Board Office Use: Le	gislative File Info.
File ID Number	15-0029
Introduction Date	1-28-2015
Enactment Number	15-0133
Enactment Date	1/28/15 d.



Memo

То	Board of Education
From	Antwan Wilson, Superintendent and Secretary, Board of Education By: Mia Settles-Tidwell, Chief Operations Officer Timothy White, Deputy Chief, Facilities Planning and Management
Board Meeting Date	January 28, 2015
Subject	Amendment No. 2, Independent Consultant Agreement - HY Architects - Elmhurst Middle School Paving Project
Action Requested	Approval by the Board of Education of Amendment No. 2, Independent Consultant Agreement with HY Architects for Design Services on behalf of the District at Elmhurst Middle School Paving Project, in an amount not-to exceed \$4,587.50 increasing previous contract amount from \$71,075.00 to a not to exceed amount of \$75,662.50 and revising the end date from March 26, 2014 through March 26, 2015 to November 14, 2016. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Background	The extended project duration due to delayed approval of trench drain submittal.
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 all individuals participating in the learning process.
	The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that



we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation Approval by the Board of Education of Amendment No. 2, Independent Consultant Agreement with HY Architects for Design Services on behalf of the District at Elmhurst Middle School Paving Project, in an amount not-to exceed \$4,587.50 increasing previous contract amount from \$71,075.00 to a not to exceed amount of \$75,662.50 and revising the end date from March 26, 2014 through March 26, 2015 to November 14, 2016. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

Measure J

Attachments

- Independent Contractors Agreement including scope of work
- Certificate of Insurance
- Consultant Proposal

OAKLAND UNIFIED

File ID Number: 15-0029Introduction Date: 128/15Enactment Number: 15-0135Enactment Date: 128/15By: 0.5

# AMENDMENT NO. 2 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and <u>HY Architects</u>. OUSD entered into an Agreement with CONTRACTOR for services on <u>March 26, 2014</u>, and the parties agree to amend that Agreement as follows:

1.	Services:
	If scope of work changed: 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. <u>Attach revised scope of work.</u>
	The CONTRACTOR agrees to provide the following amended services: The scope of the project is to cover additional fees for trench drain delay
2.	Terms (duration): X The term of the contract is <u>unchanged</u> . X The term of the contract has <u>changed</u> .
	If term is changed: The contract term is extended by an additional One year, 8 months, and the amended expiration date is November 14, 2016.
3.	Compensation: The contract price is <u>unchanged</u> . X The contract price has <u>changed</u> .
	If the compensation is changed: The contract price is amended by
	X Increase of \$4,587.50 to original contract amount
	Decrease of \$to original contract amount
	and the new contract total is Seventy-five thousand, six hundred sixty-two dollars and fifty cents

- 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:

X 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)
			\$

 Approval: This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Board of Education, and the Superintendent as their designee.

James Harris President and of Education

UNIFIED SCHOOL DISTRICT

Date

Antwan Wilson, Superintendent Secretary, Board of Education

the Mathematica

Timothy White, Associate Superintendent Facilities, Planning and Management

CONTRACTOR

Contractor Signature

12/16/14 Date

Marcus Hibser, Principal Print Name, Title

K999069.002 Rev. 10/30/08

OAKLAND

Contract No.

P.O. No.

# EXHIBIT "A" Scope of Work

# **Contractor Name: HY Architects**

# Billing Rate: Four thousand, five hundred eighty-seven dollars and fifty cents (\$4,587.50)

1. Description of Services to be Provided

The scope of the project is to cover additional fees for trench drain delay

2. Specific Outcomes:

Create equitable opportunities for learning; and provide accountability for quality.

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

0 Ensure a high quality instructional core	0 Prepare students for success in college and careers
0 Develop social, emotional and physical health	0Safe, healthy and supportive schools
X Create equitable opportunities for learning	x Accountable for quality
0 High quality and effective instruction	0 Full service community district

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

Susie Butler-Berkley Contract Analyst



HIBSER YAMAUCHI Architects, Inc.



November 5, 2013

# RE: **ELMHURST PAVING PROJECT** Elmhurst Middle School Oakland Unified School District

# FEE PROPOSAL FOR EXTENDED CONSTRUCTION TIME DUE TO DELAYS IN THE INSTALLATION OF THE TRENCH DRAIN

Dear Mary:

Per your request we are pleased to provide the following fee for the time extension to the Elmhurst Paving Project due to the delays in the installation of the Trench drain.

# PROPOSED FEE

For the above work we herein propose an additional lump sum fee of \$4587.50.

- 1. HY fees for trench drain delay: 8.75hrs at \$170 \$1487.50
- 2. Baseline Engineers fees for trench drain delay: 20hrs hrs at \$155 \$3100.00

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

If you have any additional questions, please do not hesitate to call. Our current billing rates are attached for your reference. This proposal is valid for the next 30 days. We are available to begin work immediately upon receipt of your written approval. I look forward to working with you.

The total fee for the delay from Oct 2<sup>nd,</sup> 2014 thru Trench Drain completion is <u>\$4587.50</u>

Please feel free to call if you have any questions

Truly yours,

Marcus Hibser Principal

# Client#: 390 HIBSEYAMA ACORD\_M CERTIFICATE OF LIABILITY INSURANCE Date (MM/DD/YYY) 12/10/2014 12/10/2014 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates P. O. Box 12675		CONTACT NAME:				
		PHONE (A/C, No, Ext): 510 465-3090	510 452-2193			
		E-MAIL ADDRESS:				
Oakland, CA 94604-2675 510 465-3090	INSURER(S) AFFORD	INSURER(S) AFFORDING COVERAGE				
	INSURER A: Sentinel Insurance Co	11000				
INSURED	INSURER B : Travelers Property Cas	25674				
	Hibser Yamauchi Architects, Inc.	INSURER C: U.S. Specialty Insuran	29599			
300 - 27th Street, 2nd Floor Oakland, CA 94612	INSURER D : Hartford Accident & In	22357				
	INSURER E :					
		INCLIDED E -				

