

File ID Number	20-2325
Introduction Date	12/9/20
Enactment Number	20-1724
Enactment Date	12/9/2020 lf
By	



**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

**OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the Board of Education**

To: Board of Education

From: Kyla Johnson-Trammell, Superintendent  
Sailaja Suresh, Senior Director, School Operations

Board Meeting Date: 12/9/2020

Subject: **Gensler – Outdoor Learning Spaces Playbook & Kit Of Parts – No Cost Contract**

**ACTION REQUESTED:**

Ratification by the Board of Education of the contract with Gensler for fiscal year 20-21.

**BACKGROUND:**

In the summer of 2020, an OUSD parent who works for Gensler, an architecture and design firm, stepped up to help design sample outdoor learning spaces that could help students and teachers return to school in safe, outdoor settings. Her firm agreed to support her work on this project on a pro-bono basis, as the work would contribute to OUSD and other districts' abilities to reopen school in the context of the COVID-19 pandemic.

**DISCUSSION**

Gensler's Pro Bono Services include preliminary design services for a typical temporary outdoor learning space which may be located at any of the sites identified in Section A.1. of the contract. Gensler's Services will include:

- a) Site Plan Studies at (2) initial site locations per section A.1;
- b) Outdoor Learning Space program furniture "kit of parts" study; and
- c) Playbook for the Outdoor Learning Space Program.

**COMPETITIVELY  
BID** Was this contract competitively bid? No  
If no, exception: No-cost

**FISCAL IMPACT:**

The contract is provided at no-cost to the district.

**RECOMMENDATION:**

Approval of professional services contract between Oakland Unified School District and Gensler. Services to be primarily online from August 2020-May 2021.

**Attachments:** Contract



October 6, 2020

Sailaja Suresh  
Senior Director, School Operations  
Oakland Unified School District  
sailaja.suresh@ousd.org

Subject: **Agreement for Pro Bono Design Services**  
For the Oakland Unified School District  
Outdoor Learning Program  
Gensler Project Number (TBD)

Dear Sailaja Suresh:

This Agreement is between Oakland Unified School District (“Client”) and M. Arthur Gensler Jr. & Associates, Inc. (“Gensler”), located at 2101 Webster Street, Suite 2000, Oakland, CA, for pro bono design services.

#### **A. PROJECT**

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A.1 Project Description. The project includes design for temporary Outdoor Learning Spaces to be placed in the school yards of the following Oakland Unified School District site locations (the “Project”):

- a) Laurel Elementary School, 3750 Brown Avenue, Oakland, CA 94619
- b) Bridges Academy, 1325 53<sup>rd</sup> Avenue, Oakland, CA 94601

The Outdoor Learning Spaces are intended to provide temporary shelter for daily use (approx. 6 hours/day). The Outdoor Learning Spaces will not include permanent structures, power, data, mechanical, plumbing, or security systems.

A.2 Project Budget. Client and Gensler will review Client’s budget goals for the Project (the “Project Budget”) at the commencement of design. If requested by Client, Gensler will incorporate any agreed upon changes as part of its Pro Bono Services, subject to the limits specified in Section B.1 below, or as compensable Additional Services.

A.3 Project Schedule. The following schedule milestones are projected presently:

- a) Commence Pro Bono Services: 9/1/2020
- b) Complete Site Plan Studies & “Kit of Parts” Document: 9/8/2020
- c) Complete Playbook for Outdoor Learning Program (Conclude Pro Bono Services): 10/9/2020
- d) Implementation by OUSD: TBD



## **B. SCOPE OF SERVICES PROVIDED BY GENSLER**

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Client and Gensler will each provide the names of their key Project team members, including the primary contact person and the person authorized to make decisions.

### B.1 Gensler's Pro Bono Services

B.1.1 Gensler's Pro Bono Services include preliminary design services for a typical temporary outdoor learning space which may be located at any of the sites identified in A.1. Gensler's Services will include:

- a) Site Plan Studies at (2) initial site locations per section A.1;
- b) Outdoor Learning Space program furniture "kit of parts" study; and
- c) Playbook for the Outdoor Learning Space Program.

