

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	25-1086
Introduction Date	5-28-2025
Enactment Number	
Enactment Date	



## Memo

<b>To</b>	Board of Education
<b>From</b>	Kyla Johnson-Trammell, Superintendent Preston Thomas, Chief Systems & Services Officer Kenya Chatman, Executive Director, of Facilities
<b>Board Meeting Date</b>	May 28, 2025
<b>Subject</b>	Amendment No. 2 to Agreement for Engineering Services - AGS, Inc. – Roosevelt Middle School Modernization Project – Division of Facilities Planning and Management
<b>Action Requested</b>	Approval by the Board of Education of Amendment No 2 to the Agreement for Engineering Services by and between the District and AGS, Inc., Oakland, CA, to provide geotechnical consulting services during construction Phase 3 (Building A Modernization) of the improvements for the Roosevelt Middle School Modernization Project, in an additional amount of \$410,579.90, increasing the Agreement's total not-to-exceed amount from \$103,187.60 to \$513,767.50, and extending the term of the Agreement from June 9, 2022 through June 26, 2026 to July 26, 2028, (an additional 761 days). All other terms and conditions of the Agreement remain the same in full force and effect.
<b>Discussion</b>	This Amendment is for additional geotechnical & special inspection services for Phase 3 construction and extending the term of the Agreement an additional 761 days.
<b>LBP</b> (Local Business Participation Percentage)	100.00%
<b>Recommendation</b>	Approval by the Board of Education of Amendment No 2 to the Agreement for Engineering Services by and between the District and AGS, Inc., Oakland, CA, to provide geotechnical consulting services during construction Phase 3 (Building A Modernization) of the improvements for the Roosevelt Middle School Modernization Project, in an additional amount of \$410,579.90, increasing the Agreement's total not-to-exceed amount from \$103,187.60 to \$513,767.50, and extending the term of the Agreement from June 9, 2022 through June 26, 2026 to July 26, 2028, (an additional 761 days). All other terms and conditions of the Agreement remain the same in full force and effect.
<b>Fiscal Impact</b>	Fund 21 Building Funds, Measure Y
<b>Attachments</b>	<ul style="list-style-type: none"> <li>• Amendment No. 2, including Exhibits</li> <li>• Routing Form</li> <li>• File ID: 23-1522</li> </ul>

## AMENDMENT NO. 2

### AGREEMENT FOR ENGINEERING SERVICES

This Amendment is entered into between the Oakland Unified School District and **AGS, Inc.** ("Contractor") to amend the **Engineering Services Agreement** between the District and the Contractor dated **June 9, 2022** ("Agreement"), for the **Roosevelt Middle School Modernization Project** ("Project"), as set forth below and in the Exhibit A attached hereto and incorporated herein by this reference:

1. <b>Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR shall provide the following amended services: To provide geotechnical consulting services during construction for Phase III of Building A alterations &amp; improvements, as outlined in the Proposal dated March 24, 2025, which is attached to this Amendment as Exhibit A.</p>		
2. <b>Terms</b> (duration):	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The contract term is extending the current end date of June 26, 2026, to July 26, 2026, by an additional (761) days.</p>		
3. <b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <b><u>Four Hundred Ten Thousand Five Hundred Seventy-Nine Dollars and 90/100 (\$410,579.90).</u></b></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the not-to-exceed total contract price was <b><u>One Hundred Three Thousand One Hundred Eighty-Seven Dollars and 60/100 (\$103,187.60).</u></b> and after this amendment, the not-to-exceed total contract price will be: <b><u>Five Hundred Thirteen Thousand Seven Hundred Sixty-Seven Dollars and 50/100 (\$513,767.50).</u></b></p>		

#### 4. Amendment History:

☒ There are no previous amendments to this Agreement. ☐ This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
1	08/10/2023	Additional geotechnical and special inspection services during construction for Increments 1 & 2 improvements	\$86,116.60

5. **No Further Modifications.** Except as expressly modified by this Amendment, all other terms and condition of the Agreement remain unmodified and in full force and effect. In the event of any conflict between this Amendment and the Agreement, the terms of this Amendment shall control.
6. **Entire Agreement.** This Amendment, together with the Agreement and any prior amendments thereto, constitutes the entire agreement between the parties concerning the Project and the subject matter hereof and superseded any prior or contemporaneous oral or written discussions, representations, or agreements regarding the same. No modification or waiver of any provision of this Amendment shall be binding unless in writing and signed by both parties.
7. **Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.
8. **Authority.** Each party represents and warrants that is has full legal authority to enter into this Amendment and that the individuals executing this Amendment on behalf of the respective parties have been duly authorized to do so.

OAKLAND UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
Jennifer Brouhard, President,  
Board of Education

\_\_\_\_\_  
Date

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

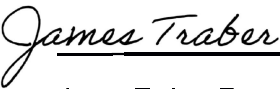
\_\_\_\_\_  
Date

  
Preston Thomas (May 2, 2025 07:26 PDT)

\_\_\_\_\_  
Preston Thomas, Chief Systems & Services Officer,


05/02/2025  
\_\_\_\_\_  
Date

Approval as to form:

  
\_\_\_\_\_  
James Traber, Esq.  
Facilities Counsel

04/23/2025  
\_\_\_\_\_  
Date

CONTRACTOR: AGS, INC.

  
\_\_\_\_\_  
Contractor Signature

4/15/2025  
\_\_\_\_\_  
Date

Bahram Khamenehpour, Principal  
\_\_\_\_\_  
Print Name, Title

**EXHIBIT “A”**  
**Scope of Work for Amendment**

**Contractor Name: AGS, Inc.**

1. Detailed Description of Services to be provided: : To provide geotechnical consulting services during construction for Phase III Building A alterations & improvements, as outlined in the Proposal dated March 24, 2025, which is attached to this Amendment as Exhibit A.

2. Specific Outcomes:

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district





5 Freelon Street  
San Francisco, CA 94107  
(415) 777-2166  
[www.agsinc.com](http://www.agsinc.com)

March 24, 2025

Eric Scheuermann  
Oakland Unified School District  
Senior Project Manager

Subject: Proposal for Geotechnical and Special Inspections during Construction  
Services For Phase 3 (Building A Modernization)  
Proposed Roosevelt Middle School Modernization Project  
1926 E 19th St, Oakland, CA 94606

Dear Eric:

Per your request, AGS, Inc. (AGS) is pleased to submit this proposal to provide geotechnical and special inspection services during construction for the proposed Phase 3 (Building A Modernization) improvements at Roosevelt Middle School in Oakland, California. This proposal is based on the 100 percent submittals for this project.

At this time a detailed construction schedule is not available and we have estimated the cost of our services based on an assumed schedule using information from the approved plans. Modifications to the scope and fees may be required as required by the city, DSA or your office or may occur during construction. Unless otherwise noted, our time will be charged on a Time and Expense basis in accordance with the agreed contract fee schedule.

A description of the work to be performed is as follows:

**TASK 01 – CONSULTATION, CONSTRUCTION ENGINEERING, AND GEOTECHNICAL RELATED PROJECT MANAGEMENT**

The consulting and services we propose during the design and construction phases of the residential project include

- 1) Coordination of engineering requirements with the Civil and Structural Engineer
- 2) Attendance at one on-site design meeting
- 3) Review of up to ten (10) submittals and respond to up to five (5) RFIs
- 3) Preparation of technical letters as required during the construction to provide supplemental recommendations
- 4) Data entry of all pile installation and test data
- 5) Preparation of one summary final report that summarizes pile installation and test results, review of mass grading, utility trench backfill, and pavement construction observation.

## **TASK 02 – GRADING OBSERVATION SERVICES**

Major mass grading is not anticipated except for excavation for bio-swale, and ramp construction. The scope of our work will consist of a few part-time observations. We understand that a third-part hired by the District will provide full-time and part-time observations and all of the laboratory and field compaction testings. The scope of services will include the following:

- 1) Attendance at pre-construction meeting by Project Manager
- 2) Part-time observation by Project Engineer – estimate 1 visit
- 3) Part-time observation by Senior Engineer – estimate 3 visit

## **TASK 03 – ON-SITE UNDERGROUND UTILITY CONSTRUCTION OBSERVATION SERVICES**

The scope of our work will consist of part-time construction observation during underground construction for the site. It is our understanding that underground construction will consist of the construction of storm, sanitary sewer, water, and joint trench lines within the on-site property boundaries. The scope of our work will consist of a few part-time observations. We understand that a third-part hired by the District will provide full-time and part-time observations and all of the laboratory and field compaction testings.

- 1) Attendance at pre-construction meeting by Project Manager
- 2) Part-Time observation of fill placement during construction of water and joint utilities. Observation services will be limited to utility construction within the on-site property boundaries. – Estimate 4 visits
- 3) Periodic observation by the Project Engineer– estimate 2 visits.

## **TASK 04 – ON-SITE PAVEMENT CONSTRUCTION OBSERVATION SERVICES**

The scope of our work will consist of part-time construction observation during pavement construction for the site. The scope of our work will consist of a few part-time observations. We understand that a third-part hired by the District will provide full-time and part-time observations and all of the laboratory and field compaction testings.

- 1) Part-time oversight by the Project Engineer– estimate 1 visit total

## **TASK 05 – FOUNDATIONS**

Under this task, AGS will provide full-time Geotechnical observation during installation of the production deep foundations in accordance with Section 1705 of the California Building Code. During pile installation, an AGS geologist/engineer will log the pile driving/installation to make sure that the materials encountered have the same characteristics as those used in the design. AGS's hours for production piles are based on hundred and two hundreds and ten (210) days draft construction schedule. Changes to the Contractor's production or pile scope that affect AGS's pile observation and support time will be submitted as additional scope. We assumed at least two compression and two tension testings. We assume that all pile observations can be performed during normal business hours during weekdays. We assume that production pile installation will take about 210 days and work days shall not exceed 10 hours per day. If altered schedules such as nights, holidays or weekends are required, the hourly rates are subject to change.

Additionally, we assumed eight (8) site visits to evaluate subgrade for the shallow footing.

