Water intrusion and mold were found at Lincoln Elementary School at Room 166. Preliminary report findings show that even though mold was removed, the water intrusion issue still needs to be resolved.

**LBP (Local Business Participation Percentage)** 0.00%

**Procurement Method** Professional Services Agreement - Formal - Advertised RFP / Awarded to entity following OUSD competitive solicitation process.

**Recommendation** Approval by the Board of Education of an Agreement for Architectural Services between the District and Allana Buick & Bers, Inc., Palo Alto, CA., for the latter to provide partial building enclosure investigation and field testing, testing includes a small flood test at the parapet and roof juncture above the afflicted area as well as a spray test of the Portland cement plaster exterior finish, in conjunction with the Lincoln Water Intrusion Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing Upon Board Approval and concluding no later than December 31, 2016, in an amount not-to exceed \$52,050.00.

**Fiscal Impact** Fund 67, Self Insurance Fund

## Attachments

- Agreement for Architectural Services including scope of work
- Certificate of Insurance
- Consultant Proposal



# CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 16-1477

Department: Facilities Planning & Management

Vendor Name: Allana Buick & Bers, Inc.

Project Name: Lincoln ES Water Intrusion Project No.: N/A

Contract Term: Intended Start: Upon Board Approval Intended End: 12/31/2016

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$ 52,050.00

Approved by: Maria Denney

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

Local Business Policy? Yes  No

How was this Vendor selected?

This vendor specializes in water intrusion.

Summarize the services this Vendor will be providing.

Project management, coordination and planning, water and destructive testing, data analysis and defect tallying, defect report, meetings, analysis and construction.

Was this contract competitively bid? Yes  No

If No, please answer the following:

1) How did you determine the price is competitive?

Due to the health implications caused by this issue, a trusted consultant was solicited.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**

**AGREEMENT FOR ARCHITECTURAL SERVICES  
BY AND BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
ALLANA BUICK & BERS, INC**

This Agreement for Architectural Services is made as of the 5th day of May, 2016, between the **Oakland Unified School District**, a California public school district ("District"), and **Allana Buick & Bers, Inc.** ("Architect") (individually a "Party" and collectively "Parties"), for the following project ("Project"):

**Lincoln Elementary School Water Intrusion, located at 225 11<sup>th</sup> Street, Oakland, CA.**

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

**Article 1. Definitions**

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2. **Architect:** The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.
  - 1.1.3. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
  - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
  - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
  - 1.1.6. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
  - 1.1.7. **District:** The Oakland Unified School District.
  - 1.1.8. **DSA:** The Division of the State Architect.
  - 1.1.9. **Project Budget:** The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
  - 1.1.10. **Record Drawings:** A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Builts, sketches, details, and clarifications.
  - 1.1.11. **Service(s) or Work:** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that

are necessary for the design and completion of the Project.

1.1.12. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

**Article 2. Scope, Responsibilities, And Services Of Architect**

- 2.1. Architect shall provide the Services as described in **Exhibit "A"**, commencing with receipt of a written Notice to Proceed or authorization from District to perform Services requested hereunder.
- 2.2. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 2.3. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

**Article 3. Completion of Services**

The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the time as specified in the notice, if any.

**Article 4. Compensation and Value of Agreement**

- 4.1. District shall pay Architect for all Services contracted for under this Agreement on a time and materials basis. The total compensation paid Architect pursuant to this Agreement may not exceed **Fifty-Two Thousand Fifty Dollars (\$52,050)**.
- 4.2. Architect shall notify District if District requested services or reimbursables will exceed the Fifty-Two Thousand Fifty Dollars (\$52,050) limit of this Agreement. If any work is performed by Architect without the prior written authorization of District, District shall not be obligated to pay for such work. The Parties may, by written agreement, increase the monetary limit of this Agreement.
- 4.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Architect 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.
- 4.4. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing the Services for District.

**Article 5. Ownership of Data**

- 5.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, Record Drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.
- 5.2. The Architect retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.
- 5.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance

of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive and/or compact disc with these documents that is compatible with AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.

- 5.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.
- 5.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word) which the District shall have the right to utilize in any way permitted by statute:
  - 5.5.1. One (1) set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
  - 5.5.2. One (1) set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
  - 5.5.3. One (1) set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical, and electrical), roof plan, sections, and exterior elevations of the Project.
  - 5.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data, and reports prepared by the Architect under this Agreement.
- 5.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's consultants.