# COVERAGES CERTIFICATE NUMBER:

o o r annoi a d				11-1101		
THIS IS TO	CERTIFY THAT THE POLICI	ES OF INSURANCE LISTED BEL	OW HAVE BEEN ISSUED TO	O THE INSURED NAMED	ABOVE FOR THE POLICY PERIOD	
INDICATED.	NOTWITHSTANDING ANY F	REQUIREMENT, TERM OR COND	TION OF ANY CONTRACT	OR OTHER DOCUMENT	WITH RESPECT TO WHICH THIS	
CERTIFICATE	E MAY BE ISSUED OR MAY	PERTAIN, THE INSURANCE AF	FORDED BY THE POLICIE	S DESCRIBED HEREIN	IS SUBJECT TO ALL THE TERMS,	
EXCLUSIONS	S AND CONDITIONS OF SUC	CH POLICIES. LIMITS SHOWN N	AY HAVE BEEN REDUCED	BY PAID CLAIMS.		
INSR		ADDL SUBR	POLICY EFF	POLICY EXP		

LTR	TYPE OF INSURANCE	INSR WVD	POLICY NUMBER	POLICY NUMBER (MM/DD/YYYY) (MM/DD/YYYY) LIMITS		S	
A	GENERAL LIABILITY	JABILITY GENERAL LIAB		12/09/2014	12/09/2015	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence)	\$2,000,000 \$1,000,000
	CLAIMS-MADE X OCCUR		EXCLUDES CLAIMS			MED EXP (Any one person)	\$10,000
			ARISING OUT OF			PERSONAL & ADV INJURY	s2,000,000
			THE PERFORMANCE			GENERAL AGGREGATE	\$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:		OF PROFESSIONAL			PRODUCTS - COMP/OP AGG	\$4,000,000
	POLICY X PRO- JECT LOC		SERVICES.				\$
D			57UEGAT0886	12/09/2014	12/09/2015	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	X ANY AUTO					BODILY INJURY (Per person)	\$
	ALL OWNED SCHEDULED					BODILY INJURY (Per accident)	\$
	X HIRED AUTOS X NON-OWNED				1	PROPERTY DAMAGE (Per accident)	s
							\$
A	X UMBRELLA LIAB X OCCUR		57SBWLZ9809	12/09/2014	12/09/2015	EACH OCCURRENCE	\$1,000,000
	EXCESS LIAB CLAIMS-MADE					AGGREGATE	s1,000,000
	DED X RETENTION \$10000						\$
В	WORKERS COMPENSATION		UB7086Y501	09/01/2014	09/01/2015	X WC STATU- TORY LIMITS ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A				E.L. EACH ACCIDENT	s1,000,000
	OFFICER/MEMBER EXCLUDED?	NIA	A	-		E.L. DISEASE - EA EMPLOYEE	\$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below				E.L. DISEASE - POLICY LIMIT	s1,000,000	
С	Professional		USS1424711	03/07/2014	4 03/07/2015	\$2,000,000 per clain	n
	Liability					\$2,000,000 annl aggr.	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required) All operations of the named insured. Oakland Unified School District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named as Additional Insured's to General and Auto Liability per policy form wording. Insurance is Primary and Non-contributory

CERTIFICATE HOLDER

CANCELLATION

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

**REVISION NUMBER** 

AUTHORIZED REPRESENTATIVE

i XA Jelson

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

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ACORD 25 (2010/05) 1 of 1 The ACORD name and logo are registered marks of ACORD #S1191555/M1191484 Hibser Yamauchi Architects, Inc.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB7086Y501

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

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

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

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

# Schedule

# Person or Organization:

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

Job Description:

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

DATE OF ISSUE: 09/01/2014

 Insured:
 Hibser Yamauchi Architects,Inc.

 Insurer:
 Sentinel Insurance Co. LTD

 Policy Number:
 57SBWLZ9809

 Policy Effective Date:
 12/09/2014

Additional Insured:

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

# EXCERPTS FROM: Hartford Form SS 00 08 04 05 BUSINESS LIABILITY COVERAGE FORM

### C. WHO IS AN INSURED

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

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

# f. Any Other Party

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

(a) In the performance of your ongoing operations;

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

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

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

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

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

# E.5. Separation of Insureds

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

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

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

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

If you have agreed in a written contract, written agreement or permit that this insurance is primary and noncontributory 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.



OAKLAND UNIFIED SCHOOL DISTRICT

# AMENDMENT INDEPENDENT CONTRACT ROUTING FORM

				Project	Information					
Project Name Elmhurst Middle School Paving Project						Site	202			
				Basic	Directions					
	Services	cannot be p	rovided until the c	ontract is	fully approved	and a	a Purchase Or	rder ha	is been issued.	
			I liability insurance, ensation insurance of					tract is	over \$15,000	
				Contracto	or Informatio	n				
Con	tractor Name	HY Archite			Agency's Cor		Marcus Hibse	et		
	SD Vendor ID #	V015480			Title		Project Mana	ager		
Stre	et Address	300-27 <sup>th</sup> S	treet, 2 <sup>nd</sup> Floor		City	Oak	land	State	CA Zip 94612	2
Tele	phone	510-446-2	222		Policy Expires	S	12	2-0	19-2015	
Con	tractor History	Previous	ly been an OUSD o	contractor?	X Yes 🗌 No	V	Vorked as an C	DUSD e	employee? 🗌 Yes x N	0
OUS	SD Project #	13130								
					Term					
Da	ate Work Will B	egin	4-26-2014		Date Work Wil			1	1-14-2016	
-										
				Com	pensation					
To	otal Contract An	nount	\$	Total Contract N		Not T	lot To Exceed \$75,66		\$75,662.00	
Pa	ay Rate Per Ho	Ur (If Hourly)	\$	1	If Amendment, Changed Amount \$ 4,587.50				-	
	ther Expenses		-		Requisition Number					
				Budget	Information					
	lf you are plann	and a second sec		P funds, ple		State ar			completing requisition.	
R	Resource #	Fund	ing Source		Org Key	_	Obje	ect Code		
	9350	Me	easure J		2029905890	)	6	5215	\$4,587.50	
			Approval an	d Routing	(in order of ap	oprova	al steps)	-		
				proved and a				docume	ent affirms that to your	
	Division Head		$\frown$		Phone	51	0-535-7038	Fax	510-535-7082	
1	Director, Facilit	ies Planning	and Management			L			ante contra antena e altera e	
1.	Signature	0	1/2-			Da	te Approved	12	19/14	
	General Counse	el, Departmer	nt of Facilities Planni	ng and Man	agement				1.1.1	
2.	Signature	MM	K			Da	te Approved	1.	5.14	
	Deputy Chief, F	acilities Plan	ning and Manageme	nt						
3.	Signature		Dhi	TinW	hit	D	ate Approved	K	-119/H	
	Chief Operation	s Officer	V						to the test of	
4.			1				ate Approved			
	President, Boar	d of Educatio	n , )	11						
5.	Signature	Xh	XI	C		D	ate Approved		1/4/15	