### B.1.2 Excluded Services:

- a) Use of Playbook at Additional Site Locations. Gensler understands that while the Playbook is based on the specific site locations indicated in section A.1, the Client, without Gensler's involvement and outside of this Pro Bono Agreement, may adapt and apply concepts of this Playbook to other sites within the Oakland Unified School District.
- b) Operations, Maintenance, Procurement, Installation, or approvals process required by Authority Having Jurisdiction.
- c) COVID-19 Operational Guidance. Gensler provides design and related consulting services. Client acknowledges that governments, health professionals, industrial hygienists, engineers and other third-parties have specified a range of evolving COVID-19 related health, safety, and operational guidance that is pertinent to our built environments, including but not limited to, physical distancing or air quality measures, health screening recommendations, and surface contamination considerations (collectively, "COVID-19 Operational Guidance"). Client understands and agrees that Gensler will not provide COVID-19 Operational Guidance and is not being retained for the purpose of advising on such matters. Client will engage internal experts or third-party consultants for COVID-19 Operational Guidance, to determine the standards it wishes to adopt and prioritize, and will assume responsibility for the effectiveness of those standards in mitigating the risk of COVID-19 exposure to its employees, guests, students, or vendors. Gensler may guide Client on design strategies to assist Client in implementing Client's selected standards.

B.1.3 Client will engage separate consultants to provide the following design services, if required for the Project: N/A.



B.1.4 Gensler's Pro Bono Services, and the maximum number of hours to be provided by Gensler for each of its Pro Bono Services, are designated in the table below as Gensler's responsibility.

<b>Pro Bono Services</b>	<b>Responsibility</b> <i>(Gensler, Client or Others)</i>	<b>Hours</b> <i>(Maximum No. of Hours for Gensler's Services)</i>	<b>Comments</b> <i>(If Any)</i>
a) Site Plan Studies	Gensler	40	
b) Furniture "kit of parts" study	Gensler	30	
c) Playbook for Outdoor Learning Program	Gensler	40	

If any Pro Bono service requires more hours than specified in the table above, Gensler and Client may: (a) renegotiate the number of Pro Bono hours provided; (b) agree upon compensation to Gensler for the additional hours; or (c) terminate this Agreement.

B.2 CAD Format and Standards. Gensler will use Revit. At the completion of the Project, Gensler will deliver electronic files of the final documents prepared by Gensler for Client's use in connection with the Project.

B.3 Optional/Additional Services. Gensler will provide services and/or hours beyond the Pro Bono Services and hours described in Section B.1 ("Additional Services"), if requested by Client and confirmed in writing by Gensler. To the extent that any Additional Services require Client to compensate Gensler, such Additional Services may be added only via a written amendment signed by both Parties.

B.4 TB Test/Fingerprint Requirements. All meetings for this Project are anticipated to be virtual and Gensler will have limited or no contact with Client's students. As such, Client has waived TB test/fingerprint requirements.

B.5. COVID-19. The Parties declare that they are able to meet their obligations under this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements. Gensler agrees to notify Client within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR who was on a Client site tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.

## **C. SERVICES AND INFORMATION PROVIDED BY CLIENT**

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### C.1 Client's Responsibilities.

a) Client will designate a representative authorized to act on its behalf to provide decisions, communicate with Gensler, and approve reports, presentations and other documents and data. Such decisions, approvals and authorizations will be provided promptly in order to meet the mutually agreed upon schedule. Out-of-sequence services, if requested, will be compensated as Additional Services, if they exceed the limits specified in Section B.1.



b) Client will maintain commercial general liability insurance and include Gensler as Additional Insured under the policy.

C.2 Services Provided By Client or Others. The following services may be required on the Project and will be provided by Client, Client's consultants or contractors, or others:

- a) Consulting services, including: N/A;
- b) Procurement of materials and services;
- c) Construction or installation services;
- d) Any materials, equipment or services required for the Project that are not described specifically as Gensler's Pro Bono or Additional Services.