#### **Article 6. Termination of Agreement**

- 6.1. If Architect fails to perform Architect's duties to the satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 6.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the

event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.

- 6.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 6.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Architect's notice of termination.
- 6.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the costs associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 6.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

#### **Article 7. Indemnity/Architect Liability**

- 7.1. To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.
- 7.2. The following shall be Claims, to the extent they satisfy the definition of Claims herein:
  - 7.2.1. The cost of Project delays. Without limiting Architect's liability for indirect cost impacts due to Project delays, the direct costs for which the Architect shall be liable for shall be proportionate to the amount the District is liable to the Project contractor(s), subcontractor(s), suppliers, inspector(s), construction manager(s) for the Project delays, including the proportionate cost of interim housing necessitated by Project delays, to the extent that the Project delays arise out of, pertain to, relate to or result from the negligent errors or omissions, recklessness, or willful misconduct of Architect in the performance of any Services which falls below the applicable standard of care of Architects engaged in similar public education projects.
  - 7.2.2. The cost of construction change orders for errors and omissions. Without limiting Architect's liability for indirect cost impacts, the direct costs for which the Architect shall be liable shall equal the difference between the cost of the change order(s) and the reasonable cost of the work had that work been a part of the originally prepared construction documents, the change order(s) result from any error or omission of Architect in the performance of Services which falls below the applicable standard of care of Architects engaged in similar public education projects.



These amounts may be paid by Architect to District or the District may in reasonable good faith withhold those costs from amounts owing to Architect, pending resolution of the dispute.

- 7.3. Architect's duty to indemnify under this Agreement shall apply during the term of this Agreement and shall survive any expiration or termination of this Agreement until any such Claim(s) are barred by the applicable statute of limitations and is in addition to any other rights or remedies that the District may have under the law or under this Agreement.

**Article 8. Mandatory Mediation for Claims**

- 8.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10<sup>th</sup>) day after termination of the Mediation, unless otherwise agreed to by the Parties.
- 8.2. Except as set forth below, the Parties agree to refrain from filing, maintaining, or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.
- 8.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, or any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.
- 8.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.
- 8.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.
- 8.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 8.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provisions herein.

**Article 9. Fingerprinting**

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

**Article 10. Responsibilities of the District**

- 10.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 10.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 10.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- 10.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and desirable for the coordination or management of work related to the Project.
- 10.5. The District shall provide to the Architect all relevant information it knows it possesses regarding the Project that the Architect needs to perform its Services. The District shall provide this information and its decisions required under this Agreement in a timely manner and to avoid unreasonable delay in the Project.

**Article 11. Liability of District**

- 11.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided for 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.
- 11.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Architect, or by its employees, even though such equipment may be furnished or loaned to Architect by District.

**Article 12. Nondiscrimination**

- 12.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person.
- 12.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

**Article 13. Insurance**

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

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

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of Architect's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect 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.

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

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

13.2. **Proof of Carriage of Insurance.** The Architect 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:

13.2.1. 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."

13.2.2. 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.

13.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, 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 Architect's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

- 13.3. **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.

**Article 14. Covenant Against Contingent Fees**

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or to recover, the full amount of such compensation, fee, commission, percentage fee, gift, or contingency.

**Article 15. Entire Agreement/Modification**

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

**Article 16. Non-Assignment of Agreement**

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation, or sublease without Architect's prior written consent shall be considered null and void.

**Article 17. Law/Venue**

- 17.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 17.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

**Article 18. Alternative Dispute Resolution**

**18.1. Architect's Invoices**

18.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, what portion or amount of the Architect's invoices that are disapproved for payment, what portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's Invoices ("Disputed Architect Invoice Detail").

18.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate

to the District in writing, and request to meet and confer in good faith with respect to any such disapproved portion or amount of the Architect invoices and the Disputed Architect Invoice Detail to determine if the dispute can be resolved. Such meet and confer communications shall include, but are not limited to, face-to-face meetings within thirty (30) days of the Architect's notice to the District with the appropriate District and Architect personnel as appropriate and necessary.

18.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a dispute as indicated herein.

18.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

18.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail shall satisfy this negotiation requirement.

