

| Board Office Use: Legislative File Info. | |
|---|--------------|
| File ID Number | 24-0390 |
| Introduction Date | 03-13-2024 |
| Enactment Number | 24-0440 |
| Enactment Date | 3/13/2024 er |



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems & Services Officer, Division of Facilities Planning and Management- Kenya Chatman, Executive Director, Division of Facilities Planning and Management

Board Meeting Date March 13, 2024

Subject Amendment No. 3, Architectural Services Agreement – Noll & Tam Architects – Urban Promise Academy (UPA) Campus Portable Relocation Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Amendment No. 3 to the Architectural Services Agreement by and between the **District** and **Noll & Tam Architects, Berkeley, CA**, for the latter to continue to provide basic services for Phase I Assessment & Design of three existing portable buildings and Phase II DSA approvals and construction administration fees for **the Urban Promise Academy (UPA) Campus Portable Relocation Project**, in an additional total amount of **\$34,303.00**, increasing Agreement's total not-to-exceed amount from **\$121,093.00 to \$155,396.00**. All other terms and conditions of the Agreement remain in full force and effect.

Discussion This Amendment is for basic services.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education of Amendment No. 3 to the Architectural Services Agreement by and between the District and Noll & Tam Architects, Berkeley, CA, for the latter to continue to provide basic services for Phase I Assessment & Design of three existing portable buildings and Phase II DSA approvals and construction administration fees for the Urban Promise Academy (UPA) Campus Portable Relocation Project, in an additional total amount of \$34,303.00, increasing Agreement's total not-to-exceed amount from \$121,093.00 to \$155,396.00. All other terms and conditions of the Agreement remain in full force and effect.

Fiscal Impact Fund 35 County School Facilities Fund

Attachments

- Amendment No. 3, including exhibits
- Routing Form
- File IDs 23-2425; -22-2932

AMENDMENT NO. 3

ARCHITECTURAL SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Noll & Tam Architects**. OUSD entered into an agreement with CONTRACTOR for services on **December 15, 2022** ("Agreement"), and the parties agree to amend the Agreement for the Services with **The Urban Promise Academy (UPA) Campus Portable Relocation Project** as follows and in the attached Exhibit A:

| | | |
|--|---|--|
| 1. Services: | <input checked="" type="checkbox"/> The scope of work is <u>unchanged</u> . | <input type="checkbox"/> The scope of work has <u>changed</u> . |
| <p>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.</p> <p>The CONTRACTOR agrees to provide the following amended services: to provide continuing basic services for Phase 1 Assessment & Design of three existing portable buildings and Phase II DSA approvals and construction administration fees, as described in the Proposal dated November 27, 2023, attached to this Amendment as Exhibit A</p> | | |
| 2. Terms (duration): | <input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> . | <input type="checkbox"/> The term of the contract has <u>changed</u> . |
| <p>If term is changed:</p> | | |
| 3. Compensation: | <input type="checkbox"/> The contract price is <u>unchanged</u> . <input checked="" type="checkbox"/> The contract price has <u>changed</u> . | |
| <p>If the compensation is changed: The not-to-exceed contract price is</p> <p><input checked="" type="checkbox"/> Increased by <u>Thirty-Four Thousand Three Hundred Three Dollars and No/100 (\$34,303.00) for Basic Services.</u></p> <p><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$_____).</p> <p>Prior to this amendment, the not-to-exceed total contract price was <u>One Hundred Twenty-One Thousand Ninety-Three Dollars and No/100 (\$121,093.00)</u>, and after this amendment, the not-to-exceed total contract price will be: <u>One Hundred Fifty-Five Thousand Three Hundred Ninety-Six Dollars and No/100 (\$155,396.00)</u>.</p> | | |

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


5. Amendment History:

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

| No. | Date | General Description of Reason for Amendment | Amount of Increase (Decrease) |
|-----|------------|---|-------------------------------|
| 1. | 02-08-2023 | Compensation | \$59,460.00 |
| 2. | 11-16-2023 | Compensation | \$29,645.00 |

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


OAKLAND UNIFIED SCHOOL DISTRICT



Benjamin Davis "Sam", President,
Board of Education

3/14/2023

Date



Kyla Johnson-Trammell, Superintendent
of the Board of Education

3/14/2024

Date

[Preston Thomas \(Feb 16, 2024 10:17 PST\)](#)