THIS FORM IS NOT A CONTRACT

Board Office Use: Le	gislative File Info.
File ID Number	14-1465
Introduction Date	6-25-2014
Enactment Number	14-1367
Enactment Date	10/25/14
	- Clarif -



Community Schools, Thriving Students

# Memo

То	Board of Education
From	Dr. Gary Yee, Acting Superintendent and Secretary, Board of Education By: Vernon Hal, Deputy Superintendent, Business Operations ded Timothy White, Associate Superintendent, Facilities Planning and Management
Board Meeting Date	June 25, 2014
Subject	Amendment No. 1, Independent Contractor Agreement - HY Architects- Elmhurst Middle School Paving Project
Action Requested	Approval by the Board of Education of Amendment No. 1, Independent Contractor Agreement with HY Architects for Design Services on behalf of the District at Elmhurst Middle School Paving Project, in an amount not-to exceed \$15,150.00 increasing previous contract amount from \$55,925.00 to a not to exceed amount of \$71,075.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Background	Request by Alliance Principal to infill dirt strip with asphalt paving between street and sidewalk to make a smooth surface for children being dropped-off and picked-up along Birch Street.
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

www.ousd.k12.ca.us



Community Schools, Thriving Students Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

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

Recommendation Approval by the Board of Education of Amendment No. 1, Independent Contractor Agreement with HY Architects for Design Services on behalf of the District at Elmhurst Middle School Paving Project, in an amount not-to exceed \$15,150.00 increasing previous contract amount from \$55,925.00 to a not to exceed amount of \$71,075.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

# Fiscal Impact Measure B

Attachments

- Independent Contractors Agreement including scope of work
- Certificate of Insurance



# AMENDMENT NO. 1 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and <u>HY Architects</u>. OUSD entered into an Agreement with CONTRACTOR for services on <u>March 26, 2014</u>, and the parties agree to amend that Agreement as follows:

1.	Services: The scope of work is <u>unchanged</u> . X The scope of work has <u>changed</u> .								
	If scope of work changed: 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. Attach revised scope of work.								
	The CONTRACTOR agrees to provide the following amended services: The scope of the project includes additional design and civil engineering services to incorporate city sidewalk improvement (as a Bid Alternate), designing site furnishings and packaging a conformed set for re-bid.								
2.	Terms (duration): X The term of the contract is unchanged.								
	If term is changed: The contract term is extended by an additional, and the amended expiration date is,								
3.	Compensation: The contract price is <u>unchanged</u> . X The contract price has <u>changed</u> .								
	If the compensation is changed: The contract price is amended by								
	X Increase of \$15,150.00 to original contract amount								
	Decrease of \$to original contract amount								
	and the new contract total is Seventy-one thousand, seventy-five dollars and no cents (\$71,075.00)								
_									

- 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:

X 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)
			\$

 Approval: This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Board of Education, and the Superintendent as their designee.

OAKLAND UNIFIED SCHOOL DISTRICT

David Kakasinha, President, Board of Education

Date

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

Timothy White, Associate Superintendent Date Facilities, Planning and Management

K999069.002 Rev. 10/30/08

Contract No.

CONTRACTOR

Contractor Signatore

hibser Principal Marcus Print Name, Title

P.O. No.

Amendment to Professional Services Contract

# EXHIBIT "A" Scope of Work

Contractor Name: HY Architects

# Billing Rate: Fifteen thousand, one hundred fifty dollars and no cents (\$15,150.00)

# 1. Description of Services to be Provided

The scope of the project includes additional design and civil engineering services to incorporate city sidewalk improvement (as a Bid Alternate), designing site furnishings and packaging a conformed set for re-bid.

2. Specific Outcomes:

Create equitable opportunities for learning, and providing accountability for quality.

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

0 Ensure a high quality instructional core	0 Prepare students for success in college and careers
0 Develop social, emotional and physical health	0Safe, healthy and supportive schools
X Create equitable opportunities for learning	x Accountable for quality
0 High quality and effective instruction	0 Full service community district