C.3 Information Provided By Client or Others. The following information may be required on the Project and will be provided by Client, Client's consultants or contractors, or others:

- a) Legal description of the property; the name/address of the property owner; and the name/address of any construction lender(s);
- b) Existing or Base Building information, including drawings, specifications, and other documents that describe the existing utility services, site conditions, build out and base building construction, and any systems with which the Project is to be coordinated;
- c) Structural, mechanical, chemical, air, and water pollution and hazardous materials tests, and other laboratory and environmental tests, inspections, and reports required by law or by authorities having jurisdiction over the Project, or reasonably requested by Gensler.

## **D. COMPENSATION**

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Compensation to Gensler for Pro Bono Services and Additional Services, will be as described below. When Gensler's compensation is based on hourly rates, the rates will be those set forth in Gensler's Standard Hourly Billing Rates.

D.1 Pro Bono Services. Gensler will not receive any monetary compensation for the Pro Bono Services and hours specified in Section B.1 above. Client will provide Gensler the following services and/or promotional opportunities: E.g. Reference to Gensler in a donor list, website, media coverage, etc.

D.2 Additional Services. Compensation for Additional Services will be based on Gensler's Standard Hourly Billing Rates. As set forth in Section B.3. above, any compensation must be set forth in a written amendment to this Agreement, signed by both Parties.

D.3 Reimbursable Expenses. Excluded.

D.4 Progress Payments. Progress payments for Additional Services, if any, will be made monthly.



**E. AGREEMENT AND ACCEPTANCE**

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E.1 Agreement. This Agreement is comprised of and incorporates the following documents, in order of precedence:

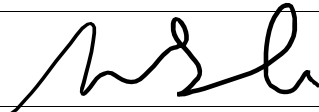
- a) This Letter of Agreement;
- b) The attached Standard Terms and Conditions of the Agreement Between Oakland Unified School District and Gensler for Pro Bono Services ("STC-PB").

Where a portion of one document is amended by another of higher precedence, all unmodified portions will remain in effect.

E.2 Effective Term. The effective term of this Agreement commences September 1, 2020 and concludes October 9, 2020.

By Gensler

Manan Shah

By   
(Signature)

Principal, 11/3/2020  
(Title) (Date)

On behalf of Andrew P. Cohen  
Executive Director,  
California Registration Number C12855

cc: <Project File>  
Damon Fisk

By Client

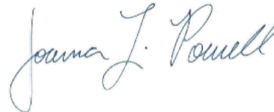


(Printed Name of Signatory)

By Preston Thomas  
(Signature)

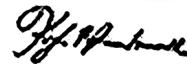
Chief Systems and Services Officer 11/2/2020  
(Title) (Date)

Approved as to form by OUSD Staff  
Attorney Joanna Powell on 10/6/20.



Jody London  
President, Board of Education

12/10/2020



Kyla Johnson Trammell  
Secretary, Board of Education

12/10/2020

# STANDARD TERMS AND CONDITIONS OF THE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND GENSLER FOR PRO BONO SERVICES (“STC-PB”)

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## Article 1 – Definitions and General Provisions

1.1 Parties. The terms “Client” and “Gensler” include each party’s authorized representatives.

1.2 Days or Time. Time periods refer to calendar days, unless otherwise stated.

1.3 Services. “Services” means the professional services to be performed by Gensler, one or more of its affiliated entities and its consultants.

1.4 Project. “Project” means the project for which Client has retained Gensler.

1.5 Work. “Work” means the construction of the Project elements designed or specified by Gensler.

1.6 Contractor. “Contractor” means the contractor engaged by Client to perform the Work.

1.7 Project Budget. The “Project Budget” is the Client’s budget for the Work. It is anticipated that the Client will include usual and customary allowances for design and construction contingencies in addition to the cost of the Work. Gensler cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or from any cost estimate reviewed by Gensler.

## Article 2 – Gensler’s Services

2.1 Standard of Care. Gensler will perform the Services with the reasonable skill and care ordinarily provided by professionals practicing in the same discipline and locality under similar circumstances.

2.2 Limitation of Construction Responsibilities. Gensler will not have control over, or charge of, and will not be responsible for, construction means, methods, schedules, delays, or safety precautions and programs in connection with the Work, or Contractor’s negligence or failure to perform the Work in accordance with the Construction Documents or any portion of the agreement between Client and Contractor.