Preston Thomas, Chief Systems & Services
Officer, Facilities Planning and Management

Feb 16, 2024

Date

Approval as to form:



Arne Sandberg [name]
General Counsel, Facilities, Planning and Management

2/15/24

Date

NOLL & TAM ARCHITECTS



Signature

02/15/2024

Date

Scott Salge, Principal
Print Name, Title

EXHIBIT “A”
Scope of Work for Amendment

Contractor Name: Noll & Tam Architects

1. Detailed Description of Services to be provided: to provide continuing basic services for Phase 1 Assessment & Design of three existing portable buildings and Phase II DSA approvals and construction administration fees, as described in the Proposal dated November 27, 2023, attached to this Amendment as Exhibit A

2. Specific Outcomes:

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

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

November 27, 2023

Nicole Wells

Project Manager, Facilities
Oakland Unified School District
Direct phone 510-535-2726
955 High Street
Oakland, CA 94601
nicole.wells@ousd.org

**RE: Urban Promise Academy Modulars
Add Service 03 – Phase I additional effort and Phase II CA fee**

Dear Ms. Wells:

This additional services request is for scope not covered in our base contract. Our understanding of the work and proposed fees are summarized below.

Scope of Work

- Phase I – Assessment & Design additional effort. The effort to document existing conditions and prepare documents for submission to DSA has exceeded our original estimate. The requested supplemental fee would make Noll & Tam whole for this phase of work which has been completed.
- Phase II – DSA approvals and Construction Administration fee. The effort required to complete DSA approvals, assist in bidding and contract procurement and provide Construction Administration services significantly exceeds our initial estimate. The requested supplemental fee would cover approximately 150 hours of work for this phase.

Fees:

Our basic fee for this scope shall be time and materials of \$34,303 as listed below:

| | |
|--|-----------------|
| Phase I – Assessment & Design additional effort | \$7,603 |
| <u>Phase II – DSA approvals and Construction Administration fee.</u> | <u>\$26,700</u> |
| Total Request | \$34,303 |

We appreciate your consideration of this proposal and please don't hesitate to call with any questions.

Best regards,



Zachary Goodman, AIA, Principal



Christina Stone <christina.stone@ousd.org>

22151 Urban Promise Academy - Noll & Tam LBU

Tiffany Knuckles <tiffany@360tcpr.com>

Tue, May 2, 2023 at 2:15 PM

To: Christina Stone <christina.stone@ousd.org>

Cc: Nicole Wells <nicole.wells@ousd.org>, Shonnell Frost-Gibbs <shonnell@360tcpr.com>, Shonda Scott <shonda@360tcpr.com>

Hi Christina,

Per their contract (attached for reference), I believe there is 0% LBP on this project. It is funded by Fund 35 and therefore not monitored for local business. Additionally, I do not believe either Noll and Tam nor Atium are small/local firms.

Thank you,

[Quoted text hidden]



22-2932 Amendment No. 1 Agreement for Architectural Services - Noll & Tam Architects Urban Promise Academy.pdf
4462K



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

| | | | |
|---|---|------|-----|
| Project Name | Urban Promise Academy (UPA) Campus Portable Relocation Project | Site | 236 |
| Basic Directions | | | |
| Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board. | | | |
| Attachment Checklist | <input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider | | |

Contractor Information

| | | | | | | | |
|--------------------|---|------------------|---|-------|----|-----|-------|
| Contractor Name | Noll & Tam Architects | Agency's Contact | Scott Salge | | | | |
| OUSD Vendor ID # | 008175 | Title | Principal | | | | |
| Street Address | 729 Heinz Avenue, #7 | City | Berkeley | State | CA | Zip | 94710 |
| Telephone | 510-542-2200 | Policy Expires | | | | | |
| Contractor History | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | |
| OUSD Project # | 22151 | | | | | | |

Term of Original/Amended Contract

| | | | |
|---|------------|--|------------|
| Date Work Will Begin (i.e., effective date of contract) | 12-15-2022 | Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date) | 12-31-2024 |
| | | New Date of Contract End (If Any) | |

Compensation/Revised Compensation

| | | | |
|--|----|---|-------------|
| If New Contract, Total Contract Price (Lump Sum) | \$ | If New Contract, Total Contract Price (Not To Exceed) | \$34,303.00 |
| Pay Rate Per Hour (If Hourly) | \$ | If Amendment, Change in Price | |
| Other Expenses | | Requisition Number | |