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

6-2-271 DIANA And

Susie Butler-Berkley Contract Analyst Page 2 of 2

K999069.001

	CI	ient#: 390		HIBSI	EYAMA	
	CORD. CERTI	FICATE OF LIA			1	DATE (MM/DD/YY) 03/04/2014
)ea	DUCER aley, Renton & Associates D. Box 12675		ONLY AN HOLDER.	THIS CERTIFIC	UED AS A MATTER OF D RIGHTS UPON THI ATE DOES NOT AME AFFORDED BY THE PO	E CERTIFICATE ND, EXTEND OR
	kland, CA 94604-2675 9465-3090			INSURERS	AFFORDING COVERAG	E
	RED	ananan ana ana ana ana ana ana ana ana	INSURER A: Ha	artford Casualty	Insurance Co.	
Hibser Yamauchi Architects, Inc.			INSURER B. TT	avelers Property	Casualty Co	
	300 - 27th Street, 2nd Oakland, CA 94612	Floor		S. Specialty Inst		
	Uakianu, CA 54012			entinel Insurance	e Co. LTD	
0	VERAGES		INSURER E:			
THIAN	E POLICIES OF INSURANCE LISTED Y REQUIREMENT, TERM OR CON Y PERTAIN, THE INSURANCE AFFO LICIES. AGGREGATE LIMITS SHOWN	DITION OF ANY CONTRACT OR OT RDED BY THE POLICIES DESCRIB	THER DOCUMENT WIT	H RESPECT TO WI	HICH THIS CERTIFICATE !	WAY BE ISSUED O
SR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMIT	S
1	GENERAL LIABILITY	57SBWLZ9809	12/09/13	12/09/14	EACH OCCURRENCE	\$2,000,000
	X COMMERCIAL GENERAL LIABILITY	GENERAL LIAB		*******	FIRE DAMAGE (Any one fire)	\$300,000
		EXCLUDES CLAIMS	5.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1		MED EXP (Any one person)	\$10,000
		ARISING OUT OF	10		PERSONAL & ADV INJURY	\$2,000,000
		THE PERFORMANCE OF PROFESSIONAL			GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$4,000,000
	POLICY X PRO- LOC	SERVICES.			PRODUCIS -COMPICE AGG	:4,000,000
)	AUTOMOBILE LIABILITY X ANY AUTO	57UEGAT0886	12/09/13	12/09/14	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
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	X HIRED AUTOS X NON-OWNED AUTOS				BODILY INJURY (Per socident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN EA ACC	\$
-	EXCESS LIABILITY	57SBWLZ9809	12/09/13	12/09/14	AGG EACH OCCURRENCE	\$ \$1,000,000
		5755425005	12/00/10	12/05/14	AGGREGATE	\$1,000,000
	DEDUCTIBLE					\$
	X RETENTION \$10000			00104/44	WC STATU- OTH-	5
3	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB7086Y501	09/01/13	09/01/14	A TORY LIMITS ER	\$1,000,000
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-			CANCELLA	TION		
E	RTIFICATE HOLDER AD	DITIONAL INSURED; INSURER LETTER:			ED POLICIES BE CANCELLED B	EFORE THE EXPIRAT
	Oakland Unified Sch	ool District			ER WILL KNOCKNOW MAIL	
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	Oakland, CA 94601-	0000		CIOPIDORIOPIDORIO ARCEN	XRANXKARXKANANRAK	
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AC	ORD 25-S (7/97)1 of 1	#\$906970/M906920			BMA @ ACORD	CORPORATION

Hibser Yamauchi Architects, Inc.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB7086Y501

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

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

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

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

# Schedule

# Person or Organization:

# **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

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

DATE OF ISSUE: 09/01/13

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

Additional Insured:

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

# EXCERPTS FROM: Hartford Form SS 00 08 04 05 BUSINESS LIABILITY COVERAGE FORM

### C. WHO IS AN INSURED

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

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

### f. Any Other Party

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

(a) In the performance of your ongoing operations;

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

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

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

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

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

### E.5. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned

in this policy to the first Named Insured, this insurance applies:

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

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

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

If you have agreed in a written contract, written agreement or permit that this insurance is primary and noncontributory 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 FRCM Hartford Form SS04 :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.



# Community Schools, Thriving Students AMENDMENT INDEPENDENT CONTRACT **ROUTING FORM**

				<b>Project Informa</b>	tion				
Proj	ect Name	Elmhurst Mi	ddle School Pavi	ng Project	Site	202			
				Basic Directio	ns				
	Services	cannot be pr	ovided until the c	ontract is fully app	roved and	a Purchase	Order has b	been issue	d.
				including certificates certification, unless v			ontract is ov	er \$15,000	
				Contractor Inform	nation				
Con	tractor Name	HY Archite	cts	Agency	's Contact	Marcus Hil	and the second states a second states and		
OUSD Vendor ID # V015480			Title		Architect o				
	et Address	300-27 <sup>th</sup> St		City		kland	State	CA Zip	94612
alacter grown	phone	510-446-22		Policy E					
	tractor History		y been an OUSD o	contractor? X Yes	No	Worked as an	OUSD emp	ployee?	Yes x No
20(5	SD Project #	13130							
				Term					
						1.22			
Da	ate Work Will B	egin	3-26-2014		rk Will En		3.2	6-2015	
			5-20-2014		an o years	from start date)	0-21	02010	
				Compensat	ion				
Tr	tal Contract Ar	nount	\$	Total Cor	Total Contract Not To Exceed			\$71,075.00	
	y Rate Per Ho					······································		\$ 15,150.00	
	her Expenses	- (n nount)		Requisition Number					
	and an portooo		and the second se	Budget Informa					
				Buuget informa					
	If you are plann	ing to multi-fun	d a contract using LE	P funds, please contac	t the State a	ind Federal Off	ice before con	npleting requ	isition.
R	lf you are planni Resource #		d a contract using LE ng Source	P funds, please contac Org			ce <u>before</u> con bject Code		iisition. mount
R		Fundi	in a state of the second se		Key				mount
R	esource #	Fundi	ng Source asure B	Org 202990	Key 15890	01	oject Code	A	mount
	esource # 9350	Fundi Mea	ng Source asure B Approvalian	Org 202990 d Routing (in order	Key 15890 • of approv	OI val steps)	oject Code 6215	A \$15,15	mount 0.00
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# THIS FORM IS NOT A CONTRACT

Board Office Use: Le	gislative File Info.
File ID Number	14-0505
Committee	Facilities
Introduction Date	3-26-2014
Enactment Number	14-0535
Enactment Date	32614



Community Schools, Thriving Students

# Memo

То	Board of Education
From	Dr. Gary Yee, Ed.D., Acting Superintendent and Secretary, Board of Education By: Vernon/Hal, Deputy Superintendent, Business Operations VEN Timothy White, Associate Superintendent, Facilities Planning and Management
Board Meeting Date	March 26, 2014
Subject	Small Design Contact - HY Architects - Elmhurst Middle School Paving Project
Action Requested	Approval by the Board of Education of an Small Design Contract with HY Architects for Design Services on behalf of the District at the Elmhurst Middle School Paving Project, in an amount not-to exceed \$55,925.50. The term of this Agreement shall commence on March 26, 2014 and shall conclude no later than March 26, 2015.
Background	This project is part of a district-wide paving effort.
Local Business Participation Percentage	100.00%
Strategic Alignment	Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.
	Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the

www.ousd.x12 ca.us



Community Schools, Thriving Students

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

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

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

Fiscal Impact

Attachments

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

# INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES (CONSTRUCTION RELATED)

# Elmhurst Middle School Paving Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the <u>18th day of Febeuary</u>, <u>2014</u> by and between the Oakland Unified School District, Oakland, California ("District") and <u>HY Architects</u> ("Consultant"), (together, "Partles").