## Article 3 – Client’s Responsibilities

3.1 Information. Client will provide full information regarding the requirements for the Project.

3.2 Client’s Services and Information. Gensler will be entitled to rely upon the accuracy and completeness of the services, information, surveys, and reports provided by Client, Contractor, or any of their subcontractors or consultants. Gensler’s coordination of the Services with the services of Client’s consultants will be limited to that necessary for consistency of the Documents (as defined in section 4.1 below) with those of such consultants.

## Article 4 – Use of Gensler’s Documents and Data

4.1 The drawings, specifications, surveys, reports, and other documents (collectively “Documents”) and any computer tapes, disks, models, CAD files, research, analytics, processes, algorithms or other data, in any medium (collectively “Digital Media”) prepared by Gensler are instruments of service and/or otherwise protected by U.S. copyrights laws, and will remain Gensler’s property. Gensler grants Client a nonexclusive license to use the Documents and Digital Media, delivered or intended as deliverables, solely and exclusively in connection with Client’s use and occupancy of the Project, provided that Client substantially performs its contract obligations, including prompt payment of all sums when due.

4.2 Client agrees to indemnify and hold Gensler harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses (including reasonable legal fees and costs of defense), accruing or resulting to any persons, firms, or other legal entities, on account of any damages or losses to property or persons, including death or economic loss, arising out of the unlicensed use, or the transfer or modification of the Documents and/or Digital Media. Except for any Construction Documents signed and sealed by Gensler, Client will remove Gensler’s title block and any other Gensler insignia from the Documents and Digital Media before use, transfer or modification of the same.

## Article 5 – Claims and Disputes

5.1 Mediation. The parties agree to mediate any dispute or claim, under the Construction Industry Mediation Procedures of the American Arbitration Association, prior to undertaking arbitration per Section 5.2. The cost of the mediation service will be borne equally by the parties.

5.2 Arbitration. In the event the parties are not able to resolve a dispute by mediation, the parties agree to submit the matter to confidential arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in force at the time the claim is submitted to arbitration. The arbitration will be held in or near the city of Gensler's office providing the Services. The award rendered by the arbitrator(s) will be final, and judgment on the award may be entered in any court having jurisdiction.

5.3 Mutual Indemnification and Insurance. Gensler agrees to indemnify Client from and against those damages that Client incurs, as a result of a third-party claim concerning the death or bodily injury to any person or the destruction or damage to any property, to the extent caused by the negligent act, error, or omission of Gensler or anyone for whom Gensler is legally liable. Client agrees to indemnify Gensler from and against those damages that Gensler incurs, as a result of a third-party claim concerning the death or bodily injury to any person or the destruction or damage to any property, to the extent caused by the negligent act, error, or omission of Client or anyone for whom Client is legally liable.

Throughout the term of this Agreement, each Party shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease

5.4 Limitation of Liability. Except for the indemnification obligations under Section 5.3, Client agrees that Gensler's total liability arising out of or related to the Project or this Agreement, will not exceed the total compensation received by Gensler pursuant to this Agreement or \$10,000, whichever is greater.

5.5 Mutual Waiver of Consequential Damages. Gensler and the Client hereby waive special, exemplary or consequential damages for claims or disputes arising out of or relating to this Agreement. The parties agree that this mutual waiver includes, but is not limited to, waiver of damages incurred by either party for loss of income, lost profit, financing costs, loss of business, or damage to reputation.

5.6 Governing Law. This Agreement will be governed by the law of the jurisdiction where the Project is located.

## **Article 6 – Termination and Suspension**

6.1 Termination or Suspension by Either Party. This Agreement may be terminated or suspended by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with this Agreement, through no fault of the party initiating the termination or suspension, and such nonperformance is not remedied within the notice period.

6.2 Failure to Make Payments. Client's failure to make payments to Gensler in accordance with this Agreement, or the Client's violation of its obligations under section 8.6 of this Agreement will constitute substantial nonperformance and cause for termination or, at Gensler's option, cause for suspension of performance of Services under this Agreement, and Gensler shall not be responsible for any claims or damages arising out of or related thereto.