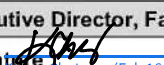


Budget Information

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

| Resource # | Funding Source | Org Key | Object Code | Amount |
|------------|--|--|-------------|-------------|
| 7710/9916 | Fund 35, County School Facilities Fund | 350-7710-0-9916-8500-6215-236-9180-9003-9999-22151 | 6215 | \$34,303.00 |

Approval and Routing (in order of approval steps)

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

| | | | | | |
|----|---|---------------|--------------|-----|--------------|
| | Division Head | Phone | 510-535-7038 | Fax | 510-535-7082 |
| 1. | Executive Director, Facilities Planning & Management | | | | |
| | Signature  | Date Approved | Feb 16, 2024 | | |
| | Kenya Hatman (Feb 16, 2024 12:00 PST) | | | | |
| 2. | General Counsel, Department of Facilities Planning and Management | | | | |
| | Signature  | Date Approved | 2/15/24 | | |
| | Lozano Smith, approved as to form | | | | |
| 3. | Deputy Chief, Facilities Planning and Management | | | | |
| | Signature  | Date Approved | Feb 16, 2024 | | |
| | Preston Thomas (Feb 16, 2024 10:17 PST) | | | | |
| 4. | Chief Financial Officer | | | | |
| | Signature | Date Approved | | | |
| 5. | President, Board of Education | | | | |
| | Signature | Date Approved | | | |

| Board Office Use: Legislative File Info. | |
|--|----------------|
| File ID Number | 23-2425 |
| Introduction Date | 11-16-2023 |
| Enactment Number | 23-1942 |
| Enactment Date | 11/16/2023 CJH |



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer, Division of Facilities Planning and Management; Kenya Chatman, Executive Director of Facilities Planning

Board Meeting Date November 16, 2023

Subject Amendment No. 2, Architectural Services Agreement – Noll & Tam Architects – Urban Promise Academy (UPA) Campus Portable Relocation Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Amendment No. 2, to the Architectural Services Agreement by and between the **District** and **Noll & Tam Architects, Berkeley, CA**, for the latter for additional services and to provide intrusion alarm design, for the **Urban Promise Academy (UPA) Campus Portable Relocation Project**, in an additional total amount of **\$29,645.00**, which includes a not-to-exceed contingency of **\$2,695.00**, for additional services, increasing Agreement's total not-to-exceed amount from **\$91,448.00 to \$121,093.00** and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

Discussion This Amendment is for additional architectural services. The Architect was selected (a) based on demonstrated competence and professional qualifications (Government Code § 4526), and (b) using a fair, competitive RFP selection process (Government Code §§ 4529.10 et seq.).

LBP (Local Business Participation Percentage) 0.00%

Recommendation Approval by the Board of Education of Amendment No. 2, to the Architectural Services Agreement by and between the District and Noll & Tam Architects, Berkeley, CA, for the latter for additional services and to provide intrusion alarm design, for the Urban Promise Academy (UPA) Campus Portable Relocation Project, in an additional total amount of \$29,645.00, which includes a not-to-exceed contingency of \$2,695.00, for additional services, increasing Agreement's total not-to-exceed amount from \$91,448.00 to \$121,093.00 and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

Fiscal Impact

Fund 35

Attachments

- Amendment No. 2, including exhibits
- Routing Form
- File ID 22-2932

AMENDMENT NO. 2

ARCHITECTURAL SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Noll & Tam Architects**. OUSD entered into an agreement with CONTRACTOR for services on **December 15, 2022** ("Agreement"), and the parties agree to amend the Agreement for the Services with **The Urban Promise Academy (UPA) Campus Portable Relocation Project** as follows and in the attached Exhibit A:

| | | |
|--|--|---|
| 1. Services: | <input type="checkbox"/> The scope of work is <u>unchanged</u> . | <input checked="" type="checkbox"/> The scope of work has <u>changed</u> . |
| <p>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.</p> <p>The CONTRACTOR agrees to provide the following amended services: intrusion alarm design for the relocatable buildings on the UPA campus. This work will be performed primarily by Jensen Hughes, at the direction of Noll & Tam as described in the Proposal dated September 8, 2022, attached to this Amendment as Exhibit A.</p> | | |
| 2. Terms (duration): | <input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> . | <input type="checkbox"/> The term of the contract has <u>changed</u> . |
| <p>If term is changed:</p> | | |
| 3. Compensation: | <input type="checkbox"/> The contract price is <u>unchanged</u> . | <input checked="" type="checkbox"/> The contract price has <u>changed</u> . |
| <p>If the compensation is changed: The not to exceed contract price is</p> <p style="margin-left: 40px;">X Increased by: <u>Twenty-Nine Thousand Six Hundred Forty-Five Dollars and No/100 (\$29,645.00), which includes \$26,950.00 for Basic Services and \$2,695.00 for Additional Services.</u></p> <p style="margin-left: 40px;"><input type="checkbox"/> Decreased by _____ dollars and no/100 (\$ _____).</p> <p>Prior to this amendment, the not-to-exceed total contract price was <u>Ninety-One Thousand Four Hundred Forty-Eight Dollars and No/100 (\$91,448.00)</u>, and after this amendment, the not-to-exceed total contract price will be: <u>One Hundred Twenty-One Thousand Ninety-Three Dollars and No/100 (\$121,093.00)</u>.</p> | | |

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

5. Amendment History:

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) |
|-----|------------|--|-------------------------------|
| 1 | 02-08-2023 | Additional environmental services and three hundred sixty-six (366) calendar days' extension to the term date. | \$59,460.00 |
| | | | \$ |


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

OAKLAND UNIFIED SCHOOL DISTRICT


Mike Hutchinson, President, Board of Education


11/17/2023

Date


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

11/17/2023

Date


Preston Thomas (Nov 1, 2023 14:03 PDT)

Preston Thomas, Chief Systems and Services
Officer, Facilities Planning and Management

Nov 1, 2023

Date

Approval as to form:


Arne Sandberg (name)
General Counsel, Facilities, Planning and Management

11/1/23

Date

NOLL & TAM ARCHITECTS


Contractor Signature

10/31/2023

Date

Scott Salge, Principal
Print Name, Title

EXHIBIT "A"
Scope of Work for Amendment

September 8, 2023

Nicole Wells

Project Manager, Facilities
Oakland Unified School District
d) 510-535-2726
955 High Street
Oakland, CA 94601
nicole.wells@ousd.org

**RE: Urban Promise Academy Relocatables
Add Service 01 – Intrusion Alarm Design**

Dear Ms. Wells:

This additional services request is for scope not covered in our base contract. Our understanding of the work and proposed fees are summarized below, and are subject to revision as mutually agreed upon.

Scope of Work:

Provide intrusion alarm design for the relocatable buildings on the UPA campus. This work will be performed primarily by Jensen Hughes, the District's preferred consultant under the direction of Noll & Tam. Please see their detailed proposal attached.

Deliverables:

100% CD set

Exclusions:

Services or work products not noted above can be provided upon request as an additional service.

Fees:

Our basic fee for this scope shall be lump sum fixed fee of \$29,645 as listed below, billed monthly on a percent complete basis. Services rendered beyond the agreed scope of work will be billed at our hourly rates.

| | |
|-------------------------|-----------------|
| Noll & Tam Architecture | \$2,450 |
| Jensen Hughs | \$24,500 |
| Sub-Total | \$26,950 |
| 10% Contingency* | \$2,695 |
| Base Total | \$29,645 |

* This is a District controlled allowance.

Please don't hesitate to call with any questions regarding this proposal.

Best regards,



Zachary Goodman, AIA , Principal

August 23, 2023

Elizabeth McLeod
Noll and Tam Architects
377 17th Street, Suite 209
Oakland, CA 94612
elizabeth.mcleod@nollandtam.com
+1 510-542-2243

RE: Urban Promise Academy, 3031 E 18th Street – Oakland, CA
Intrusion Alarm Design Services

Dear Ms. McLeod,

Jensen Hughes, Inc. (Consultant) is pleased to submit this proposal to provide intrusion alarm system design services to Noll and Tam Architects (Client) for the referenced project.

The Urban Promise Academy portable relocation project involves relocating three existing portable buildings from the neighboring Achieve Academy (a charter school) to the Urban Promise Academy, an existing OUSD campus.