NOW, THEREFORE, the Parties agree as follows:

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

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

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

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

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

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

- 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 regulared as indicated below:
  - X Signed Agreement
  - X Workers' Compensation Certification
  - X Fingerprinting/Criminal Background Investigation Certification
  - X Insurance Certificates and Endorsements
- 4. Compensation. Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in Exhibit "B" (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed <u>Fifty-five thousand</u>, nine hundred twenty-five dollars and fifty cents (\$55,925.50). District shall pay Consultant according to the following terms and conditions:
  - 4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the

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

- 5. Expenses. District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: <u>Not applicable.</u>
- 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.
- 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: <u>Not applicable.</u>
- 8. Performance of Services.
  - 8.1. Standard of Care. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
  - 8.2. Meetings. Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
  - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
  - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
- 9. Originality of Services. Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
- 10. Copyright/Trademark/Patent. Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's produced and the secure and maintain the consents to use of Consultant's patent of said matter in the name of the District.

Independent Consultant Agreement (Construction Related) -Architectural Services - OUSD - Page 1

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

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

# 12. Termination.

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

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

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

Independent Consultant Agreement (Construction Related) – Architectural Services – OUSD Page 2

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

# 14. Insurance.

- 14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
  - 14.1.1. Commercial General Liability and Automobile Liability Insurance. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
  - 14.1.2. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3.	Professional	Liability	(Errors	and	Omissio	ons).	Professional	Liability
(Er	rors and Omissi	ons) Insur	ance as a	pprop	priate to t	the Cor	nsultant's prof	ession.

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

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

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

Independent Consultant Agreement (Construction Related) -Ar chitectural Services - OUSD Page 4

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

Independent Consultant Agreement (Construction Related) –Architectural Services ~ OUSD Page 5

follows:

District: Oakland Unlfied School District 955 High Street Oakland, CA 94601 ATTN: Tadashi Nakadegawa, Director of Facilities Consultant: Maicus Hibser HY Architects 300-27<sup>th</sup> Street, 2<sup>nd</sup> Floor Oakland, CA 94612

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

- 28.Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 29. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
- 30. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 31.Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 32.Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 33.Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 34.Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 35.Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

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

Independent Consultant Agreement (Construction Related) -Architectural Services - OUSD Page 6

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

- **37.Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- **38.Incorporation of Recitals and Exhibits**. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

**Susie Butler-Berkley** 

Susie Butler-Berkley Contract Analyst IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date Indicated below.

OAKLAND UNIFIEDISCHOOL DISTRICT David Kakashiba, President, Board of Education Dr. Gary Yee, Ed.D., Acting Superintendent Secretary, Board of Education

3/27/14 Date: Date

Date:

Timothy White, Associate SuperIntendent Facilities Planning and Management

**Contractors Name** 

Marcus Hibsor, Principal Hibser adchi Architects, Inc.

APPROYED AS TO FORM:

Catherine Boskoff, Facilities Counsel

2/21/14

7.7.14 Date:

Independent Consultant Agreement (Construction Related) - Ar chitectural Services - OUSD Pa

Page 8

# Information regarding Consultant:

Consultant:	Hibser Yamauchi Architects, Inc.				
License No.:	C27362				
Address:	300 27th Street Oakland, CA 94612				
Telephone:	510-446-2222				
Facsimile:	510-446-2211 mhibaer@hy-arch.com				
E-Mail:					
Partner	ual oprietorship				

94-3170987 Employer Identification and/or Social Security Number

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.

Independent Consultant Agreement (Construction Related) -Architectural Services - OUSD

Page 9

# 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 selfinsure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date:	2/21/14
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	an
Print Name:	Marcus Hipser
Title:	Principal

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

# CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

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

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

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

Name:

Title:

\_The Work on the Contract is at an unoccupied school site and no employee and/or subconsultant 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, Subconsultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date:	2/21/14
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	1 the
Print Name:	Mardus Hibser
Title:	Perincipal

Page 11

# DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

? .

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

Date:	2/21/19
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	2
Print Name:	MarcusHibser
Title:	Principal

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

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

(See attached proposal from HY Architects)

Independent Consultan: Agreement (Construction Related I) - Architectuiral Services - OUSD Page: 13

# EXHIBIT A



HIBSER YAMAUCHI Architects, Inc.

November 15, 2013 Revised November 21, 2013

Lis Amphis

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

Elmhurst Middle School Repaying Re: Fee Proposal

Dear Colland:

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

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

# SCOPE OF SERVICES

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

300 - 27\* Street, 2\*\* Floor ; Oakland, CA 94612 | phone: [510] 446-2222 | fax (510] 446-2211 Caklum 81293 4



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

- e. Construction Administration
  - We will provide a new tran administration support by answering REP's reviewing submittals and attend on construction meetings. We assume that there will be 4 (1 houg) meetings. To prove that and 1 final walk are also anticipated.

