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Enactment Number	12-0994
Enactment Date	3-29-12 <i>JS</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date March 28, 2012

Subject Independent Consultant Contract for Professional Services - HY Architects - Piedmont Portable Installation for Library and Science Project

Action Requested Approval by the Board of Education of an Independent Consultant Contract for Professional Services with HY Architects for Architect Services on behalf of the District at Piedmont Portable Installation for Library and Science Room Project, in an amount not-to exceed \$64,350.00. The term of this Agreement shall commence on March 28, 2012 and shall conclude no later than October 12, 2012.

Background There is an existing double wide portable on the Piedmont site that is being used for science classes. The City will take over this portable and renovate it into a Public Library. The District will bring in a single portable to accommodate the new Science classroom.

Local Business Participation Percentage 100.00%

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

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

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

Architectural Services

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 3rd day of February, 2012 by and between the Oakland Unified School District, Oakland, California ("District") and HY Architects ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following: **The scope of the project is: 1) to provide design for one portable to be used for a Science room, this will include electrical, data, intercom, intrusion alarm, and plumbing for sinks. The (E) portable will need some renovations that will be coordinated with the City of Oakland; 2) AON will work under HY to design the fire alarm system for the site, this will also include the added portable for the Science room. HY will also design the changes to the existing Science room, to now house the City of Oakland Library.**

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

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):
Piedmont Portable Installation for Library and Science Room and the design of the fire alarm system for the site.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	_____

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Sixty-four thousand, three hundred fifty dollars and no cents (\$64,350.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the consultant submits an invoice to the District

for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

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

Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

11. Termination.

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

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

12. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

13. Insurance.

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

13.1.1. Commercial General Liability and Automobile Liability Insurance.

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

13.1.2. Workers' Compensation and Employers' Liability Insurance.

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

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

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

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

13.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

13.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

13.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

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

13.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

14. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

15. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

16. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

17. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

18. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

19. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.

20. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires

school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

21. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
22. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 23.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
24. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
25. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
26. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

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

Consultant:

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

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

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

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

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

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

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

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

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

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

35. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

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

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

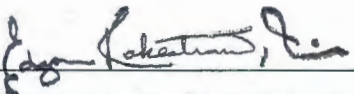
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



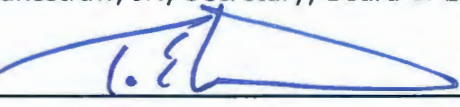
Jody London, President, Board of Education

Date: 3/29/12



Edgar Rakestraw, Jr., Secretary, Board of Education

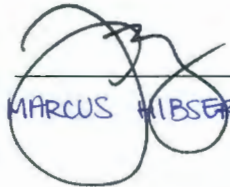
Date: 3/29/12



Timothy White, Associate Superintendent Facilities Planning and Management

Date: _____


HY Architects



MARCUS HUBSER, PRESIDENT

3/9/12

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 3.14.12

File ID Number: 12-0757
Introduction Date: 3-28-12
Enactment Number: 12-0994
Enactment Date: 3-29-12
By: dl

Information regarding Consultant:

Consultant: HIBSER YAMAUCHI ARCHITECTS, INC. 94-3170987 :
MARCUS HIBSER
License No.: C27362 Employer Identification and/or Social Security Number

Address: 300 27th STREET
OAKLAND, CA 94612

Telephone: 510-446-2222

Facsimile: 510-446-2211

E-Mail: mhibser@hy-arch.com

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

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

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

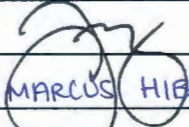
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: 3/9/12

Proper Name of Consultant: HIBSER YAMAUCHI ARCHITECTS, INC.

Signature: 

Print Name: MARCUS HIBSER

Title: PRESIDENT

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

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name: MARCUS HIBSER

Title: PRESIDENT

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

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

Date: 3/9/12

Proper Name of Consultant: HIBSER YAMAUCHI ARCHITECTS, INC.

Signature: 

Print Name: MARCUS HIBSER

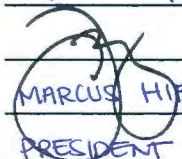
Title: PRESIDENT

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

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

Date: 3/9/12

Proper Name of Consultant: HIBSER YAMAUCHI ARCHITECTS, INC.

Signature: 

Print Name: MARCUS HIBSER

Title: PRESIDENT

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

Consultant's entire Proposal is not made part of this Agreement. **[IF A CONSULTANT PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES CAN BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]**



HIBSER YAMAUCHI Architects, Inc.