The scope of work will consist of observation of the foundation for the modular buildings.

- 1) Full-Time observation of the deep foundation by a staff engineer –estimate 210 10-hour days total.
- 2) Part-time oversight by Senior Engineer – estimate 6 visit total

We propose to perform our services on a time and expense basis as detailed in the attached table entitled "Exhibit A". We agree not to exceed the cost of **\$410,579.90** for this service without your approval.

If the actual time spent in the field exceeds the assumed length of time due to unforeseen conditions, you will be immediately notified to discuss adjustment of the program at added cost.

We will start our services immediately following your authorization to proceed.

### **GENERAL**

The cost for these services does not include re-inspections, repairs or overtime. In the event that the work is performed on weekends or holidays, adjustments will be made at our premium rate. In addition, work that is canceled without adequate notice, due to miss-scheduling, equipment failure, or weather conditions, will be charged at our regular rates.

Roosevelt Middle School  
Oakland Unified School District  
March 24, 2025  
Page 4

We appreciate the opportunity to submit this proposal. Please let us know if you have questions or need further information. I may be reached directly at 415-777-2166, extension 21.

Sincerely yours,

**AGS, Inc.**

A handwritten signature in blue ink, reading "Bahram Khamenehpour". The signature is fluid and cursive, with the first name "Bahram" being more prominent than the last name "Khamenehpour".

Bahram Khamenehpour, Ph.D., GE  
Senior Geotechnical Principal



5 Freelon Street  
San Francisco, CA 94107  
(415) 777-2188  
www.agsinc.com

# EXHIBIT A

## GEOTECHNICAL OBSERVATION AND TESTING SERVICES

**Project:** Proposal for Geotechnical and Special Inspections during Construction Services For Phase 3 (Building A Modern  
**Client:** OUSD

### **TASK 01** CONSULTATION, CONSTRUCTION ENGINEERING AND PROJECT MANGEMENT

Billing		Est	Hrs	Total	Rate Per		
<u>task</u>	<u>Item Description</u>	<u>Days</u>	<u>Day</u>	<u>Hours</u>	<u>Hour</u>	<u>Item Cost</u>	<u>Subtotal</u>
1	Project Setup(Project engineer)			1	\$ 196.12		\$ 196.12
1	Consultation Meetings(Senior Principal)	1	3	3	\$ 303.68		\$ 911.04
1	Review of Submittals and RFIs (Senior Staff Engineer)			132	\$ 170.82		\$ 22,548.24
1	Review of Submittals and RFIs (Senior PrincipalEngineer)			24	\$ 303.68		\$ 7,288.32
1	Supplemental Letter Preparation(Senior Eng)			6	\$ 240.41		\$ 1,442.46
1	Deep and Shallow Foundation Observation Reports			32	\$ 170.82		\$ 5,466.24
1	Word Processing (1 hrs/week)			16	\$ 126.54		\$ 2,024.64
1	Project Management (Project Engineer)			10	\$ 196.12		\$ 1,961.20
Task 01 Sub Total							\$ 41,838.26

### **TASK 02** MASS GRADING CONSTRUCTION OBSERVATION

Billing		Est	Hrs	Total	Rate Per		
<u>task</u>	<u>Item Description</u>	<u>Days</u>	<u>Day</u>	<u>Hours</u>	<u>Hour</u>	<u>Item Cost</u>	<u>Subtotal</u>
2	Preconstruction Meeting (Senior Principal Engineer)	1		3	\$ 303.68		\$ 911.04
2	Field Observation (Project Engineer)	1	3	3	\$ 196.12		\$ 588.36
2	Field Observation (Senior Staff Engineer)	3	3	9	\$ 170.82		\$ 1,537.38
5	Vehicle Usage	5			\$ 85.00		\$ 425.00
Task 02 Sub Total							\$ 3,461.78

### **TASK 03** UNDERGROUND

Billing		Est	Hrs	Total	Rate Per		
<u>task</u>	<u>Item Description</u>	<u>Days</u>	<u>Day</u>	<u>Hours</u>	<u>Hour</u>	<u>Item Cost</u>	<u>Subtotal</u>
3	Preconstruction Meeting (Senior Principal Engineer)			3	\$ 303.68		\$ 911.04
3	Field Observation (Project Engineer)	4	3	12	\$ 196.12		\$ 2,353.44
3	Field Observation (Senior Staff Engineer)	2	3	6	\$ 170.82		\$ 1,024.92
5	Vehicle Usage	6			\$ 85.00		\$ 510.00
Task 03 Sub Total							\$ 4,799.40

### **TASK 04** ON SITE PAVEMENT

Billing		Est	Hrs	Total	Rate Per		
<u>task</u>	<u>Item Description</u>	<u>Days</u>	<u>Day</u>	<u>Hours</u>	<u>Hour</u>	<u>Item Cost</u>	<u>Subtotal</u>
4	Field Observation (Senior Staff Engineer)	1	3	3	\$ 170.82		\$ 512.46
5	Vehicle Usage	1			\$ 85.00		\$ 85.00
Task 04 Sub Total							\$ 597.46

### **TASK 05** FOUNDATION

Billing		Est	Hrs	Total	Rate Per		
<u>task</u>	<u>Item Description</u>	<u>Days</u>	<u>Day</u>	<u>Hours</u>	<u>Hour</u>	<u>Item Cost</u>	<u>Subtotal</u>
5	Part Time Observation of shallow foundation ( Sr. Staff Engine	6	3	18	\$ 170.82		\$ 3,074.76
5	Full-time Observation of deep foundation (Staff Engineer)	210	10	2100	\$ 158.17		\$ 332,157.00
5	Site meetings & consultation (Senior Principal Engineer)	6	3	18	\$ 303.68		\$ 5,466.24
5	Vehicle Usage	108			\$ 85.00		\$ 9,180.00
Task 05 Sub Total							\$ 349,878.00

### **TASK 08** OWNER CONTINGENCY

Owner Contingency \$ 10,000.00

**PROJECT TOTAL** \$ 410,574.90

## DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Roosevelt Middle School Modernization Project	<b>Site</b>	212
<b>Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board.</b>			
<b>Attachment Checklist</b>	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

### Contractor Information

<b>Contractor Name</b>	AGS, Inc.	<b>Agency's Contact</b>	Bahram Khamenehpour
<b>OUSD Vendor ID #</b>	006491	<b>Title</b>	Senior Geotechnical Principal
<b>Street Address</b>	1110 Franklin Street	<b>City</b>	Oakland
<b>Telephone</b>	510-219-2656	<b>State</b>	CA
		<b>Zip</b>	94607
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>OUSD Project #</b>	19101		

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	6-9-2022	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	6-26-2026
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$410,579.90
<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
9657/9787	Fund 21, Measure Y	210-9657-0-9787-8500-6250-212-9180-9906-9999-19101	6250	\$410,579.90

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

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities</b>				
	<b>Signature</b> 	<b>Date Approved</b>	04/24/2025		
2.	<b>General Counsel, Facilities</b>				
	<b>Signature</b> 	<b>Date Approved</b>	04/23/2025		
3.	<b>Chief Systems &amp; Services Officer</b>				
	<b>Signature</b> 	<b>Date Approved</b>	05/02/2025		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			



Board Office Use: Legislative File Info.	
File ID Number	23-1522
Introduction Date	8-9-2023
Enactment Number	23-1450
Enactment Date	8/9/2023 er



## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Lisa Grant-Dawson, Chief Business Officer, Division of Facilities Planning and Management

**Board Meeting Date** August 9, 2023

**Subject** Amendment No. 1, Agreement for Engineering Services - AGS, Inc. – Roosevelt Middle School Modernization Project – Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of Amendment No. 1, to the Agreement for Engineering Services by and between the **District** and **AGS, Inc.**, Oakland, California, to provide geotechnical and special inspection services during construction for Increments 1 & 2 improvements for the **Roosevelt Middle School Modernization Project**, in an additional amount of **\$86,116.60**, which includes a not-to-exceed contingency fee of \$5,000, increasing the Agreement's total not-to-exceed amount from **\$17,071.00** to **\$103,187.60**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

**Discussion** This Amendment is for geotechnical & special inspection services for Increments 1 & 2 during construction phase.

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

**Recommendation** Approval by the Board of Education of Amendment No. 1, to the Agreement for Engineering Services by and between the **District** and **AGS, Inc.**, Oakland, California, to provide geotechnical and special inspection services during construction for Increments 1 & 2 improvements for the **Roosevelt Middle School Modernization Project**, in an additional amount of **\$86,116.60**, which includes a not-to-exceed contingency fee of \$5,000, increasing the Agreement's total not-to-exceed amount from **\$17,071.00** to **\$103,187.60**, and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

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

**Attachments**

- Amendment No. 1, including exhibits
- Certificate of Insurance
- Routing Form



## AMENDMENT NO. 1

### AGREEMENT FOR ENGINEERING SERVICES

This Amendment is entered into between the Oakland Unified School District (OUSD) and **AGS, Inc.** OUSD entered into an agreement with CONTRACTOR for services on **June 9, 2022** ("Agreement"), and the parties agree to amend the Agreement for the Services with Roosevelt Middle School Modernization **Project** as follows and in the attached Exhibit A:

1.	<b>Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p>The CONTRACTOR agrees to provide the following amended services: To provide additional services to include plan review to complete design reviews for the main building and Science Modular, as described in the Proposal dated May 22, 2023 attached to this Amendment at Exhibit A.</p>			
2.	<b>Terms (duration):</b>	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p><b>If term is changed:</b> The anticipated contract term is extended by an additional _____ and the anticipated completion date is _____.</p>			
3.	<b>Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p><b>If the compensation is changed:</b> The not to exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by: <u>Eighty-Six Thousand One Hundred Sixteen Dollars 60/100(\$86,116.60), which includes a not-to-exceed contingency fee of \$5,000.00.</u></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the not-to-exceed total contract price was <u>Seventeen Thousand Seventy-One Dollars No/100 (\$17, 071.00)</u>, and after this amendment, the not-to-exceed total contract price will be: <u>One Hundred Three Thousand One Hundred Eighty-Seven Dollars and 60/100(\$103,187.60) .</u></p>			