# 2. Civil

- a. Attend an initial sete meeting with HY Architects to review the school site and to determine a more defined scope of work in the dring site layout for playground site furniture and parking areas which the X-chitects will include. Review problems with the site related to the storm drainage and payment scopes.
- Review underground office manage and determine utility protection requirements for existing shallow utility
- c Review hazardaus soil analysis (d.e.y) and gestechnical investigation report to determine type of pavement and pavement rectires or alayground and parking areas.
- d Based on items 1 to 3 above and included site plan, prepare povement and draipage analysis and design with general site layer (and design deroils.
- e. Prepare civil any nearing drawing based on the above design including a grading, poving and surface drainage plan for review by HY Architects. The drawings will include (1) General construction notes and short bare specifications, (2) New poving Inyout plan; (3) New grading plan; (4) New architege study plan; (and (5) Dramage Details.
- E. Update design phase drawnys to provide construction drawings: (1) General construction notes and short form specifications, (2) New poving layout plan; (3) New grading plan; (4) New dramage utility plan; (5) Eric tim control plan, (6) Paving details; (7) Dramage Datails; (8) Utility trenching details, and (9) Standard details.
- g. Prepare technical specifications is needed. District will provide the front and, nontechnical sections of the specifications.
- 3. Utility Locator
  - a. We will encrement to locate inductioned utilities in the areas advated, but for technical reasons cannot guarantee to do no, some short lengths of abandoned utilities may not be located. Location of attractions will be by electromagnetic field induction. Ground Ponetrating Radar will also be used.
  - b INCLUSIONS: Alternatic relation or integration, telephone, gas and water. Non-metally utilities with tracer wire a obtain. Server and all on these with integration 4: clenopolition manhole access will be located by reserving a tracking term.
  - c DEPTHS of addition will be previously where possible. Instruction readings are deemed within 1996 accuracy. Children depth in the require posteriting (not included in this proposal but aundoble on rescaled).
  - d. Unless will be parallely to the these mores will be provided build note or drawing, by layers in establish the st.

### 4. Soils Report

- A reconnectance of the set of the contracts of the commaticate statement and procedures to excludite openent gardering of an orbit of the contract.
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- (c) A subset on a subset of procession of the markers of an order of any and of the event here produced in the particular of the subset of



Colland Jung Oakland Unified School District - Elmhurst MS Repaying November 39, 2013

subsoil conditions. We would provide utility location clearance for our borings as needed, including USA and egs and a private utility locator for boring location spot checks. The general utility in opplie greg and a private utility locator for boring location spot checks. The general utility in opplie greg and a private utility locator for boring location spot checks. The distribution of written our scope for purposes of this proposal we have assumed that we will be oble to drill an a standard work day and will be able to move freely between drilling locations. We would set up barmoades and caution tape in a work area perimeter around the drilling as needed. Arrangements could be made for Saturday drilling, but would involve additional fees. Excess soft cuttings from the barings would be left on site spread out in a landscape area (minimal cuttings are anticipated). The existing asphalt at the baring locations would be patched upon increated our trilling operations.

- d. We would doi out representative soil samples from the borings and conduct laboratory index, classification and strangth tests on representative samples. We would provide at least two R-value tests for power ent-evaluation utilizing standard Caltrans pavement design methodology.
- e We would produce a written report with boring logs, results of laboratory testing and geotechartal recommendations for earthwork associated with the paving section (subgrade and baserock compaction) as well recommendations for trench backfill compaction. We would provide recommendations for the pavement section (thickness of asphalt and base layers) based on Calitaria standard design methodology if provided a traffic index.
- E. See attached fee proposal dated 11/14/13 by Alan Kropp & Associates
- 5. Waste Characterization
  - a Sampling shall include a weight waste characterization. Analyses will be completed by McCampbell Adalytical Inc is ELAP-certified laboratory #1644 in Pittsburg, CA for CAM-17 matals, VOCs. SVOC, PCBs, periodes and IPH. ATEM Laboratories Inc.'s NVLAP-uccredited laboratory in Berkeley. CA will councilete the analyses for asbestos.

## 6. Cost Estimating

 Cost estimates will be provided in CSI format at the completion of Construction Documents (total Lestimate)

## CLARIFICATIONS AND ASSUMPTIONS

- 1 This project is The done in Laborer
- 2. This project will require 1 package for permitting and construction
- 3 Site repagnaphical and childry is very a the varianty of the building location and surrounding areas in CAD formatively bein ride received for our use in the development of the site plan.
- Access will be granted to ad places requiring admission for the purpose of tracking and identifying the utilities.
- Any existing utility drawings will be in ode available.
- 6 Underground Service Men will be not fied prior to any luture excivation.


Colland Jang Oakland United School District - Elm<mark>hurst MS Repoving</mark> Navember 19, 2013

#### EXCLUSIONS

- Cost estimating.
- 2. Site topographic surveys
- 3. Structural Engineering or specifying
- Electrical Engineering or specifying.
- 5. Landshape design, orrhanstore or specifying.
- 6. Change orange to the construction contract which require submitted to DSA and which were not caused as a row t of per documents will be charged as an additional service.
- ADA upgrades which may be required by the DSA as a contingent to this project how not been identified and are membrin excluded.
- 8. Bid Alternatos
- 9. Plan ches sin deur permitiens.

#### BASIS OF PROPOSAL

1. Email from Colland task and subsequent Q&A

#### ANTICIPATED SCHEDULE

After receipt of the written spectrum is the silf-construct and the receipt of all required information, our work will be performed per the time durations activated in the initial email from Colland Jung. This schedule is predicated on receipt of all appropriate information in a timely fashion. Review times by various parties file, users, building departments, etc.) convery an time, have an innort on this schedule. If the construction schedule exceeds the estimated time we may adjust this proposal to account for additional CA support and meetings.

#### PROJECT LEAM

]	Architect	House franceuse Arch	intects. Inc.
		e ingest Procest Manescor	Marcus Hibsei Craig L'Umwi
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#### PROPOSED FEE

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

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

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

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

Very Truly Yours,

Marcus Hibser, Principal

/Enclosures Current Billing Rotes

300 - 27 Street, 2119our | Oukland, CA 94612 | phone: (510) 446-2222 | fax: (510) 446-2211 Day Day



### 2013 Billing Rates

Architectural

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

Interiors

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

Administrative Staff

\$85 per hour

(rates subject to change onnually)

300 - 27 Street, 2° Hoor | Oukland, CA 94612 phone: (510) 446-2222 | fax: (510) 446-2211 Colline is a los Arguée