18.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one party by the other party of a demand for mediation, the parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

18.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

18.3. Architect shall neither rescind nor stop the progress of its work pending the outcome of any dispute under this Agreement.

**Article 19. Severability**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**Article 20. Employment Status**

20.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

20.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical, or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a District employee.

20.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.

- 20.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 20.5. A determination of employment status pursuant to the preceding paragraphs of this Article shall be solely for the purposes of the particular tax in question and, for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 20.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**Article 21. Warranty and Certification of Architect**

- 21.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.
- 21.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 21.3. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation may be One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

**Article 22. Cost Disclosure - Documents And Written Reports**

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over Five Thousand Dollars (\$5,000).

**Article 23. Notices & Communications**

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

<p><b>District:</b>  Oakland Unified School District  955 High Street  Oakland, CA 94601  Attn: Tadashi Nakadegawa  Tel: (510) 535-7038</p>	<p><b>Architect:</b>  Allan Buick &amp; Bers, Inc.  990 Commercial Street  Palo Alto, CA 94303  Attn: Eugene Buick  Tel: (650) 543-5600</p>
---	---

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any

notice given by mail shall be effective three (3) days after deposit in the United States mail.

**Article 24. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBEs") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the Act). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes this Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.

**Article 25. Local, Small Local and small Local Resident Business Enterprise (L/SL/SLRBE) Program**

Architect shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.

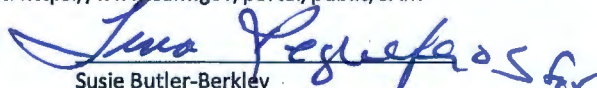
**Article 26. District's Right to Audit**

- 26.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 26.2. The District's Right includes the right to examine any and all books, records, documents, and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with all requirements of this Agreement.
- 26.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred or anticipated to be incurred.
- 26.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit all Project related accounting records and documents and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.
- 26.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 26.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

**Article 27. Other Provisions**

- 27.1. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.
- 27.2. Each party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 27.3. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 27.4. **Confidentiality.** Architect, and its Consultants, and employee(s) shall maintain the confidentiality of all information received in the course of performing the Services. Architect 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.
- 27.5. **Incorporation of Exhibits.** Any and all Exhibits and Certificate(s) attached hereto, including without limitation Exhibit "A," are hereby incorporated by this reference and made a part of this Agreement.

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>

  
Susie Butler-Berkley  
Contract Analyst

[SIGNATURES ON FOLLOWING PAGE]



ACCEPTED AND AGREED on the dates indicated below:

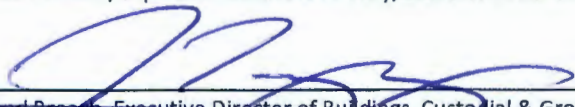
**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
James Harris, President, Board of Education

\_\_\_\_\_  
Date

\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Roland Broach, Executive Director of Buildings, Custodial & Grounds  
Facilities Planning and Management

\_\_\_\_\_  
Date

**ALLANA BUICK & BERS, INC.**

By:



5/9/16

Print Name:

John Kelleher

\_\_\_\_\_  
Date

Print Title:

CFO

APPROVED AS TO FORM:

  
\_\_\_\_\_  
OUSD Facilities Legal Counsel

5-16-16  
Date

ACCEPTED AND AGREED on the dates indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

  
James Harris, President, Board of Education

6/22/16  
Date


  
Antwan Wilson, Superintendent & Secretary, Board of Education

6/22/16  
Date

  
Roland Broach, Executive Director of Buildings, Custodial & Grounds  
Facilities Planning and Management

\_\_\_\_\_  
Date

ALLANA BUICK & BERS, INC.

By:   
Print Name: John Kelleher  
Print Title: CFO

5/9/16  
Date

APPROVED AS TO FORM:

  
OUSD Facilities Legal Counsel

5-16-16  
Date

File ID Number: 16-1477  
Introduction Date: 6/22/16  
Enactment Number: 16-1047 ✱  
Enactment Date: 6-22-16  
By:

**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Allana Buick & Bers, Inc. ("Architect") nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts.

Where the Architect or any lower participant is unable to certify this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this certification has been duly executed by the Principal of the above named Architect on the 9 day of May, 2016, for the purposes of submission of this Agreement.