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. **Amendment History:**

☒ There are no previous amendments to this Agreement. ☐ This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)

6. **Approval:** This Amendment is not effective, and no payment shall be made to Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

## OAKLAND UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
Mike Hutchinson, President,  
Board of Education

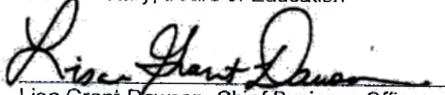
8/10/2023

\_\_\_\_\_  
Date

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

8/10/2023


\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Lisa Grant-Dawson, Chief Business Officer,  
Facilities Planning and Management

6/21/23

\_\_\_\_\_  
Date

**Approval as to form:**

  
\_\_\_\_\_

6/20/23

\_\_\_\_\_  
Date

[name]

General Counsel, Facilities, Planning and Management

## CONTRACTOR


  
\_\_\_\_\_  
Contractor Signature

6/15/2023


\_\_\_\_\_  
Date

Bahram Khamenehpour, Principal  
\_\_\_\_\_  
Print Name, Title


**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Mike Hutchinson, President,  
Board of Education

8/10/2023  
\_\_\_\_\_  
Date


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

8/10/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Lisa Grant-Dawson, Chief Business Officer,  
Facilities Planning and Management

6/21/23  
\_\_\_\_\_  
Date


APPROVALS TO FORM:

  
\_\_\_\_\_  
{name}

6/20/23  
\_\_\_\_\_  
Date

General Counsel, Facilities, Planning and Management

**CONTRACTOR**

  
11JJJJ-1!  
\_\_\_\_\_  
Contractor Signature

6/15/2023  
\_\_\_\_\_  
Date

Bahram Khamenehpour, Principal  
\_\_\_\_\_  
Print Name, Title

**EXHIBIT “A”**  
**Scope of Work for Amendment**

**Contractor Name: AGS, Inc.**

1. Detailed Description of Services to be provided: To provide additional services to include plan review to complete design reviews for the main building and Science Modular, as described in the Proposal dated May 22, 2023 attached to this Amendment at Exhibit A.
2. Specific Outcomes:
3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district



5 Freelon Street  
San Francisco, CA 94107  
(415) 777-2166  
www.agsinc.com

May 22, 2023

Mary Ledezma  
Oakland Unified School District  
Department of Facilities Planning and Management  
955 High Street, Oakland, CA 94601

Subject: Proposal for Geotechnical and Special Inspections during Construction Services For Increments 1 and 2  
Proposed Roosevelt Middle School Modernization Project  
1926 E 19th St, Oakland, CA 94606

Dear Mary:

Per your request, AGS, Inc. (AGS) is pleased to submit this proposal to provide geotechnical and special inspection services during construction for the proposed Increments 1 and 2 improvements at Roosevelt Middle School in Oakland, California. This proposal is based on the 90 percent submittals for this project.

**Roosevelt increment #1** - Modular Science (Site Work) Services include observation of the trench bottoms and probing Compaction testing as required

**Roosevelt increment #2** - Modular Science (new foundation) observation during foundation earthwork, inspect bottom of foundations, probe DSA documentation

We also understand that you require additional services (plan review) to complete Design reviews for the main building and Science Modular.

At this time a construction schedule is not available and we have estimated the cost of our services based on an assumed schedule using information from the grading and drainage plans. Modifications to the scope and fees may be required as required by the city or your office or may occur during construction. Unless otherwise noted, our time will be charged on a Time and Expense basis in accordance with the agreed contract fee schedule.

A description of the work to be performed is as follows:

**TASK 01 – CONSULTATION, CONSTRUCTION ENGINEERING, AND GEOTECHNICAL RELATED PROJECT MANAGEMENT**

The consulting and services we propose during the design and construction phases of the residential project include

- 1) Coordination of engineering requirements with the Civil and Structural Engineer

- 2) Attendance at one on-site design meeting
- 3) One plan review of the grading and drainage plans by the inspector
- 4) Preparation of technical letters as required during the construction to provide supplemental recommendations
- 5) Data entry of all compaction test data
- 6) Preparation of one summary final grading report that summarizes test results for mass grading, utility trench backfill, and pavement construction observation.

## **TASK 02 – GRADING OBSERVATION AND TESTING SERVICES**

Mass grading is not anticipated except for excavation for bio-swale for Increment #1 and removing the upper 3 feet of existing fill and replace with engineered fill for Increment #2. The scope of our work will consist of construction observation and testing during grading. The scope of services will include the following:

- 1) Attendance at pre-construction meeting by Project Manager
- 2) Full-Time observation and testing of fill placement during mass grading, including observation of subgrade preparation and engineered fill placement. – estimate 5 days
- 3) Part-time observation by Grading Supervisor – estimate 1 visit total
- 4) Part-time observation by Project Engineer – estimate 1 visit
- 5) Part-time observation by Senior Engineer – estimate 1 visit

## **TASK 03 – ON-SITE UNDERGROUND UTILITY CONSTRUCTION OBSERVATION AND TESTING SERVICES**

The scope of our work will consist of construction observation and testing during underground construction for the site. It is our understanding that underground construction will consist of the construction of storm, sanitary sewer, water, and joint trench lines within the on-site property boundaries. It is estimated that approximately 100 feet of backfilling can be completed in one day.

- 1) Attendance at pre-construction meeting by Project Manager
- 2) Full-Time observation and testing of fill placement during construction of storm drain and sanitary sewer lines. Observation services will be limited to utility construction within the on-site property boundaries. Backfill associated with the tie-in of utilities at the street is not included within this scope of services. – Estimate 15 days
- 3) Part-Time observation and testing of fill placement during construction of water and joint utilities. Observation services will be limited to utility construction within the on-site property boundaries. Backfill associated with the tie-in of utilities at the street is not included within this scope of services. – Estimate 10 days

- 4) Part-time oversight by Grading Supervisor – estimate 2 visits total.
- 5) Periodic observation by the Project Engineer– estimate 1 visit.

#### **TASK 04 – ON-SITE PAVEMENT CONSTRUCTION OBSERVATION AND TESTING SERVICES**

The scope of our work will consist of construction observation and testing during pavement construction for the site, and providing a pavement section design. It is our understanding that pavement will consist of new roadways within the site and our services will include subgrade preparation and aggregate base testing. Observation and testing of curb and gutter sub-grade and aggregate base and asphaltic concrete is not included in this proposal.

- 1) Sampling of subgrade for supplemental R-value testing
- 2) Full-Time observation and testing of subgrade, and part-time observation and testing of the aggregate base placement for the pavements/ for new walkways– estimate 4 visits each for the subgrade and the aggregate base material.
- 3) Part-time oversight by Grading Supervisor and Project Engineer– estimate 1 visit total

#### **TASK 05 – FOUNDATIONS**

The scope of work will consist of observation of the foundation for the modular buildings.

- 1) Part-Time observation of the foundation by a staff engineer –estimate 3 visits total.
- 2) Part-time oversight by Senior Engineer – estimate 1 visit total

#### **TASK 06 – LABORATORY TESTING**

Laboratory testing is required to support the above scope of services. We anticipate performing the following tests:

- 1) Moisture Density Curve relationship (4-inch mold) – estimate 6 curves
- 2) Moisture Density Curve relationship (6-inch mold) – estimate 4 curves
- 3) Collecting a total of 4 samples from the finish building pad grades for sulfate testing.
- 4) Full Sieve Analysis – estimate 3 tests
- 5) Atterberg Limits Tests – estimate 2 tests
- 6) Aggregate Base Compliance testing 1 set of testing
- 7) R-value tests – estimate 2 test

Roosevelt Middle School  
Oakland Unified School District  
November 14, 2019  
Page 4

We propose to perform our services on a time and expense basis as detailed in the attached table entitled "Exhibit A". We agree not to exceed the cost of **\$86,116.60** for this service without your approval.

If the actual time spent in the field exceeds the assumed length of time due to unforeseen conditions, you will be immediately notified to discuss adjustment of the program at added cost.

We will start our services immediately following your authorization to proceed.

#### **GENERAL**

The cost for these services does not include re-inspections, repairs or overtime. In the event that the work is performed on weekends or holidays, adjustments will be made at our premium rate. In addition, work that is canceled without adequate notice, due to miss-scheduling, equipment failure, or weather conditions, will be charged at our regular rates.

We appreciate the opportunity to submit this proposal. Please let us know if you have questions or need further information. I may be reached directly at 415-777-2166, extension 21.

Sincerely yours,

**AGS, Inc.**

A handwritten signature in dark ink, appearing to read "Bahram Khamenehpour", written in a cursive style.