SMALL DESIGN CONTRACT ROUTING FORM

		P	roject Information				
Project Name	Elmhurst M	S Paving Project		Site	202		
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Services	cannot be p		ract is fully approved a	and a Purc	hase Orde	r has be	en issued.
		ensation insurance certi	uding certificates and er fication, unless vendor i	s a sole pro		ct is over	\$15,000
		Anna the second s	ntractor Information	li Line cur	<u>. a</u>		
Contractor Name	HY Archi	lects	Agency's Cont	and the second and the second se	us Hibser	******	****
USD Vendor ID #	V015480	1	Title	Annance the and Annancements and a	Architect of Record		
itreet Address		Street, 2 <sup>nd</sup> Floor	City Delieu Euroisee	Oakland	A	ate S	A Zip 94612
elephone Contractor History	510-448-2 Previous	sly been an OUSD conti	Policy Expires	Maden		9rL	VIC Yes X N
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			Term				
Date Work Will E	Begin	3-26-2014	Date Work Will End By (not more than 5 years from start date)		3-26-	2015	
			Compensation				
Total Contract A	mount	\$	Total Contract Not To Exceed		eed	\$55,925.50	
Pay Rate Per Hour (if Houry) \$		S	If Amendment, Changed Amount		Amount	\$	
Other Expenses			Requisition Nun		alan 110, kawana tan hubu a		*** ***** ****************************
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		Approval and R	outing (in order of app	roval sten	5)	-	
			ed and a Purchase Order is			cument aff	ims that to your
Division Head		2077 V 2000	Phone	510-	535-7038	Fax	510-535-7082
Director, Facili	Director, Facilities Planning and Management						1
Signature				Date App	oved	727	14
General Couns	General Counsel, Department of Facilities Planning and Management						
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	Signature				** (1 to 1)	17.1	and an and an and an and a series of the ser
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THIS FORM IS NOT A CONTRACT

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	Oakland, CA 94612		The state of state of the state	s. specially ins	urance Compan	negasiatsiyaxaanaanaayaganig vaa
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#### Hibser Yamauchi Architects, Inc.

### WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: U87085Y501

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

We have the right to recover our payments from anyone hable 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 remuteration.

#### Schedule

Person or Organization:

Job Description:

All operations of the nameo marined "Caldand Unified School District and the State and their againts legresen latives, employees, trustees, officers, consultants, and volumeere

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

DATE OF ISSUE: (M/01/1)

Insured: Hibser Yamauchi Architectu.inc. Insurer: Heatford Casualty Insurance Co. Policy Number: 57SBWL29609 Policy Effective Date: 12/09/13

Additional Insured:

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

### EXCERPTS FROM: Hartford Form \$\$ 00 08 04 05 BUSINESS LIABILITY COVERAGE FORM

#### C. WHO IS AN INSURED

6. Additional insureds When Required By Written Contract, Written Agreement Or Permit The person(s) or organization(s) identified in Paragraphs a, through I, 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. 1, Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs a, through a, 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) to 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 insurads, this insurance does not apply to: "Bodly 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 noncontributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other Insurance.

#### E.S.b. Walver Of Rights Of Recovery (Walver Of Subrogation)

If the insured has walved 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.

Board Office Use: Le	gislative File Info.
File ID Number	14-0505
Committee	Facilities
Introduction Date	3-26-2014
Enactment Number	14-0535
Enactment Date	324/14



Community Schools, Thriving Students

# Memo

То	Board of Education				
From	Dr. Gary Yee, Ed.D., Acting Superintendent and Secretary, Board of Education By: Vernon/Hal, Deputy Superintendent, Business Operations VEV Timothy White, Associate Superintendent, Facilities Planning and Management				
<b>Board Meeting Date</b>	March 26, 2014				
Subject	Small Design Contact - HY Architects - Elmhurst Middle School Paving Project				
Action Requested	Approval by the Board of Education of an Small Design Contract with HY Architects for Design Services on behalf of the District at the Elmhurst Middle School Paving Project, in an amount not-to exceed \$55,925.50. The term of this Agreement shall commence on March 26, 2014 and shall conclude no later than March 26, 2015.				
Background	This project is part of a district-wide paving effort.				
Local Business	100.00%				
Participation Percentage					
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				

www.ousd.k12.ca.us



Community Schools, Thriving Students

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

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

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

Fiscal Impact

Attachments

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

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

#### Elmhurst Middle School Paving Project

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

NOW, THEREFORE, the Parties agree as follows:

.

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

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

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

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

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

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

- 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:
  - X Signed Agreement
  - X Workers' Compensation Certification
  - X Fingerprinting/Criminal Background Investigation Certification
  - X Insurance Certificates and Endorsements
- 4. Compensation. Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in Exhibit "B" (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed <u>Fifty-five thousand, nine hundred twenty-five dollars and fifty cents (\$55,925.50)</u>. 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.

- 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: <u>Not applicable.</u>
- 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.
- 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: <u>Not applicable.</u>
- 8. Performance of Services.

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- 8.1. Standard of Care. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 8.2. Meetings. Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 8.3. District Approval. The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
- 9. Originality of Services. Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
- 10. Copyright/Trademark/Patent. Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's

Independent Consultant Agreement (Construction Related) - Architectural Services - OUSD Page 1

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

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

#### 12. Termination.

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

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

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

Independent Consultant Agreement (Construction Related) –Architectural Services – OUSD Page 2

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

#### 14. Insurance.

- 14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
  - 14.1.1. Commercial General Liability and Automobile Liability Insurance. Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
  - 14.1.2. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
  - 14.1.3. Professional Liability (Errors and Omissions). Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

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

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

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

Independent Consultant Agreement (Construction Related) – Architectural Services – OUSD Page 4

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

Independent Consultant Agreement (Construction Related) –Architectural Services – OUSD Page 5

follows:

#### District:

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

#### Consultant:

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

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

- **28.Integration/Entire Agreement of Parties**. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 29.California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
- **30.Waiver**. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- **31.Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 32.Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- **33.Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 34.Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- **35.Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 36.Signature Authority. Each party has the full power and authority to enter into and perform

Independent Consultant Agreement (Construction Related) -Architectural Services - OUSD Page 6

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

- **37.Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- **38.Incorporation of Recitals and Exhibits**. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

Susie Butler-Berkley

Susie Butler-Berkley Contract Analyst IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT David Kakashiba, President, Board of Education Dr. Gary Yee, Ed. D., Acting Superintendent Secretary, Board of Education

Date: 3/27/14 Date: 3/11/14 Date:

Date:

Timothy White, Associate Superintendent Facilities Planning and Management

**Contractors Name** 

Marcus Hibser, Principal Hibser Wimauchi Architects, Inc.