07145

February 3, 2012

Rocky Borton
Project Manager
Oakland Unified School District
955 High Street
Oakland, CA 94601

Re: Fee Proposal for Architectural / Engineering Services
Installation of Science Portable Building, Conversion of Existing Portable into Library Space, Site Fencing, Piedmont Elementary School

Dear Kevin:

Thank you for considering our services for your project. We appreciate all opportunities to work with the Oakland Unified School District. Per our recent discussion we are submitting this proposal for architectural / engineering services for installation of a science portable building, conversion of an existing portable into library space, and provide site fencing at Piedmont Elementary School.

Our understanding of the scope of the project is:

- Science Room Portable Building: Installation of one portable classroom building that will be used as an elementary school science room. This portable is anticipated to include electrical, data, intercom, intrusion alarm, plumbing for sinks. Fire alarm design will be done by Aon under a separate agreement directly with the District. We will coordinate and include their drawings in our set. This portable will be purchased by the district and will require painting, cabinets, flooring, etc. called out on our drawings.
- Conversion of Existing Portable Buildings into a Library Space: Limited remodeling to accommodate a library setup, including casework, new flooring, painting, etc., to be determined in review with the City.
- Site Fencing: Additional chain link fencing to allow for access to the library portables from the street. The City of Oakland will be installing a ramp / stairs to provide street access to the library portable building (not included in this proposal).

Our specific scope of work will be to prepare design, construction documents, submission to DSA, bidding, construction administration and close-out of these buildings.

Per your email, we will be aiming to meet a schedule to have this project prepared for installation / construction in the Summer of 2012. The DSA review period is variable and may impact the bidding and construction schedule.

SCOPE OF SERVICES

1. Architectural
 - a. Design
 - 1) Prepare preliminary layout of portable location and plans for review with District Facilities staff and school site administration.
 - b. Construction Documents
 - 1) Consult with DSA Access Compliance and Fire Life Safety to determine any additional work that will be required by this project.
 - 2) Review as-built drawings for recent fire alarm- and access-upgrade documentation.
 - 3) Prepare site plan showing new location of portable classroom, new modular ramps, and interior remodeling, including casework. Site plan will also document required emergency vehicle access as well as accessible path-of-travel, parking, and toilet room facilities which



Rocky Borton
OUSD - Portable Science Classrooms & Library at Piedmont School
February 3, 2012

- serve the area of work.
- 4) Provide notes and details as may be required for alterations to the portable which is to be reconfigured for library use. (Note: We are assuming pre-approved building drawings are provided by the manufacturer and will rely on those drawings for details such as structural framing, foundation system, under-floor ventilation, etc.)
 - 5) Attend meetings with the District as necessary for coordination / review purposes.
 - 6) Submit plans to local fire department for review and approval.
 - 7) Submit to DSA for review.
- c. Bidding and Construction Administration
- 1) We will provide bidding and construction administration support by answering RFI's and attending a maximum of 4 construction meetings. A single punch list and final walk are also anticipated.
 - 2) We will prepare and submit the required DSA close-out documentation.
2. Civil Engineering Services Civil engineering services include design services and specifications (construction documents, DSA submission, bidding, construction administration and project closeout).
- a. Connection of domestic water and sanitary sewer to each science portable
 - b. Minor paving and grading design for placing portable buildings and ramps on existing asphalt concrete play yards
 - c. Construction site meetings to a maximum of 3.
3. Electrical Engineering Services Electrical engineering services include power, data, intercom, paging / clock / bell and intrusion alarm systems.
- a. Visit the school site with district personnel to verify existing conditions and standards.
 - b. Review as-built drawings provided by the District, review portable manufacturer drawings.
 - c. Electrical Design Scope:
 - 1) Provide and extend existing school power to the new modular buildings.
 - 2) Provide and extend telephone, intercom, and clocks to new modular buildings.
 - 3) Provide and extend data systems from nearest IDF or MDF to new IDF at modulares. Provide new IDF rack and equipment to District standards
 - 4) Provide power to fire alarm system as required by fire alarm designer.
 - 5) Provide and extend existing intrusion alarm system to new modular buildings.
 - 6) Provide bidding and construction support.