Bahram Khamenehpour, Ph.D., GE  
Senior Geotechnical Principal





5 Freelon Street  
San Francisco, CA 94107  
(415) 777 2166  
www.agsinc.com

EXHIBIT A

GEOTECHNICAL OBSERVATION AND TESTING SERVICES

Project: Proposal for Geotechnical and Special Inspections during Construction Services For Increments 1 and 2  
Client: OUSD

**TASK 01 CONSULTATION, CONSTRUCTION ENGINEERING AND PROJECT MANAGEMENT**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	Hours	Hour	Item Cost	Subtotal
1 Project Setup(Senior Professional)			1	\$ 157.93		\$ 157.93
1 Grading Plan review(Staff Professional)			4	\$ 135.00		\$ 540.00
1 Foundation Plan review(Staff Professional)			1	\$ 135.00		\$ 135.00
1 Foundation Plan review(Senior Professional)			1	\$ 175.00		\$ 175.00
1 Consultation Meetings(Senior Professional)	1	3	3	\$ 280.77		\$ 842.31
1 Supplemental Analysis(Senior Engineer)			2	\$ 280.77		\$ 561.54
1 Supplemental Letter Preparation(Senior Eng)			3	\$ 280.77		\$ 842.31
1 Earthwork Testing & Observation Reports			8	\$ 195.00		\$ 1,560.00
1 Drafting			6	\$ 146.23		\$ 877.38
1 Word Processing (1 hrs/week)			16	\$ 116.99		\$ 1,871.84
1 Project Management (Senior Eng)			10	\$ 157.93		\$ 1,579.30
Task 01 Sub Total						\$ 9,142.61

**TASK 02 MASS GRADING CONSTRUCTION OBSERVATION**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	Hours	Hour	Item Cost	Subtotal
2 Preconstruction Meeting Senior Engineer			1	\$ 280.77		\$ 842.31
2 Mass grading Technician (standard time)	5	10	50	\$ 130.00		\$ 6,500.00
2 Technician (overtime)	0	0	0	\$ 195.00		\$ -
2 Nuclear Gauge			50	\$ 10.00		\$ 500.00
2 Vehicle Usage			8	\$ 80.00		\$ 640.00
2 Grading Supervisor	1	3	3	\$ 140.38		\$ 421.14
2 Project Engineer Field Observation	1	3	3	\$ 157.93		\$ 473.79
2 Senior Engineer Field Observation	1	3	3	\$ 280.77		\$ 842.31
Task 02 Sub Total						\$ 10,219.55

**TASK 03 UNDERGROUND**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	Hours	Hour	Item Cost	Subtotal
3 Preconstruction Meeting Project Engineer			3	\$ 280.77		\$ 842.31
3 Technician S.T (Storm and Sanitary Sewer)	15	8	120	\$ 130.00		\$ 15,600.00
3 Technician S.T (Water and Joint Trench)	10	4	40	\$ 195.00		\$ 7,800.00
3 Technician (overtime)	15	2	30	\$ 195.00		\$ 5,850.00
3 Nuclear Gauge			190	\$ 10.00		\$ 1,900.00
3 Vehicle Usage			28	\$ 80.00		\$ 2,240.00
3 Grading Supervisor	2	3	6	\$ 140.38		\$ 842.28
3 Senior Engineer Field Observation	3	3	9	\$ 280.77		\$ 2,526.93
Task 03 Sub Total						\$ 37,601.52

**TASK 04 ON SITE PAVEMENT**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	Hours	Hour	Item Cost	Subtotal
4 Mass Grading Technician	1	8	8	\$ 130.00		\$ 1,040.00
4 Subgrade / Technician	4	4	16	\$ 130.00		\$ 2,080.00
4 AB / Technician	4	4	16	\$ 130.00		\$ 2,080.00
4 Field Supervisor	1	3	3	\$ 140.38		\$ 421.14
4 Nuclear Gauge			40	\$ 10.00		\$ 400.00
4 Vehicle Usage			5	\$ 80.00		\$ 400.00
4 Engineering / Field	1	3	3	\$ 130.00		\$ 390.00
Task 04 Sub Total						\$ 6,811.14

**TASK 05 FOUNDATION**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	Hours	Hour	Item Cost	Subtotal
5 Observation of foundation - Staff Engineer	3	3	9	\$ 157.93		\$ 1,421.37
5 Senior Engineer -site meetings & consultation	1	3	3	\$ 280.77		\$ 842.31
5 Vehicle Usage			1	\$ 80.00		\$ 80.00
Task 05 Sub Total						\$ 2,343.68

**TASK 06 LABORATORY TESTING**

Billing	Est	Hrs	Total	Rate Per		
task	Days	Day	No.	Hour	Item Cost	Subtotal
6 Moisture Density Curve - 4"			2		\$ 350.00	\$ 700.00
6 Moisture Density Curve - 6"			2		\$ 375.00	\$ 750.00
6 Rock Correction			2		\$ 140.00	\$ 280.00
6 Sieve Analysis			3		\$ 950.00	\$ 2,850.00
6 Atterberg Limits Tests			2		\$ 210.00	\$ 420.00
6 Aggregate Base Compliance Testing			1		\$ 1,250.00	\$ 1,250.00
6 R-Value			1		\$ 325.00	\$ 325.00
Task 06 Sub Total						\$ 6,575.00

**TASK 07 PLAN REVIEW FOR THE MAIN BUILDING**

Foundation, Grading and Drainage Plan review(Senior Professional)	30	\$ 280.77	\$ 8,423.10
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**TASK 08 OWNER CONTINGENCY**

Owner Contingency		\$ 5,000.00
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PROJECT TOTAL \$ 86,116.60



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EXHIBIT A

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**TASK 08 OWNER CONTINGENCY**

Owner Contingency		\$ 5,000.00
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PROJECT TOTAL \$ 86,116.60



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/6/2023

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

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

<b>PRODUCER</b> Pacific Diversified Insurance Services 363 Civic Dr. Suite 100 Pleasant Hill CA 94523	<b>CONTACT</b> NAME: Certificate Department PHONE (A/C, No, Ext): 925-686-2860 E-MAIL ADDRESS: Certificates@pdins.com FAX (A/C, No): 925-686-6118														
License#: 0K07568 G&GBUIL-01	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Navigators Specialty Insurance Company</td><td>36056</td></tr><tr><td>INSURER B: Ohio Security Insurance Company</td><td>24082</td></tr><tr><td>INSURER C: California Automobile Insurance Company</td><td>38342</td></tr><tr><td>INSURER D: Ascot Specialty Insurance Company</td><td>45055</td></tr><tr><td>INSURER E: Coverys Specialty Insurance Company</td><td>15686</td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Navigators Specialty Insurance Company	36056	INSURER B: Ohio Security Insurance Company	24082	INSURER C: California Automobile Insurance Company	38342	INSURER D: Ascot Specialty Insurance Company	45055	INSURER E: Coverys Specialty Insurance Company	15686	INSURER F:	
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INSURER E: Coverys Specialty Insurance Company	15686														
INSURER F:															
<b>INSURED</b> G & G Builders Inc 4542 Contractors Place Livermore CA 94551															

**COVERAGES****CERTIFICATE NUMBER:** 1979282955**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	ESGL221000120701	7/25/2022	7/25/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 GL Deductible \$ 5,000
C	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BA040000063603	11/22/2022	11/22/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
E	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			ESXS221000120801	7/25/2022	7/25/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A B	Pollution Liability Rented/Leased Equipment	Y	Y	NY22ECPX00287NC BKS56637643	7/25/2022 7/25/2022	7/25/2023 7/25/2023	Gen Agg./Each Incdt. 2,000,000 Deductible: 5,000 Rented/Leased Limit: 225,000

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

As required by the written contract, the following endorsements apply to the Certificate Holder and/or any other entity named in this section: General Liability Additional Insured (Ongoing & Completed Operations) CG2010 04-13 & CG2037 04-13, Primary Non-Contributory CG2001 04-13, Designated Construction Per Project Aggregate Limit CGA354 09-20, Waiver of Subrogation CG2404 05-09; Auto Liability Additional Insured MCA85100817-CA including Primary & Non-Contributory and Waiver of Subrogation; Pollution Liability Additional Insured, including Primary Non-Contributory and Waiver of Subrogation NENV ACRISURE EDGE 02-19.

RE: Project #22146, LOCKWOOD STEAM ELEMENTARY SCHOOL SITE IMPROVEMENTS, 6701 International Blvd Oakland CA 94621

Oakland Unified School District

**CERTIFICATE HOLDER****CANCELLATION**

OUSD Facilities Planning & Management  
955 High Street,  
Oakland CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE

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

## **Business Auto Broadening Endorsement**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

- I. NEWLY ACQUIRED OR FORMED ENTITY (BROAD FORM NAMED INSURED)
- II. EMPLOYEES AS INSURED
- III. AUTOMATIC ADDITIONAL INSURED
- IV. EMPLOYEE HIRED AUTO LIABILITY
- V. SUPPLEMENTARY PAYMENTS
- VI. FELLOW EMPLOYEE COVERAGE
- VII. ADDITIONAL TRANSPORTATION EXPENSE
- VIII. HIRED AUTO PHYSICAL DAMAGE COVERAGE
- IX. ACCIDENTAL AIRBAG DEPLOYMENT COVERAGE
- X. LOAN/LEASE GAP COVERAGE
- XI. GLASS REPAIR – DEDUCTIBLE WAIVER
- XII. TWO OR MORE DEDUCTIBLES
- XIII. AMENDED DUTIES IN EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS
- XIV. WAIVER OF SUBROGATION
- XV. UNINTENTIONAL ERROR, OMISSION, OR FAILURE TO DISCLOSE HAZARDS
- XVI. EMPLOYEE HIRED AUTO PHYSICAL DAMAGE
- XVII. PRIMARY AND NONCONTRIBUTORY IF REQUIRED BY CONTRACT
- XVIII. HIRED AUTO – COVERAGE TERRITORY
- XIX. BODILY INJURY REDEFINED TO INCLUDE RESULTANT MENTAL ANGUISH

# BUSINESS AUTO COVERAGE FORM

## **I. NEWLY ACQUIRED OR FORMED ENTITY (Broad Form Named Insured)**

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured, the following is added:

- d. Any business entity newly acquired or formed by you during the policy period provided you own 50% or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of 180 days following acquisition or formation of the business entity. Coverage under this provision is afforded only until the end of the policy period. Coverage does not apply to an "accident" which occurred before you acquired or formed the organization.

## **II. EMPLOYEES AS INSURED**

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured, the following is added:

- e. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

## **III. AUTOMATIC ADDITIONAL INSURED**

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured, the following is added:

- f. Any person or organization that you are required to include as additional insured on the Coverage Form in a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

## **IV. EMPLOYEE HIRED AUTO LIABILITY**

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who Is An Insured, the following is added:

- g. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

## **V. SUPPLEMENTARY PAYMENTS**

SECTION II – LIABILITY COVERAGE, A. Coverage, 2. Coverage Extensions, a. Supplementary Payments, Subparagraphs (2) and (4) are replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We are not obligated to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**VI. FELLOW EMPLOYEE COVERAGE:**

SECTION II – LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee

This exclusion does not apply if you have workers' compensation insurance in-force covering all of your "employees". Coverage is excess over any other collectible insurance.