Based on prior meetings with OUSD, the existing intrusion alarm system serving the Urban Promise Academy is obsolete and requires an upgrade. The intrusion alarm design will provide for an upgrade to the intrusion alarm control equipment and new intrusion alarm equipment in the three relocated portable buildings. Existing intrusion alarm wiring and devices within the existing Urban Promise Academy buildings will be reused.

Scope of Services

Jensen Hughes proposes to provide the following Scope of Services:

INTRUSION ALARM DESIGN SERVICES

1. Attend one pre-design meeting with the Client to identify the intrusion alarm systems objectives and to determine the approach to the systems replacement.
2. Develop AutoCAD background drawings from Client-supplied electronic files, black-line drawings, and site surveys.
3. Review the available existing intrusion alarm record drawings and system documentation to develop the intrusion alarm system design.

1220 Concord Avenue, Suite 400
Concord, CA 94520
O: +1-925-938-3550

4. Conduct one site visit to determine existing site conditions. During the site visit, Jensen Hughes will identify and locate existing intrusion alarm system devices and appliances for reuse.
5. Prepare intrusion alarm design drawings and technical specifications. Intrusion alarm design drawings will be detailed sufficient for OUSD Building & Grounds Alarm Shop requirements. The design drawings will be prepared in AutoCAD format. The design intent is to provide a new Bosch B9512G intrusion alarm control unit in the existing Urban Promise Academy campus. Existing intrusion alarm devices within the campus existing buildings will be reused with the new system. The locations of existing intrusion alarm devices will be shown on the design drawings.
6. Coordinate the design with the Client, other subconsultants, and the OUSD Buildings & Grounds Alarm Shop.
7. Submittals to the Client will be by email or electronic file transfer. Professional Engineer stamping of intrusion alarm drawings is excluded. Submittals to OUSD will be hard copy.
8. Submit 100% intrusion alarm construction drawings and specifications for the project to Client for submission to DSA. Submission to DSA shall be the responsibility of the Client. Revise the intrusion alarm drawings one time to incorporate appropriate comments received from all stakeholders.

CONSTRUCTION ADMINISTRATION

1. Attend one pre-construction and one pre-pull meeting with the selected contractor and Client. Meetings shall be arranged by the Client.
2. Attend one construction kick-off meeting with the selected contractor and Client. Meetings shall be arranged by the Client.
3. Due to the limited scope of the project construction observation visits are excluded.
4. Respond to contractor or inspector requests for information (RFIs) concerning interpretation of construction drawings. Prepare RFI responses as appropriate. Review intrusion alarm contractor submittals.
5. Witness the pre- and final acceptance tests of the intrusion alarm system with the Client, contractor, OUSD Building & Grounds Alarm Shop, and Project Inspector. Results of the final tests will be recorded and submitted to the Client. Two site visits are included for systems testing.

Additional Services

Any other work requested by Client outside of the Services specified above shall be considered an “Additional Service” and will be conducted on a mutually-agreed-upon basis. When such work is requested, Jensen Hughes will submit an estimate of the cost to the Client for approval prior to commencing work.

Additional work may include, but is not limited to:

1. Drawing reviews and consulting, for any other building on the Urban Promise Academy or Achieve Academy campuses. (All work is limited to intrusion alarm within the buildings identified in the Scope of Services above.)
2. Additional site visits.
3. Additional meetings.
4. Additional system tests.
5. Building and fire code analysis and appeals.

6. Review of additional resubmitted shop drawings or construction change orders.
7. Review of requests for payment and change orders from the contractor.
8. Additional construction observation visits beyond the Scope of Services.
9. Additional time for system acceptance testing beyond that noted in Scope of Services resulting from contractor's delays or deficiencies.
10. Professional engineer review or stamping of documents or drawings beyond that listed in the Scope of Services.
11. Development by Jensen Hughes of any system design, specifications or other project related documents not specified in the Scope of Services.
12. DSA submittals or verified reports.
13. Automatic sprinkler system design, testing and consulting.
14. Mechanical, structural, or civil engineering and consulting.
15. Special hazard or kitchen hood fire suppression system design, testing, and consulting.
16. Building code and accessibility consultation.

All services not specifically described in the Proposal are excluded from Consultant's Scope of Services.