**ALLANA BUICK & BERS, INC.**

By: \_\_\_\_\_

John Kelleher

Print Name: \_\_\_\_\_

John Kelleher

Print Title: \_\_\_\_\_

CEO

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

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

1. Site.
  - 1.1. Architect shall perform the Services of this Agreement for the Lincoln Elementary School, located at 225 11<sup>th</sup> Street, Oakland, CA ("Site"), specifically the east wall located outside and above Room 166 of the Site.
2. Architect agrees to generally perform the following Services for the Project, without limitation and as further set forth herein:
  - 2.1. Project management, coordination, and planning.
  - 2.2. Water and destruction testing for three (3) days.
    - 2.2.1. Including pre-destructive testing visual inspection.
    - 2.2.2. Including two (2) Architect consultants for three (3) days at the east stucco wall.
  - 2.3. Data analysis and defect tallying.
  - 2.4. Preliminary defect report development.
    - 2.4.1. Including preliminary cost estimate.
  - 2.5. Client meetings as requested and/or required by District.
  - 2.6. Stucco sample analysis.
3. Architect shall perform Limited Testing and Repair at the East Wall at Room 166 (Option #2), including without limitation:
  - 3.1. Architect shall perform isolated spray testing starting from the ground level and move upward, including the coping on the East Wall.
  - 3.2. Once spray testing is completed, Architect shall proceed with destructive testing at the ground level, control joints, penetrations, and coping.
  - 3.3. During the course of demolition, Architect shall forensically analyze the condition of the underlayment and the method and manners in which the stucco and accessories were installed which may have contributed to the reported leakage and observed wall and sheathing damage.
  - 3.4. Architect shall utilize its analysis to better define and advise the District on the scope of necessary repair work which may consist of, but may not be limited to, complete or limited removal and replacement of the stucco at the deteriorated sheathing locations as appropriate, repair of plywood sheathing that provides critical seismic resistance, application of sealants and a high quality elastomeric coating after the wood and stucco repairs are completed, and/or replacement of the entire stucco cladding.
4. Itemized Breakdown of Services (on following page).



### Discussion and Findings

Based on our brief site visit and review of the prior testing firm's report we are providing the following options as next steps for the District to consider:

Forensic Testing: (Option #1)      **ABB Cost: \$79,395**      **Contractor Cost: \$57,858**

If the District intends to pursue legal action against the General Contractor we would suggest to performing additional spray testing and destructive testing to identify the leak source(s) at the wall located outside and above Room 166. Testing would include visual observations and conditions assessment of the entire building, on both the interior and exterior followed by spray testing and destructive removal of the coping, stucco, stucco at reveals, and the water spigot penetration.

Additional testing locations other than the East Wall:

During the course of our brief site visit, we preliminarily identified delaminated paint, soffit staining, and potential issues with unsealed pipe penetrations at the South and West elevations. We would estimate at least 3 to 5 additional preliminary leak and destructive testing locations to be performed over the course of 2 to 3 days. This would include rooftop spray testing and destructive testing.

Testing duration is summarized as follows:

- 1 day – Two consultants - thorough review of the interior and exterior prior to any testing
- 3 days – Two consultants on the East Wall outside of and above Room 166
- 3 days – Two consultants at the South Wall (peeling soffit paint), West Wall – stains at stucco beam, and unsealed pipe penetrations.

Testing would require the assistance of a destructive testing contractor and will include interior demolition.

Total number of days for testing and investigation: 7 days

Subsequent to our testing, we would prepare a litigation style defect repair which would describe the failures modes and identify code and construction deficiencies. The report would include a discussion regarding a preliminary repair scope.

Upon completion of this testing, we would review our findings and then discuss next steps, such as, additional testing and other related discovery, as well as, the repair scope. Depending on the outcome of the testing results, we could discuss the performing of repair work immediately while legal action is pursued.