**VII. ADDITIONAL TRANSPORTATION EXPENSE**

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, a. Transportation Expenses, is replaced with the following:

We will pay up to \$50 per day to a maximum of \$1000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss". If your business shown in the Declarations is other than an auto dealership, we will also pay up to \$1,000 for reasonable and necessary costs incurred by you to return a stolen covered auto from the place where it is recovered to its usual garaging location.

**VIII. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions, the following is added:

- c. If Liability Coverage is provided in this policy on a Symbol 1 or a Symbol 8 basis and Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this coverage form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire, subject to the following limit:
  - (1) The most we will pay for "loss" to any hired "auto" is \$50,000 or Actual Cash Value or Cost of Repair, whichever is less
  - (2) \$500 deductible will apply to any loss under this coverage extension, except that no deductible shall apply to "loss" caused by fire or lightningSubject to the above limit and deductible we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own of similar size and type. This coverage extension is excess coverage over any other collectible insurance.

**IX. ACCIDENTAL AIRBAG DEPLOYMENT COVERAGE**

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3.a., is amended to add the following:

This exclusion does not apply to the accidental discharge of an airbag.

**X. LOAN/LEASE GAP COVERAGE**

SECTION III - PHYSICAL DAMAGE COVERAGE C. Limit of Insurance, the following is added:

4. In the event of a "total loss" to a covered "auto" shown in the schedule or declarations for which Collision and Comprehensive Coverage apply, we will pay any unpaid amount due on the lease or loan for that covered "auto," less:
- a. The amount paid under the Physical Damage Coverage Section of the policy; and
  - b. Any:
    - (1) Overdue lease/loan payments at the time of the "loss";
    - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
    - (3) Security deposits not returned by the lessor;
    - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
    - (5) Carry-over balances from previous loans or leases.

The most we will pay under Auto Loan/Lease Gap Coverage for an insured auto is 25% of the actual cash value of that insured auto at the time of the loss.

**XI. GLASS REPAIR – DEDUCTIBLE WAIVER**

SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**XII. TWO OR MORE DEDUCTIBLES**

SECTION III -PHYSICAL DAMAGE COVERAGE, D. Deductible, the following is added:

If two or more "company" policies or coverage forms apply to the same accident:

- 1. If the applicable Business Auto deductible is the smallest, it will be waived; or
- 2. If the applicable Business Auto deductible is not the smallest, it will be reduced by the amount of the smallest deductible; or
- 3. If the loss involves two or more Business Auto coverage forms or policies the smallest deductible will be waived.

For the purpose of this endorsement "company" means the company providing this insurance and any of the affiliated members of the Mercury Insurance Group of companies.

**XIII. AMENDED DUTIES IN EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in SECTION IV, BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit, Or Loss, a., In the event of "accident", you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

**XIV. WAIVER OF SUBROGATION**

SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights Of Recovery Against Others To Us, section is replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**XV. UNINTENTIONAL ERROR, OMISSION, OR FAILURE TO DISCLOSE HAZARDS**

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 2. Concealment, Misrepresentation, or Fraud, the following is added:

Any unintentional omission of or error in information given by you, or unintentional failure to disclose all exposures or hazards existing as of the effective date or at any time during the policy period shall not invalidate or adversely affect the coverage for such exposure or hazard or prejudice your rights under this insurance. However, you must report the undisclosed exposure or hazard to us as soon as reasonably possible after its discovery. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**XVI. EMPLOYEE HIRED AUTO PHYSICAL DAMAGE**

SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, b. For Hired Auto Physical Damage Coverage, is replaced by the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**XVII. PRIMARY AND NONCONTRIBUTORY IF REQUIRED BY CONTRACT**

SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance, the following is added and supersedes any provision to the contrary:

e. This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



**XVIII. HIRED AUTO - COVERAGE TERRITORY**

SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions, 7. Policy Period, Coverage Territory, e. Anywhere in the world if:, is replaced by the following:

- e. Anywhere in the world if:
  - (1) A covered "auto" is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

**XIX. BODILY INJURY REDEFINED TO INCLUDE RESULTANT MENTAL ANGUISH**

SECTION V – DEFINITIONS, C. "Bodily Injury" is amended by adding the following:

"Bodily injury" also includes mental anguish but only when the mental anguish arises from other bodily injury, sickness, or disease.

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

## **DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT SUBJECT TO CAP**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Designated Construction Project(s):</b> All projects
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A**, and for all medical expenses caused by accidents under Section **I** – Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.
- F.** Notwithstanding the foregoing or any other provision of this policy or any endorsement attached thereto, the most we will pay under the Designated Construction Project General Aggregate Limit for all Designated Construction Projects combined is: \$5,000,000

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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s)</b>	<b>Location And Description Of Completed Operations</b>
As required by written contract signed by both parties prior to loss	All locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
As required by written contract signed by both parties prior to loss	All locations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

1. Your acts or omissions; or
  2. The acts or omissions of those acting on your behalf;
- in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

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

This insurance does not apply to "bodily injury" or "property damage" occurring after:

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

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

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

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

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

<b>Name Of Person Or Organization:</b> As required by written contract signed by both parties prior to loss
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

## ENDORSEMENT NO. 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ACRISURE EDGE AMENDATORY ENDORSEMENT**

It is hereby agreed as follows:

1. Section I.1.B.3. Coverage B Exclusions, paragraph a. Asbestos and Lead-based Paint, is deleted in its entirety and replaced with the following:

**b. Asbestos and Lead-based Paint**

arising out of any asbestos or asbestos-containing materials or lead-based paints, in, upon or applied to any man-made structures or objects. However, this exclusion does not apply to any:

(1) **claim** for **bodily injury** or **property damage**; or

(2) **environmental damage** because of:

- (a) asbestos, asbestos-containing materials, or lead-based paints in soil, groundwater or any other body of water;
- (b) the inadvertent disturbance of asbestos, asbestos-containing materials, or lead-based paints; or
- (c) the disturbance of asbestos, asbestos-containing materials, or lead-based paints caused directly by any of the following named perils: fire, hostile fire, explosion, lightning, windstorm, vandalism or malicious mischief, riot or civil commotion, sprinkler leakage, flood, earthquake, collision or upset of an auto, mobile equipment or aircraft.

However, in any event, this policy does not apply to **cleanup costs**, removal, abatement or encapsulation of any such materials not inadvertently disturbed, disturbed pursuant to the named perils described in paragraph (c) above, or otherwise still located in building structures or components as originally intended.

2. SECTION II. WHO IS AN INSURED, paragraph 5. is deleted in its entirety and replaced with the following:

5. Any person or organization, including your clients for whom you perform **your work**, whom you agree to include as an insured in a written contract, written agreement or permit is an insured, but only with respect to a **pollution incident** arising out of **your work** and only:

- a. if the written contract, written agreement or permit is executed and effective prior to the date any **pollution incident** to which this policy applies first began; and
- b. for the lesser of the:
  - (1) minimum limits required by the written contract, written agreement or permit; or
  - (2) applicable limits of liability in this policy.

No person, organization or entity is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **named insured** in the Declarations.

No coverage is afforded under this policy for any **loss** arising out of an additional insured's own liability, sole negligence, or willful or deliberate misconduct.

3. SECTION IV. CONDITIONS, paragraph 14. Inspection and Audit, is deleted in its entirety and replaced with the following:

**14. Inspection and Audit**

By acceptance of this policy, you agree that we have the right, but not the obligation, to inspect or monitor on a continuing basis the operations or activities of your business which may give rise to any **claim** or **loss** under this policy. If we decide to exercise this right, we will inspect or monitor your operations or activities at a reasonable time of business, and if at a third party jobsite, in accordance with any such third party agreements or obligations, including access agreements required by such third party. We will provide you



or your broker or agent with reasonable notice as to the time and place of our inspection or monitoring, and we will seek your assistance with providing access to any locations, operations, books and records we intend to inspect or monitor.

We may, subject to our sole discretion, report orally or in writing to you on the conditions we find and recommend changes. Any such reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections, nor do we undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. Further, nothing in our inspection, monitoring or reports shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine whether any conditions are safe, or whether any operations or facilities are in compliance with laws, regulations, codes or standards.

4. Solely with respect to a person or organization qualifying as an additional insured within or endorsed to this policy, the following is added to SECTION IV. CONDITIONS, paragraph 16. Other Insurance:

Notwithstanding any other provision to the contrary in this policy, with respect to a person or organization qualifying as an additional insured within or endorsed to this policy, and only when required by written contract executed and effective prior to the date any **pollution incident** to which this policy applies first began, the insurance afforded by this policy shall be primary and non-contributory with any other valid and collectible insurance and our obligations are not affected by any such other insurance.

5. SECTION IV. CONDITIONS, paragraph 23. Subrogation, is deleted in its entirety and replaced with the following:

### 23. Subrogation

In the event of any payment under this insurance by us, we shall be subrogated to all the insured's rights of recovery against any person or organization. No insured shall do anything after the payment of **loss** by us to prejudice such rights. The insured agrees to cooperate with us and to execute and deliver all instruments and papers and do whatever else is necessary to enforce such rights. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them.

With respect to Coverage 1.A. Operations Pollution Liability, we agree to waive our right of subrogation against any of your clients or any other person or organization as required by written contract but only if and to the extent you had a written contract agreeing to waive such rights prior to the **loss** hereunder began.

6. SECTION IV. CONDITIONS, paragraph 25. Voluntary Payments / Consent, is deleted in its entirety and replaced with the following:

### 25. Voluntary Payments / Consent

Other than **emergency response costs** or **crisis management events**, no insured shall, except at its own cost:

- a. voluntarily make any payment, assume any obligation, or incur any expense to which this policy applies without our prior written consent; or
- b. admit liability, offer to settle, or agree to any settlement in connection with any **claim** or **suit** without our prior written consent. When our written consent to a settlement is requested, you must promptly provide us with all information and particulars we may reasonably request, including, but not limited to, information which an insured may deem immaterial, in order to reach an informed decision as to such consent. Any **loss** or other costs, charges or expenses resulting from any admission of liability by or with the consent or agreement of a **responsible insured** to settle incurred prior to our consent shall not be covered hereunder.