CLARIFICATIONS AND ASSUMPTIONS

1. The project does not require DSA accessibility / ADA upgrades associated with parking, path of travel and toilet facilities that serve campus. Path of travel from the campus to the new portables is included in our scope.
2. The locations for the portables at the site will be relatively flat with existing utility locations in reasonable proximity to the new locations of the portables.
3. Existing site topographical and utility survey in the vicinity of the building location and surrounding areas in CAD format will be made available for our use in the development of the site plan.
4. The existing portable to be upgraded to a library use is DSA certified.
5. Existing drawings of the existing school campus with its corresponding DSA application number(s), cluster of buildings, code analysis, utilities, fire alarm, parking, accessible path-of-travel and toilet room facilities will be provided to us.



Rocky Borton
OUSD - Portable Science Classrooms & Library at Piedmont School
February 3, 2012

6. Existing fire hydrants at the campus are assumed to be sufficient, so any design to provide new hydrants is excluded.
7. The existing infrastructure, in particular electrical service, is sufficient to accommodate these renovations.

EXCLUSIONS

1. Fire alarm design (to be completed by Aon under direct contract with OUSD).
2. Structural engineering.
3. Landscape design or architecture
4. Soils engineering
5. Site topographic or utilities surveys.
6. ADA upgrades elsewhere on the campus which may be required by the DSA as a contingent prior to approval of this project have not been identified and are therefore excluded.
7. Furniture and equipment planning.
8. Building Commissioning.
9. Bid Alternates.
10. Any work related to asbestos, lead, mold or other hazardous materials identification or abatement.
11. Plan check and/or permit fees (required for local fire marshal review and DSA review).
12. Preparation of record or as-built drawings at the conclusion of the project.

PROJECT TEAM

Architect: Hibser Yamauchi Architects, Inc.
Principal: Marcus Hibser
Project Manager: Lee Pollard

Electrical Engineer: American Consulting Engineers Electrical

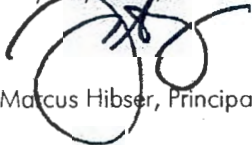
Civil Engineer: Kister, Savio & Rei

PROPOSED FEE

For the above work we herein propose a lump sum fee of \$55,600.00. For any additional scope of work beyond what is described above we will submit a contract modification for approval prior to commencement of the additional work.

We hope that this proposal meets with your expectations. If you have any additional questions, please do not hesitate to call. This proposal is valid for the next 60 days. We are available to begin work immediately upon receipt of the District's written authorization. We look forward to working with you.

Very truly yours,



Marcus Hibser, Principal

DESCRIPTIONS (Continued from Page 1)

form wording.

Insurance Is Primary and Non-contributory

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB7086Y501

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

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

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

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

Schedule

Person or Organization:

Oakland Unified School District
955 High Street
Oakland, CA 94601

Job Description:

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

DATE OF ISSUE: 03/05/12

EXCERPTS FROM: Hartford Form SS 00 08 04 05

BUSINESS LIABILITY COVERAGE FORM

Insured: Hibser Yamauchi Architects, Inc.

Insurer: Hartford Casualty Insurance Co.

Policy Number: 57SBALZ9809

Policy Effective Dates: 12/09/11 – 12/09/12

C. WHO IS AN INSURED

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

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

f. Any Other Party

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

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products- completed operations hazard, but only if

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

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

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

E.5. Separation of Insureds

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

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

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

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

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

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

EXCERPT FROM Hartford Form SS 04 38 06 01

HIRED AUTO AND NON-OWNED AUTO

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

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

AGREEMENT FOR ARCHITECTURAL SERVICES ROUTING FORM

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

Contractor Information							
Contractor Name	HY Architects	Agency's Contact	Marcus Hibser				
OUSD Vendor ID #	V015480	Title	Architect of Record				
Street Address	300-27 th Street	City	Oakland	State	CA	Zip	94612
Telephone	510-446-2222	Policy Expires	12-9-2012				
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes x No				
OUSD Project #	07145						

Term			
Date Work Will Begin	3-28-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	10-12-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$64,350.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9299, 9399, 9499	Measure B	1469901891	6215	\$64,350.00

Approval and Routing (in order of approval steps)					
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.					
	Division Head	Charles Love	Phone	510-535-8081	Fax 510-535-7082
1.	Capital Program Contract & Accounting Manager			Date Approved	3-13-12
	Signature 				
2.	General Counsel, Department of Facilities Planning and Management			Date Approved	3-14-12
	Signature 				
3.	Associate Superintendent, Facilities Planning and Management			Date Approved	
	Signature 				
4.	President, Board of Education			Date Approved	
	Signature				