**Limited Testing and Repair at the East Wall at Room 166: (Option #2)**      **ABB Cost: \$52,050**  
**Contractor Cost: \$41,476**

It is our understanding that the District needs to stop the leaking immediately to prevent further damage at Room 166. An alternative to exhaustive testing would be to study the East Wall only. Other suspected areas of leakage based on our site visit would be monitored during the upcoming rainstorms. Reportedly, the Bay Area will be experiencing a severe El Nino type year and this may be an opportunity to study these new locations at the South and West Walls during a rain event

We would suggest performing isolated spray testing starting from the ground level and move upward, including the coping on the East Wall. Once spray testing is completed we would suggest moving forward with destructive testing at the ground level, control joints, penetrations, and coping. During the course of demolition, we will forensically analyze the condition of the underlayment and the method and manners in which the stucco and accessories were installed which may have



contributed to the reported leakage and observed wall and sheathing damage. Based on our analysis the scope of repair work will be better defined. With this said, we envision the following:

Repair discussion -

The photos presented to us through ATI's report exhibited water damaged plywood sheathing. Nothing short of complete removal and replacement of the stucco at the deteriorated sheathing locations should be performed. We are assuming the plywood sheathing provides critical seismic resistance and as such, should be repaired. The extent of stucco demolition would depend on the extent of damaged plywood uncovered. Depending on what we learn from the destructive testing and spray testing and provided that the leak source(s) are isolated, we would envision a repair consisting of limited stucco and reveal replacement and the application of sealants and a high quality elastomeric coating after the wood and stucco repairs are completed. Conversely, the testing and investigation may prove that the entire stucco cladding at this location would need to be replaced.

Immediate Emergency Repairs without Testing (Option #3): **ABB Cost: \$13,890**  
**Contractor Cost: \$64,581**

If the testing of the stucco assembly is not feasible at this time and the District solely pursues a repair at their own cost, it is possible to develop a repair scope that consists of limited stucco removal and replacement where the damaged sheathing was observed. Once the stucco is removed, the plywood would be replaced and new weather resistive barrier would tie into the existing. The repair would include application of sealants at all cracks, penetrations, and at all vertical and horizontal reveals. The repair would likely eliminate most, if not all potential moisture intrusion sources. The risk with this approach is that the failure mode would not necessarily be specifically identified and that potentially some damaged sheathing would potentially remain in place. The success of the repair would be monitored during the course of the upcoming rainstorms. We would suggest selecting only qualified waterproofing repair contractors which we could assist the District.

**END OF LETTER**

We appreciate the opportunity to be of service to the Oakland School District and SGI. Please review the options presented in this letter and let us know how you would like to proceed.

Sincerely,

**Allana Buick and Bers, Inc.**

Eugene Buick, P.E.  
Principal/COO



Allana Buick & Bers, Inc.  
990 Commercial Street  
Palo Alto, CA 94303  
t 650.543.5600  
f 650.543.5625  
www.abbae.com

**ALLANA BUICK & BERS**

Making Buildings Perform Better

October 26, 2015

Ms. Maria S. Denney, AIA  
SGI Construction Management  
955 High Street  
Oakland, CA

**Re: Project Initiation and Initial DT Proposal  
Lincoln Elementary School  
225 11<sup>th</sup> St.  
Oakland, CA 94601**

**ON: 1508-00970**

Dear Ms. Denney-

Allana Buick & Bers, Inc. (ABBAE) is pleased to provide a budget to SGI Construction Management (SGICM), on behalf of the Oakland Unified School District (OUSD) for project initiation and initial destructive testing to be performed at Lincoln Elementary School located in Oakland, California.

#### **SCOPE OF SERVICES**

##### OPTION 1

1. Project management, coordination, and planning
2. Water and Destructive testing for a total of six (6) days
  - a. Includes Pre-DT visual inspections
  - b. Includes 2 ABBAE consultants for 3 days at the east stucco wall
  - c. Includes 2 ABBAE consultants for 3 days at roofing and misc.
3. Data analysis and defect tallying
4. Preliminary defect report development
5. Client / Attorney meetings
6. Stucco Sample Analysis

##### OPTION 2

1. Project management, coordination, and planning
2. Water and Destructive testing for three (3) days
  - a. Includes Pre-DT visual inspections
  - b. Includes 2 ABBAE consultants for 3 days at the east stucco wall
3. Data analysis and defect tallying
4. Preliminary defect report development
  - a. Includes preliminary cost estimate
5. Client meetings
6. Stucco Sample Analysis

##### OPTION 3

1. Construction monitoring for three (3) days
  - a. Includes one ABBAE consultant for 3 days of demolitions depending on speed on demolition (will not confirm leak sources)
  - b. Includes report of findings
2. Client meetings