7. SECTION V. RIGHTS AND DUTIES OF INSURED AND US, paragraph 1. Claim Reporting, is deleted in its entirety and replaced by the following:

### 1. Claim Reporting

As a condition precedent to coverage under the policy, if an insured receives a **claim** or becomes aware of a **pollution incident** or **crisis management event** which may give rise to **loss** under this policy, the insured must notify us as soon as practicable utilizing any of the following methods:

- a. electronic mail to our Claims Department at [newloss@navg.com](mailto:newloss@navg.com);
- b. by telephone at 855-444-4796; or
- c. mail to our Danbury Office at

Navigators Insurance  
Attn: Claims Department  
83 Wooster Heights Road  
Danbury, CT 06810  
United States of America

Notice to us should contain the following information:

- a. The current contact information of the person giving notice to us;
- b. The time, date and location of the **pollution incident** or **crisis management event**;
- c. A description of the circumstances giving rise to the **pollution incident** or **crisis management event** including how and when you became aware of the **pollution incident** or **crisis management event**;
- d. The names and addresses of any injured persons or witnesses; and
- e. All other information which is relevant to the **claim**, **pollution incident**, or **crisis management event**.

Thereafter, the insured is required to submit to us as soon as practicable, but in no event longer than sixty (60) days from the date of our request, any information related to the notice which we may reasonably request including but not limited to any relevant contracts, technical reports, laboratory data, field notes, or documents generated by an insured in the investigation of any potential **loss** hereunder, whether or not these materials are deemed by any insured to be relevant.

If a **claim** is made against any insured, you must promptly send us copies of any demands, notices, summonses or legal papers received in connection therewith.

If any insured reports any **claim** or **pollution incident** under this policy knowing such **claim** or **pollution incident** to be false or fraudulent from the standpoint of a **responsible insured**, as regards to the amount or otherwise, this policy shall become null and void, and all coverage hereunder shall be forfeited.

- 8. SECTION VII. DEFINITIONS, paragraph 12. Environmental damage, is deleted in its entirety and replaced by the following:
  - 12. **Environmental damage** means physical damage to the atmosphere, biota, soil, land, any structure on land, groundwater or surfacewater or any structure or vessel upon water caused by a **pollution incident** and giving rise to **cleanup costs**. **Environmental damage** does not include **property damage**.
- 9. SECTION VII. DEFINITIONS, paragraph 35. Responsible insured, is deleted in its entirety and replaced by the following:
  - 35. **Responsible insured** means your owners, **executive officers**, directors, or partners; your managers or supervisors specifically responsible by title or formal job-description for environmental affairs, control, or compliance; and your **employees** who are responsible for giving or receiving notice of a **claim** to us.

All other terms, conditions, and exclusions shall remain the same





## DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Roosevelt Middle School Modernization Project	<b>Site</b>	212
<b>Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.</b>			
<b>Attachment Checklist</b>	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

### Contractor Information

<b>Contractor Name</b>	AGS, Inc.	<b>Agency's Contact</b>	Bahram Khamenehpour
<b>OUSD Vendor ID #</b>	006491	<b>Title</b>	Senior Geotechnical Principal
<b>Street Address</b>	1110 Franklin Street	<b>City</b>	Oakland
<b>Telephone</b>	510-219-2656	<b>State</b>	CA
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
<b>OUSD Project #</b>	19101		

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	6-9-2022	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	6-26-2026
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$86,116.60
<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
9655/9787	Fund 21, Measure Y	210-9655-0-9787-8500-6265-212-9180-9906-9999-19101	6265	\$86,116.60

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

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/20/23		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/20/23		
3.	<b>Chief Business Officer, Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	6/21/23		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			





Board Office Use: Legislative File Info.	
File ID Number	22-1248
Introduction Date	6-8-2022
Enactment Number	22-1164
Enactment Date	6-8-2022 CJH



## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tadashi Nakadegawa, Division of Facilities Planning and Management

**Board Meeting Date** June 8, 2022

**Subject** Agreement for Engineering Services – AGS, Inc. – Roosevelt Middle School Modernization Project – Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education to the Agreement for Engineering Services by and between the **District** and **AGS, Inc.**, Oakland, California, for the latter to provide updated geotechnical recommendations in accordance with 2022 California Building Code (CBC) and plan review for the proposed modernization based on: updated Geotechnical Letter; and Plan and Specification Review for Main Classroom Building A and for New Cafeteria Building B, for the **Roosevelt Middle School Modernization Project**, in the not-to-exceed amount of **\$17,071.00**, which includes a not-to-exceed amount of **\$4,000.00**, for additional services, as the selected consultant, with work scheduled to commence on **June 9, 2022**, and scheduled to last until **June 26, 2026**, pursuant to the Agreement.

**Discussion** Consultant was selected without competitive bidding based on a demonstrated competence and professional qualifications (Government Code §4526), and (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), and (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50).

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

**Recommendation** Approval by the Board of Education to the Agreement for Engineering Services by and between the **District** and **AGS, Inc.**, Oakland, California, for the latter to provide updated geotechnical recommendations in accordance with 2022 California Building Code (CBC) and plan review for the proposed modernization based on: updated Geotechnical Letter; and Plan and Specification Review for Main Classroom Building A and for New Cafeteria Building B, for the **Roosevelt Middle School Modernization Project**, in the not-to-exceed amount of **\$17,071.00**, which includes a not-to-exceed amount of **\$4,000.00**, for additional services, as the selected consultant, with work scheduled to commence on **June 9, 2022**, and scheduled to last until **June 26, 2026**, pursuant to the Agreement.

**Fiscal Impact** Fund 21 Building Fund, Measure J

**Attachments**

- Contract Justification Form
- Agreement including, Exhibits
- Insurance Certificate
- Routing Form



## CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 22-1248

Department: Facilities Planning and Management

Vendor Name: AGS, Inc.

Project Name Roosevelt Middle School Modernization Project Project No.:

Contract Term: Intended Start: 6-9-2022 Intended End: 6-26-2026

Total Cost Over Contract Term: \$17,071.00

Approved by: Tadashi Nakadegawa

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

Local Business Policy? ☒ Yes (No if Unchecked)

How was this contractor or vendor selected?

AGS, Inc., was chosen based on the RFP based on demonstrated competence, professional qualification, expertise, and experience with similar projects they completed in the past for the District.

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

AGS, Inc. will provide updated geotechnical recommendations in accordance with 2022 California Building Code (CBC) and plan review for the proposed modernization based on: updated Geotechnical Letter; and Plan and Specification Review for Main Classroom Building A and for New Cafeteria Building B, for Roosevelt Middle School Modernization.

Was this contract competitively bid? ☐ Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. AGS, Inc's price was fair and reasonable compared to the prices submitted by the other responding engineers.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- ☐ Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Completion contract – *contact legal counsel to discuss if applicable*
- ☐ Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- ☐ Energy service contract – *contact legal counsel to discuss if applicable*
- ☐ Other: \_\_\_\_\_ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- ☐ Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- ☒ Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- ☐ Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- ☐ For services other than above, the cost of services is \$99,100 or less (as of 1/1/22)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- ☐ Certain instructional materials (Public Contract Code §20118.3)
- ☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)



- ☐ Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- ☐ Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Other: \_\_\_\_\_

Maintenance Contract:

- ☐ Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- ☐ Other: \_\_\_\_\_

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

- Consultant is providing engineering services associated with geotechnical recommendations for the Roosevelt Site Modernization Project.

**AGREEMENT**  
**FOR**  
**ENGINEERING SERVICES**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
**AND**  
**AGS, INC**  
**FOR THE**  
**ROOSEVELT MIDDLE SCHOOL MODERNIZATION**

**June 9, 2022**

**OAKLAND UNIFIED SCHOOL DISTRICT**  
955 High Street  
Oakland, California 94601

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## AGREEMENT FOR ENGINEERING SERVICES

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This agreement for engineering services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and AGS, INC. (the “Engineer”), with respect to the following recitals:

- A. District proposes to undertake a project which requires the services of a duly qualified and licensed engineer.
- B. Engineer represents that Engineer is licensed to provide engineering services in the State of California and is specially qualified to provide the services required by the District.
- C. The Parties have negotiated the terms under which Engineer will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

### ARTICLE 1 DEFINITIONS

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

1.2 **Agreement.** “Agreement” shall mean this Agreement for Engineering Services. In the event of a conflict between the body of the Agreement and Exhibit C, the body of the Agreement shall control.

1.3 **Basic Services.** Engineer’s Basic Services consist of the services as defined in Article 5 and *Exhibit C*.

1.4 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between District and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

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

1.6 **District.** “District” shall mean Oakland Unified School District, and its governing board

members, employees, agents and authorized representatives.

1.7 **Engineer.** “Engineer” shall mean AGS, Inc., and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean the work of improvement described in Article 3 and the construction and post-construction closeout thereof, including the Engineer's services thereon, as described in this Agreement.

1.9 [Not Used.]

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

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

2.1 District retains Engineer to perform, and Engineer agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the engineering services specified in this Agreement and related incidental services. The Engineer agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The term for the performance of Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Architect shall complete the Services within the Term. The Services shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by engineers in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). Engineer shall be responsible for the completeness and accuracy of its plans and specifications.

## **ARTICLE 3 DESCRIPTION OF PROJECT**

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

Roosevelt Middle School Modernization Project.

## ARTICLE 4 COMPENSATION

4.1 **Basic Services.** For the Basic Services satisfactorily performed under this Agreement, Engineer shall be compensated according to its hourly rate schedule (Section 4.8, below). Engineer's total compensation for its Basic Services shall not exceed **THIRTEEN THOUSAND SEVENTY-ONE DOLLARS AND NO/100 (\$13,071.00)**, which is Engineer's estimate of the maximum total cost of its Basic Services on the Project, based on its April 12, 2022 (Revised April 21, 2022), fee estimate. However, Engineer will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Engineer acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 **Additional Services.** Engineer may invoice separately for Additional Services if provided by Engineer under Article 6, and the total contingency compensation for Additional Services shall not exceed **FOUR THOUSAND DOLLARS AND NO/100 (\$4,000.00)**. However, Engineer will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

### 4.3 Reimbursable Expenses

4.3.1 Reimbursable Expenses are those actual out-of-pocket expenses directly incurred as a result of Engineer's performance of Basic or Additional Services under this Agreement. Engineer may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Engineer and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Engineer must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 Engineer shall be reimbursed by District for its Reimbursable Expenses on the Project. Engineer's total reimbursement for Reimbursable Expenses shall not exceed **ZERO DOLLARS AND NO/100 (\$0)**, which is Engineer's estimate of the maximum total cost of Reimbursable Expenses on the Project.