2/21/4

APPROYED AS TO FORM:

Catherine Boskoff, Facilities Counsel

3 - 7 - 14 Date:

#### Information regarding Consultant:

Consultant:	Hibser Yamauchi Architects, Inc.			
License No.:	C27362			
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 X Corporation, State: Limited Liability Company Other:				

Employer Identification and/or Social Security Number

94-3170987

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:

1 .

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

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

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

Date:	2/21/14
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	AX
Print Name:	Marcus Hoser
Title:	Principal

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

#### CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

- The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or
- Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

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

Name:

Title:

\_\_\_\_\_The Work on the Contract is at an unoccupied school site and no employee and/or subconsultant 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, Subconsultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date:	2/21/14
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	10 A
Print Name:	Mardus Hibser
Title:	Principal

#### DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

1 .

A 1

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

Date:	2/21/10
Proper Name of Consultant:	Hibser Yamauchi Architects, Inc.
Signature:	- An
Print Name:	MarcusHibser
Title:	Principal

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

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

(See attached proposal from HY Architects)

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	proversion processing	GENERAL LIAB			FIRE DAMAGE (Any one fre)	\$300,000
	CLAIMS MADE X OCCUR	,			MED EXP (Any one person)	\$10,000
		ARISING OUT OF THE PERFORMANCE			PERSONAL & ADVINJURY GENERAL AGGREGATE	\$2,000,000
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	ANY AUTO				OTHER THAN EA ACC	5
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Hibser Yamauchi Architects, Inc.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB7085Y501

### 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:

Job Description:

All operations of the named insured. ""Caldand Unified School District and Ite State and their agants representatives, employees, trustees, officers, consultants, and volunteers.

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

DATE OF ISSUE: 09/01/13

insured: insumer. Policy Number. Policy Effective Date: 12/09/13

Hibser Yamauchi Architects.Inc Hartford Casualty Insurance Co. 57SBWLZ9809

Additional Insured:

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

### EXCERPTS FROM: Hartford Form SS 00 08 04 05 **BUSINESS LIABILITY COVERAGE FORM**

#### C. WHO IS AN INSURED

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

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

(a) In the performance of your ongoing operations;

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

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

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

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

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

#### E.5. Separation of Insureds

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

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

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

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

If you have agreed in a written contract, written agreement or permit that this insurance is primary and noncontributory 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 (Walver Of Subrogation)

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

#### EXCERPT FROM Hartford Form SS 04 38 06 01 HIRED AUTO AND NON-OWNED AUTO

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

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

### EXHIBIT A



HIBSER YAMAUCHI Architects, Inc.

November 15, 2013 Revised November 21, 2013

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

Re: Elmhurst Middle School Repaying Fee Proposal

Dear Colland:

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

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

#### SCOPE OF SERVICES

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



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

 300 - 27\* Street, 2<sup>nd</sup> Floor
 Oakland, CA 94612
 phone: (510) 446-2222
 lax: (510) 446-2211

 Oakland
 Davis
 Ios Angeles



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

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

#### Cost Estimating

 Cost estimates will be provided in CSI format at the completion of Construction Documents (total 1 estimate)

#### CLARIFICATIONS AND ASSUMPTIONS

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



#### EXCLUSIONS

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

#### BASIS OF PROPOSAL

1. Email from Colland Jang and subsequent Q&A

#### ANTICIPATED SCHEDULE

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

#### PROJECT TEAM

Architect:	Hibser Yamauchi Arc	hitects, Inc.
	Principal:	Marcus Hibser
	Project Manager:	Craig Durand
Civil Engineer:	Baseline Engineering	
Utility Locator:	Subtronic	
,		
Soils Engineer:	Alon Kropp & Associo	ites
Waste Characterization	SCA Environmental	
	Civil Engineer: Utility Locator: Soils Engineer:	Principal: Project Manager: Civil Engineer: Baseline Engineering Utility Locator: Subtronic Soils Engineer: Alan Kropp & Associa

 300 - 27<sup>th</sup> Street, 2<sup>nd</sup> Floor
 Oakland, CA 94612
 phone: [510] 446-2222
 fax: (510] 446-2211

 Oakland
 Davis
 Los Angeles



#### PROPOSED FEE

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

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

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

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

Very Truly Yours,

Marcus Hibser, Principal

Morcus rugser, runcipor

/Enclosures. Current Billing Rates



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

### 2013 Billing Rates

### Architectural

	Principal	\$275	per hour
	Architect 3	\$170	per hour
	Architect 2	\$160	per hour
	Architect 1	\$150	per hour
	Job Captain	\$130	per hour
	Senior Draftsperson	\$120	per hour
	Draftsperson	\$115	per hour
	Jr. Draftsperson	\$105	per hour
Interiors			
	Project Designer	\$130	per hour
	Staff Designer	\$110	per hour
Administrat	ive Staff	\$85	per hour

(rates subject to change annually)



## SMALL DESIGN CONTRACT ROUTING FORM

				Project Information				
Project Nam	ie E	Elmhurst M	S Paving Project		Site	202		
				Basic Directions	1			
Se	ervices o	cannot be p	provided until the con	ntract is fully approved	and a Pu	rchase C	Order has	been issued.
Attachment				cluding certificates and e			ntract is o	ver \$15,000
Checklist	Wo	rkers compe	ensation insurance cer	rtification, unless vendor	is a sole p	rovider		
			ć	ontractor Information	1			
Contractor N	ame	HY Archit		Agency's Con		rcus Hib	ser	
OUSD Vende		V015480		Title		chitect of		
Street Addre	SS	300-27 <sup>th</sup> S	Street, 2 <sup>nd</sup> Floor	Cîty	Oakland		State	GA Zip, 9461
Telephone		510-446-2	2222	Policy Expires		1	1-9-	2014
Contractor H			sly been an OUSD cor	ntractor? X Yes 🗌 No	Work	ed as an	OUSD en	nployee? TYes X N
OUSD Project	ct #	13130						
				Term				And an an an an and an
Date Work	k Will Be	egin	3-26-2014	Date Work Wil (not more than 5 y		tart date)	3-3	26-2015
				Compensation				
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			\$	If Amendment,				5,925.50
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THIS FORM IS NOT A CONTRACT