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/9/2016

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

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

PRODUCER License # 0757776 Concord, CA - HUB International Insurance Services Inc. 2300 Clayton Rd. Concord, CA 94520	CONTACT NAME:	
	PHONE (A/C, No, Ext): (925) 609-6500	FAX (A/C, No): (925) 609-6550
INSURED  Allana Buick & Bers, Inc. 990 Commercial Street Palo Alto, CA 94303	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Hanover Insurance Company	NAIC # 22292
	INSURER B : Allmerica Financial Benefit	41840
	INSURER C : Starr Surplus Lines Insurance Company	13604
	INSURER D :	
	INSURER E :	


COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<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 checked="" type="checkbox"/> LOC OTHER:	X	ZHF919072605	10/01/2015	10/01/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ Included
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	AWF945819804	10/01/2015	10/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		UHF912808205	10/01/2015	10/01/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	PROFESSIONAL LIAB		SLSLPRO26233715	10/01/2015	10/01/2016	Per Claim/Aggregate 2,000,000
C	Claims-Made		SLSLPRO26233715	10/01/2015	10/01/2016	Deductible 50,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Re: Lincoln Elementary School Water Intrusion Project.  
Oakland Unified School District and the State, their agents, representatives, employees, trustees, officers and volunteers, as additional insured including Primary wording applies to General Liability per attached 421-2915-1214 and additional insured in respects to Auto Liability per attached CA2048-0299, Primary wording applies per attached CA0001-0310, all as required by written contract.

CERTIFICATE HOLDER CANCELLATION

Oakland Unified School District 955 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SUMMARY OF COVERAGES

1.	Additional Insured by Contract, Agreement or Permit	Included
2.	Additional Insured – Primary and Non-Contributory	Included
3.	Blanket Waiver of Subrogation	Included
4.	Bodily Injury Redefined	Included
5.	Broad Form Property Damage – Borrowed Equipment, Customers Goods & Use of Elevators	Included
6.	Knowledge of Occurrence	Included
7.	Liberalization Clause	Included
8.	Medical Payments	Included
9.	Newly Acquired or Formed Organizations - Covered until end of policy period	Included
10.	Non-owned Watercraft	51 ft.
11.	Supplementary Payments Increased Limits	
	- Bail Bonds	\$2,500
	- Loss of Earnings	\$1000
12.	Unintentional Failure to Disclose Hazards	Included
13.	Unintentional Failure to Notify	Included

This endorsement amends coverages provided under the Commercial General Liability Coverage Part through new coverages, higher limits and broader coverage grants.

**1. Additional Insured by Contract, Agreement or Permit**

The following is added to **SECTION II – WHO IS AN INSURED:**

**Additional Insured by Contract, Agreement or Permit**

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit that such person or organization to add an additional insured on your policy is an additional insured 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, but only with respect to:

(1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

(2) Premises you own, rent, lease or occupy; or

(3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

(1) Only applies to the extent permitted by law; and

(2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.
- (4) Will not be broader than coverage provided to any other insured.
- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

c. This provision does not apply:

- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
- (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment:
  - (a) After the equipment lease expires; or
  - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
- (4) To any:
  - (a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or
  - (b) Managers or lessors of premises if:
    - (i) The occurrence takes place after you cease to be a tenant in that premises; or
    - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and

advertising injury" involved the rendering of or failure to render any professional services by or for you.

- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION III - LIMITS OF INSURANCE**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract, agreement or permit described in Paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

2. **Additional Insured - Primary and Non-Contributory**

The following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other insurance**:

**Additional Insured - Primary and Non-Contributory**

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II - WHO IS AN INSURED**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss covered under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. **Primary Insurance**

This insurance is primary to other insurance that is available to the Additional Insured which covers the

Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) when b. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

- (1) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
  - (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of SECTION I – **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY.**
- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each

insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers

**3. Blanket Waiver of Subrogation**

The following is added to SECTION IV – **COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damage under this coverage form. The damage must arise out of your activities under a written contract with that person or organization. This waiver applies only to the extent that subrogation is waived under a written contract executed prior to the "occurrence" or offense giving rise to such payments.