4.4 The total not-to-exceed price under this Agreement based on Sections 4.1, 4.2, and 4.3 above is **SEVENTEEN THOUSAND SEVENTY-ONE DOLLARS AND NO/100 (\$17,071.00)**. For services satisfactorily performed, payment for Basic Services, Additional Services, and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the

Engineer's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Engineer's invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Engineer of the dispute and, upon Engineer's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Engineer shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Engineer shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Engineer cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Engineer otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Engineer's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Engineer to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Engineer is responsible under Section 5.7.20. If the total amount invoiced by Engineer reaches the not-to-exceed Basic Services amount before Engineer's Basic Services under this Agreement are complete, Engineer must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

4.6 Should District cancel the Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Engineer shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Engineer's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Engineer's records and files regarding, or relating to, any of the work performed by Engineer for District on this Project during or after the Project. Engineer shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Engineer will be responsible for Engineer's consultants keeping similar records. District shall be given reasonable access to Engineer's Project related records and files for audit purposes within ten (10) days of receipt of District's request. Engineer shall keep and maintain those records and files for ten (10) years.

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

4.9 Engineer shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

## **ARTICLE 5**

### **BASIC SERVICES TO BE RENDERED BY ENGINEER**

#### **5.1 General**

5.1.1 Engineer's Basic Services consist of the services normally required to perform the tasks, work, and services described in ***Exhibit C***. The District shall have the right to add or delete from the Engineer's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Engineer shall expeditiously and diligently perform all of its work and obligations under this Agreement. Engineer may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Engineer acknowledges that its priority is to complete the Project and the Engineer's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

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

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

#### **5.2 Consultants**

5.2.1 Engineer's Consultants. The Engineer shall employ or retain at Engineer's own expense, engineers and other consultants necessary to Engineer's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Engineer for this Project shall be approved by District prior to their commencement of work. The Engineer's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Engineer's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Engineer must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 District's Consultants. Engineer shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Engineer shall procure a certified survey of the site if required for the Basic Services, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths.



All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

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

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

5.3.1 The Engineer shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Engineer may perform its functions under the Agreement and Contract Documents.

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

5.3.3 The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Engineer shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Engineer, unless due to Wrongful Acts or Omissions.

5.3.4 The Engineer shall make such regular reports as shall be required by agencies having jurisdiction over the Project. When construction is properly completed, Engineer shall provide such certification as to Hazardous Substances as may be required of engineers for such projects by the OPSC.

5.3.5 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Engineer shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Engineer agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Engineer which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Engineer, and after such termination, District may pursue claims, lawsuits or other proceedings against Engineer.

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

5.3.6.1 In the event of such a change order, Engineer shall be responsible for the difference between (a) what the contractor would have added to its original bid or proposal for the Project if the Wrongful Act or Omission had not occurred (i.e., the “added value” portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Engineer’s Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties’ intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.3.6.2 In addition, Engineer shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may backcharge, and withhold payment from, the Engineer for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so backcharges and withholds, upon Engineer’s request District and Engineer shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Engineer as described above. If District and Engineer do not reach agreement on all four of these items when meeting and conferring, then District and Engineer shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Engineer can initiate a court action to resolve the dispute.

## **ARTICLE 6**

### **ADDITIONAL SERVICES TO BE RENDERED BY ENGINEER**

6.1 "Additional Services" shall be provided by Engineer if authorized in writing by District. No additional compensation shall be paid to Engineer for performing these Additional Services unless the District and the Engineer agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement. Any work performed by Engineer without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

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

6.2.1 providing financial feasibility or other special studies;

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

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

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

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

6.2.6 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted engineering practice.

## **ARTICLE 7 RESPONSIBILITIES OF DISTRICT**

It shall be the duty of District to:

7.1 pay all fees required by any reviewing or licensing agency;

7.2 designate a representative authorized to act as a liaison between the Engineer and the District in the administration of this Agreement and the Contract Documents;

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

7.4 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer;

7.5 furnish the services of consultants not routinely provided by the Engineer when such services are reasonably required by the scope of the Project and are requested by the Engineer;

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

7.7 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and the District will also provide information regarding programmatic needs and specific equipment selection data; and

7.8 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and

## **ARTICLE 8**

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

8.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Engineer and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission or omission by the Engineer, or otherwise resulting directly or indirectly from the Engineer's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Engineer in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than One Million Dollars (\$1,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Engineer shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the District.

8.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Engineer's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Engineer shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

8.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Engineer's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

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

8.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

8.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

## **ARTICLE 9 WORKER'S COMPENSATION INSURANCE**

9.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. All

such insurance shall include a waiver of any subrogation rights as against the District. If the Engineer employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

9.2 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Engineer's services, if Engineer ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Engineer shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

## **ARTICLE 10 ERRORS AND OMISSIONS INSURANCE**

10.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Engineer shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Engineer's professional sub-consultants (including consultants of Engineer's) shall comply with this Article 10, and Engineer shall include such provisions in its contracts with them.

10.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

10.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

10.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

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

10.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

10.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

10.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

## **ARTICLE 11 COMPLIANCE WITH LAWS**

11.1 Engineer shall be familiar with, and Engineer and Engineer's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA").

## **ARTICLE 12 TERMINATION OF AGREEMENT**

12.1 **Termination by District** – This Agreement may be terminated, or the Project may be canceled, by the District for the District's convenience and without cause at any time immediately upon written notice to the Engineer. In such event, the Engineer shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, under this Agree-

ment through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Engineer, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Engineer. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Engineer must cure such breach. In response to such Notice, if the Engineer fails to cure, and fails to reasonably commence to cure, the breach(es) by the deadline set by the Notice, then the District may terminate the Agreement through written notice delivered to the Engineer, which shall be effective upon such delivery. In such event, the Engineer shall be compensated for all services completed under this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District in writing, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all services necessary to complete the work in progress as of the date of the termination.

**12.2 Termination by Engineer** – For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Engineer may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Engineer may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Engineer, Engineer shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

### **12.3 Miscellaneous Termination Provisions**

12.3.1 Following the termination of this Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or



other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Engineer, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Engineer shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer or any of its agents under this Agreement shall immediately upon request by the District be delivered to the District. Engineer may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Engineer may have against the District or a claim by the Engineer to an ownership interest in the intellectual property embodied in the documents or materials.

### **ARTICLE 13**

#### **ENGINEER AN INDEPENDENT CONTRACTOR**

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

### **ARTICLE 14**

#### **[Not Used]**

### **ARTICLE 15**

#### **OWNERSHIP OF DOCUMENTS**

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

15.2 The Engineer will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Engineer's files for a period of no less than fifteen (15) years. Engineer shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

## **ARTICLE 16**

### **LICENSING OF INTELLECTUAL PROPERTY**

16.1 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Engineer shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

16.2 The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Engineer and retains a certified engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Engineer and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Engineer represents and warrants that Engineer has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Engineer or its consultants prepares or causes to be prepared under this Agreement. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Engineer's negligence, recklessness or willful misconduct.** The Engineer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression,

including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Engineer and provided to Engineer by the District.

## **ARTICLE 17 ACCOUNTING RECORDS OF ENGINEER**

17.1 Engineer's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

## **ARTICLE 18 INDEMNITY**

**18.1 Engineer Indemnification.** To the fullest extent permitted by law, including California Civil Code section 2782.8, the Engineer shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees ("District Indemnitees") against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Engineer, the Engineer's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

The Engineer's defense obligation shall consist of payment of 50% of the attorneys' fees, experts' fees, and all other litigation costs incurred in the District's defense ("Defense Costs"), with such payment occurring within thirty (30) days of Engineer's receipt of each invoice for such Defense Costs. After conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse the Engineer for any amount of Defense Costs paid by Engineer in excess of the proportional fault of the Engineer to the extent specified in a settlement agreement, arbitration award, or verdict; or Engineer shall reimburse the District for any amount of Defense Costs paid by District in excess of the proportional fault of the parties other than the Engineer to the extent specified in a settlement agreement, arbitration award, or verdict.

For purposes of this Article 18.1 only, "claims" means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Engineer shall meet and confer with other parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Engineer.

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Engineer and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Engineer's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Engineer shall be entitled to such indemnification only if each of the following conditions are met: (a) Engineer actually re-draws or completes such other designs or contract documents; (b) Engineer complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Engineer with the previously prepared documents or materials; and (d) District expressly requests that the Engineer utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

## **ARTICLE 19 TIME SCHEDULE**

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

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Engineer and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Engineer is delayed in the Engineer's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Engineer. District shall not be liable for damages to the Engineer on account of any such delay.

## **ARTICLE 20 MISCELLANEOUS PROVISIONS**

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its district office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

20.2 The Engineer shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

**District:** Oakland Unified School District  
955 High Street  
Oakland, California 94601  
Attention: Tadashi Nakadegawa, Deputy Chief

**Engineer:** AGS, Inc.  
1110 Franklin Street, Ste. 3  
Oakland, CA 94607  
Attention: Bahram Khamenehpour, Principal

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Engineer and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Engineer.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Engineer, by the execution of this Agreement, acknowledges that the Engineer has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

20.10 Prior to executing this Agreement, the Engineer shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

20.12 A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute (including a dispute related to indemnity by the

Engineer for claims against the District by a contractor based on allegations of deficiencies in the Engineer's plans or specifications). The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

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

20.14 The following forms, attached to the proposal, are incorporated into the contract:

- ~~Roof project certification (if required; see Public Contract Code §3006).~~
- Fingerprinting Notice and Acknowledgement.
- ~~Iran Contracting Act Certification.~~
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- ~~Buy American Certification.~~
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement and insurance documentation shall be submitted to the District.