6.3 Termination for Convenience. Either party may terminate this Agreement for its convenience upon not less than seven days written notice to the other party.

6.4 Compensation upon Termination. In the event of termination, Gensler will be compensated for Additional Services performed prior to termination, together with reimbursable expenses then due.

## **Article 7 – Payments to Gensler**

7.1 Progress Payments. Gensler will submit monthly invoices for Services performed and expenses incurred during the previous month, exclusive of any non-US withholding or value-added taxes. Payment will be due in US Dollars and payable upon receipt of Gensler's invoices. Client will notify Gensler of any disputes or questions regarding an invoice within 15 days of Client's receipt of the invoice in question. Disputes or questions regarding an invoice or a portion of an invoice will not be cause for withholding payment for the remaining portions due. Amounts unpaid 30 days after the issue date of Gensler's invoice will be assessed a service charge of 1.5% per month.

7.2 Hourly Rates. Where Services are to be compensated on an hourly basis, compensation will be based on the hourly rates set forth in Gensler's and Gensler's consultants' standard rate schedules.

7.3 Changes in Project Scope. If portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project will be payable to the extent Services are performed on those portions.

7.4 Changes in Project Schedule. The compensation set forth in this Agreement anticipates that the Services will proceed continuously in accordance with a mutually agreed Project Schedule. If the Project Schedule is extended, or the Services are delayed or disrupted for causes beyond Gensler's reasonable control, or the



Agreement is suspended pursuant to Article 6 of this Agreement, Gensler's compensation will be increased.

## **Article 8 – Miscellaneous Provisions**

8.1 Assignment and Third Parties. Neither party will assign this Agreement, any right arising out of it, or the performance of obligations hereunder, without the written consent of the other. Nothing contained in this Agreement will create a contractual relationship with, or a cause of action in favor of, any third party.

8.2 Professional Credits. Gensler will have the right to include representations of the design of the Project, including photographs, among Gensler's professional materials, including, but not limited to, promotional materials, professional publications, and competition submissions. Unless otherwise directed by Gensler, Client will provide professional credit for Gensler in Client's promotional materials (except for materials used to solicit funding) for the Project.

8.3 Latent Conditions. In the event the Project includes any remodeling, alteration, or rehabilitation work, Client acknowledges that certain design and technical decisions will be made on assumptions based on available documents and visual observations of existing conditions.

8.4 Area Measurements and Calculations. Area measurements and calculations provided by Gensler ("Measurements") are for Client's reference only, and are not intended to be relied upon by third parties, used in legal documents, or to be the sole basis for calculating rent, tax obligations or other similar purposes. The use and application of Measurements is at the sole discretion of the Client and Client agrees to indemnify Gensler from any claims or damages asserted by third parties arising from or related to the application and use of the Measurements.

8.5 Hazardous Materials. Client acknowledges that Gensler has no expertise in, and is not being retained for the purposes of, investigating, detecting, abating, replacing, remediating, or removing any items, products, or materials containing hazardous substances.

8.6 Ethics. Client and Gensler acknowledge their responsibilities and commitment to abide by their respective ethical guidelines, to require that their employees, agents, consultants or contractors conduct themselves professionally and respectfully, and to comply with both domestic and international anti-slavery and anti-corruption laws, including but not limited to the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act and the Modern Slavery Act, and any amendments and related regulations. Either party may terminate this Agreement at any stage of the Project, if it reasonably believes that the other party has failed to comply with the provisions of this section, including any

non-compliance prior to the effective date of this Agreement. A party exercising its right to terminate under this provision will not be liable for any claims or damages arising out of or related to the termination.

8.7 Confidentiality. N/A

8.8 Entire Agreement, Non-Waiver and Severability. This Agreement represents the entire and integrated agreement between Client and Gensler and supersedes all prior negotiations, representations, or agreements. No failure to act by either Party hereto will be deemed to constitute a waiver of such Party's rights or remedies hereunder. If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.

- End of Document -