**4. Bodily Injury Redefined**

SECTION V – **DEFINITIONS**, Definition 3. "bodily injury" is replaced by the following:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

**5. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators**

- a. SECTION I – **COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph 2. **Exclusions** subparagraph j. is amended as follows:

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraphs (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor do they apply to the use of elevators at premises you own, rent, lease or occupy.

- b. The following is added to SECTION V – **DEFINITIONS:**

24. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. worked on; or
- b. used in your manufacturing process.
- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent

**6. Knowledge of Occurrence**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

- e. Notice of an "occurrence", offense, claim or "suit" will be considered knowledge of the insured if reported to an individual named insured, partner, executive officer or an "employee" designated by you to give us such a notice.

**7. Liberalization Clause**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

**Liberalization Clause**

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium, within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**8. Medical Payments**

- a. **SECTION I – COVERAGES, COVERAGE C – MEDICAL PAYMENTS**, Paragraph 1. **Insuring Agreement**, subparagraph a.(3)(b) is replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident; and

- b. This coverage does not apply if **COVERAGE C – MEDICAL PAYMENTS** is excluded either by the provisions of the Coverage Part or by endorsement.

**9. Newly Acquired Or Formed Organizations**

**SECTION II – WHO IS AN INSURED**, Paragraph 3.a. is replaced by the following:

- a. Coverage under this provision is afforded until the end of the policy period.

**10. Non-Owned Watercraft**

**SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Paragraph 2. **Exclusions**, subparagraph g.(2) is replaced by the following:

**g. Aircraft, Auto Or Watercraft**

- (2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

**11. Supplementary Payments Increased Limits**

**SECTION I – SUPPLEMENTARY PAYMENTS COVERAGES A AND B**, Paragraphs 1.b. and 1.d. are replaced by the following:

- 1.b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- 1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1000 a day because of time off from work.

**12. Unintentional Failure to Disclose Hazards**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 6. **Representations:**

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

**13. Unintentional Failure to Notify**

The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this policy shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury" or "property damage" is not covered under this policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

## DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
 GARAGE COVERAGE FORM  
 MOTOR CARRIER COVERAGE FORM  
 TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: <b>10-01-2015</b>	Countersigned By:
Named Insured: <b>Allana Buick &amp; Bers, Inc</b>	(Authorized Representative)

### SCHEDULE

<b>Name of Person(s) or Organization(s):</b>  "Any person or organization with whom you agreed in a written contract, written agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your covered autos."
--

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

#### **5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

### **B. General Conditions**

#### **1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

#### **2. Concealment, Misrepresentation Or Fraud**

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

#### **3. Liberalization**

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### **4. No Benefit To Bailee – Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

#### **5. Other Insurance**

- a. For any covered "auto" you own, this coverage form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this coverage form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.

- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this coverage form's Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage forms and policies covering on the same basis.

#### **6. Premium Audit**

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

#### **7. Policy Period, Coverage Territory**

Under this coverage form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and

- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;



Re 5/3/16

## AGREEMENT FOR ARCHITECTURAL SERVICES ROUTING FORM

### Project Information

<b>Project Name</b>	Lincoln Elementary School Water Intrusion	<b>Site</b>	133
---------------------	---	-------------	-----

### Basic Directions

**Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.**

<b>Attachment Checklist</b>	<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

<b>Contractor Name</b>	Allana Buick & Bers, Inc.	<b>Agency's Contact</b>	Eugene Buick
<b>OUSD Vendor ID #</b>	V063449	<b>Title</b>	Architect of Record
<b>Street Address</b>	990 Commercial Street	<b>City</b>	Palo Alto
<b>Telephone</b>	650-543-5600	<b>State</b>	CA
<b>Policy Expires</b>		<b>Zip</b>	94303
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Worked as an OUSD employee?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>OUSD Project #</b>			

### Term

<b>Date Work Will Begin</b>	Upon Board Approval	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	12-31-2016
-----------------------------	---------------------	--	------------

### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$52,050.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
0111	Fund 67, Self Insurance Fund	9879056805	5826	<b>\$52,050.00</b>

### Approval and Routing (in order of approval steps)

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>	4/12/16		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>	5-16-16		
3.	<b>Interim Deputy Chief, Facilities Planning and Management</b>				
	Signature	<b>Date Approved</b>			
4.	<b>Senior Business Officer, Board of Education</b>				
	Signature	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	Signature	<b>Date Approved</b>			