\* \* \* \* \*

**DISTRICT:**

**OAKLAND UNIFIED SCHOOL DISTRICT**

850.40 6-9-2022

Gary Yee, President, Board of Education Date

[Signature] 6-9-2022

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

[Signature] 3/17/2022

Tadashi Nakadegawa, Deputy Chief Facilities Planning and Management Date

**Approved As to Form:**

[Signature] 5/17/22  
OUSD Facilities Legal Counsel Date

**CONTRACTOR:**

**AGS, INC.**

Bahram Khamenepour

Name

[Signature]  
Signature

Title: Senior Geotechnical, Principal

Date: 05/04/2022

*Exhibit A*  
**RATE SCHEDULE**





## FEE SCHEDULE

	2019	2020	2021	2022
PROFESSIONAL AND SUPPORT SERVICES    HOURLY RATE				
Senior Principal A/E 1	\$240	\$249.60	\$259.58	\$269.97
Principal A/E	\$220	\$228.80	\$237.95	\$247.47
Project Manager	\$190	\$197.60	\$205.50	\$213.72
Senior A/E	\$190	\$197.60	\$205.50	\$213.72
Project A/E	\$155	\$161.20	\$167.65	\$174.35
Senior Staff A/E	\$135	\$140.40	\$146.02	\$151.86
Staff A/E	\$125	\$130.00	\$135.20	\$140.61
CAD Specialist 3	\$125	\$130.00	\$135.20	\$140.61
Creative Services 3	\$120	\$124.80	\$129.79	\$134.98
Senior Field Technician 2, 3	\$120	\$124.80	\$129.79	\$134.98
Field Technician 2, 3	\$110	\$114.40	\$118.98	\$123.74
Project Administrator 3	\$100	\$104.00	\$108.16	\$112.49
Clerical Administrator 3	\$90	\$93.60	\$97.34	\$101.24

1 Architects, Engineers, Scientists, Geologists

Field technician services require a minimum of 4 consecutive hours per day followed by 2-hour increments. All hours are calculated "Portal to Portal". We require 24 hours advance notice for scheduling. Two hours will be charged for any cancellation within

2 24 hours.

Overtime rates for work in excess of 8 hours per day or 40 hours per week are 1.5 times the regular hourly rates for weekdays and Saturday and 2.0 times the regular hourly rates for Sunday and holidays. Overtime for professional services is billed at the

3 regular hourly rate.

*Exhibit B*  
**PROJECT SCHEDULE**

**Contract Term: Intended Start: June 9, 2022**  
**Intended End: June 26, 2026**

*Exhibit C*  
**SCOPE OF SERVICES**



5 Freelon Street  
San Francisco, CA 94107  
(415) 777-2166  
[www.agsinc.com](http://www.agsinc.com)

April 12, 2022  
(Revised April 21, 2022)

Mary Ledezma  
Oakland Unified School District  
Department of Facilities Planning and Management  
955 High Street, Oakland, CA 94601

Subject: Proposal for Geotechnical Updates and Plan Review Services  
Proposed Roosevelt Middle School Modernization Project  
1926 E 19th St, Oakland, CA 94606

Dear Mary:

Per your request on March 24, 2022, AGS, Inc. (AGS) is pleased to submit this proposal to provide updated geotechnical recommendations in accordance with 2022 California Building Code (CBC) and plan review for the proposed modernization of Roosevelt Middle School in Oakland, California. We had previously provided a geotechnical report and geohazard report to the Oakland Unified School District (the District) for submission to California Geological Survey (CGS) in November, 2020 in accordance with 2019 CBC for the project site.

### **SCOPE OF WORK**

Based on our understanding of the project scope, we propose that AGS' scope of work consists of the following:

#### **1- Updated Geotechnical Letter**

AGS will review the 2022 CBC codes to confirm whether any changes impact the plans that were based on the 2019 CBC codes. Upon reviewing the 2022 CBC, AGS will prepare a letter and will include any updated geotechnical recommendations in accordance with 2022 CBC. AGS will send the letter to Mary for review and transmittal to CGS and Division of State Architect (DSA). It is our understanding that CGS will not adapt ASCE 7-22 until 2025 and the seismic design parameters presented in our 2020 report will be valid until 2025.

#### **2- Plan and Specification Review for Main Classroom Bldg A**

AGS will perform a plan and specification review of the foundation plans at the 100% Schematic Design (SD), 100% Design Development (DD), 50% Construction Design (CD), and 100% Construction Design (CD) phases. We assume one review of the revision is included in each phase.

**3- Plan and Specification Review for New Cafeteria Bldg B**

AGS will perform a plan and specification review of the foundation plans at the 100% Schematic Design (SD), 100% Design Development (DD), 50% Construction Design (CD), and 100% Construction Design (CD) phases. We assume one review of the revision is included in each phase.

**4- Owner Contingency**

The following task is for additional services requested by the District. Use of any portion of Task 4 budget shall require written direction from the District Project Manager prior to proceeding with any additional services.

The District did not request a plan review of the grading and drainage plans, therefore it has not been included in this proposal.

We propose to perform our services on a time and expense basis to be billed per the contract fee schedule as detailed below:

Task No.	Task Description	Sr Principal Engineer	Project Engineer	Senior Staff Geologist	Cost
		\$ 269.97	\$ 174.35	\$ 151.86	
1	Updated Geotechnical Letter	4	12	-	\$ 3,172
2	Plan and Spec Review for Bldg A	8	16	-	\$ 4,949
3	Plan and Spec Review for Bldg B	8	16	-	\$ 4,949
4	Owner Contingency				\$ 4,000
				<b>Total Cost:</b>	<b>\$ 17,071</b>

We agree not to exceed the cost of **\$17,071** for these geotechnical engineering services without your approval.

We will initiate this work immediately following your Notice to Proceed (NTP) and the availability of the review documents.

This proposal is based on our understanding of the project to date. We do not include any geotechnical services during construction, or any other services not mentioned in this request.

**CLOSURE**

We appreciate the opportunity to submit this proposal. Please let us know if you have questions or need further information. I may be reached directly at 415-777-2166, extension 21.

Roosevelt Middle School  
Oakland Unified School District  
April 12, 2022 (Revised April 21, 2022)  
Page 3

Sincerely yours,

**AGS, Inc.**

A handwritten signature in blue ink, reading "Bahram Khamenehpour". The signature is fluid and cursive, with the first name "Bahram" and last name "Khamenehpour" clearly distinguishable.

Bahram Khamenehpour, Ph.D., GE  
Senior Geotechnical Principal



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/27/2021

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

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

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd., Suite 230 Lafayette CA 94549	<b>CONTACT</b> NAME: Nancy Ferrick PHONE (A/C, No, Ext): 510-272-1400 FAX (A/C, No): E-MAIL ADDRESS: nancy.ferrick@assuredpartners.com
License#: 6003745 AGSINC	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Berkley Insurance Company <b>INSURER B:</b> Hartford Accident and Indemnity Company <b>INSURER C:</b> Trumbull Insurance Company <b>INSURER D:</b> Sentinel Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>
<b>INSURED</b> AGS, Inc. 5 Freelon Street San Francisco CA 94107-3617	<b>NAIC #</b> 32603 22357 27120 11000

**COVERAGES****CERTIFICATE NUMBER:** 997820796**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	57SBWBN0485	10/10/2021	10/10/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	57UEGZC0362	10/10/2021	10/10/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	Y	Y	57SBWBN0485	10/10/2021	10/10/2022	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	Y N/A	57WEGGH0173	10/10/2021	10/10/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional & Pollution Liability			AEC904835806	10/10/2021	10/10/2022	\$3,000,000 \$3,000,000 per Claim Annual Aggregate

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

Excess Liability policy is follow-form to underlying General Liability/Auto Liability/Employers Liability.

Project: Roosevelt Middle School Modification. AGS Project #19-041

Oakland Unified School District is an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Auto Liability is Primary per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s). 30 Day Notice of Cancellation applies with 10 days for nonpayment

**CERTIFICATE HOLDER****CANCELLATION 30 Day Notice of Cancellation**

Oakland Unified School District  
Atten: Tadashi Nakadegawa, Interim Deputy Chief,  
Facilities  
955 High Street  
Oakland CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## Project Information

<b>Project Name</b>	<b>Roosevelt Middle School Modernization Project</b>	<b>Site</b>	<b>212</b>
<b>Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board.</b>			
<b>Attachment Checklist</b>	<b>x Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000</b> <b>x Workers compensation insurance certification, unless vendor is a sole provider</b>		

Contractor Name	AGS, Inc.	Agency's Contact	Bahram Khamenehpour				
OUSD Vendor ID #	006491	Title	Senior Geotechnical Principal				
Street Address	1110 Franklin Street	City	Oakland	State	CA	Zip	94607
Telephone	510-219-2656	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	19101						

Date Work Will Begin (i.e., effective date of contract)	6-9-2022	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	6-26-2026
		New Date of Contract End (If Any)	

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$17,071.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

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

Resource #	Funding Source	Org Key	Object Code	Amount
9650/9750	Fund 21, Measure J	210-9650-0-9750-8500-6289-131-9180-9905-9999-19101	6289	\$17,071.00

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

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities Planning and Management				
	Signature <i>K. Chatman</i>	Date Approved	<i>5/17/2022</i>		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature <i>[Signature]</i> <i>Orzano Smith, approved as to form</i>	Date Approved	5/17/22		
	Deputy Chief, Facilities Planning and Management				
3.	Signature <i>[Signature]</i>	Date Approved	<i>5/17/2022</i>		
	Chief Financial Officer				
4.	Signature	Date Approved			
	President, Board of Education				
5.	Signature <i>[Signature]</i> <b>Gary Yee</b>	Date Approved	6-9-2022		