Client Responsibilities

This proposal is based upon the Client performing the following activities:

1. Provide Jensen Hughes with PDF file copies, of all intrusion alarm system drawings relevant to the project. These documents are for Jensen Hughes' use in providing design services. It is understood that Jensen Hughes will rely upon the accuracy of all documents and electronic data furnished.
2. Provide Jensen Hughes with AutoCAD format drawings for all buildings relevant to the project.
3. Provide Jensen Hughes access to all areas of the buildings for the purpose of conducting the site visits and witnessing tests.
4. Coordination of the project including, but not limited to, requesting site visits, scheduling meetings, and paying any associated meeting fees with local authorities.

Staffing

Consultant reserves the right to assign personnel on an "as-needed" basis or substitute equivalently experienced personnel upon prior written notice to Client. No increase in the budget or fee will be made for such change in personnel without Client approval.

Professional Fees

The proposed Scope of Services above will be provided by Consultant for a fee of \$24,500, including necessary expenses to perform our Scope of Services. The fee is broken out by phase as follows:

| <i>Phase or Activity</i> | <i>Fee</i> |
|--------------------------------------|-----------------|
| Intrusion Alarm Design Services | \$14,950 |
| Construction Administration Services | \$9,550 |
| Totals | \$24,500 |

Payments

- + Jensen Hughes will submit an initial invoice of 10% of the approved fixed fee contract values upon initiation of effort.
- + Jensen Hughes' preferred payment method is electronic. Wire and ACH information is provided on the attached Remittance Information sheet.
- + Invoices will be submitted on a monthly basis using Jensen Hughes' standard invoice format. For Firm Fixed Price engagements, invoices will be submitted based on a percent of completion or fixed amount by task. For Time and Materials engagements, invoices will be submitted based on hours expended and agreed upon bill rates plus any expenses. Any deviation from the Jensen Hughes standard invoice format and submission process (including the use of customized billing formats and client portals for invoice submission) will result in a service fee of 1.5% over and above the agreed-upon fee.
- + Payment is due 30 days after receipt by the client or as agreed to per the Master Service Agreement (MSA). For any invoices remaining unpaid after the agreed upon due date, Jensen Hughes reserves the right to pursue all available remedies, including, without limitation, charging a service fee of 1.5% per month, suspension of services, court costs, collection costs, reasonable attorneys' fees, expert fees, and all other costs allowed by law, which may be incurred by the Consultant in pursuit of unpaid invoices.

Terms + Conditions

Jensen Hughes acknowledges that, if awarded a contract to perform the Scope of Services herein ("Contract"), the terms and conditions of such Contract will be in accordance with those of the Client Agreement. Jensen Hughes reserves the right to negotiate the terms of the Contract to our mutual satisfaction. Work authorized and carried out prior to negotiation of the Agreement will be performed under Jensen Hughes' Standard Terms and Conditions (Exhibit A) and will be paid in full without impact from/on negotiations of the Contract.

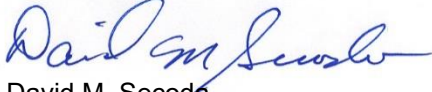
Miscellaneous

This proposal is valid for 90 days. All information contained in this proposal is considered proprietary and should not be shared without receiving written permission from Jensen Hughes. Authorization to proceed with the Scope of Services by Client shall constitute Client's acceptance to the Terms and Conditions attached hereto.

Jensen Hughes appreciates the opportunity to assist Noll and Tam Architects. If you have any questions, please contact me at +1 925-208-0598 or dsecoda@jensenhughes.com.

Sincerely,

Jensen Hughes



David M. Secoda
Senior Consultant

Attachments: Billing Contact Information, Remittance Information, Exhibit A

Acceptance

Jensen Hughes, Inc.:

Noll and Tam Architects:



SIGNATURE

David M. Secoda

PRINTED NAME

Senior Consultant

TITLE

August 23, 2023

DATE

SIGNATURE

PRINTED NAME

TITLE

DATE

Privacy Statement

Jensen Hughes respects the privacy of its clients and their employees and does not sell, rent or loan any personal data collected. Additional information on how Jensen Hughes handles personal data may be found on our website at <https://www.jensenhughes.com/privacy>. If you have any questions concerning the Jensen Hughes privacy program, please contact our Privacy Team at privacy@jensenhughes.com.

DMS/rs

Y:\Shared\Proposals\fire & building safety\wnc\2023\23-0275-DMS_OUSD Urban Promise Academydy-Noll+Tam_IA Design\FBS-WNC-23-0275-DMS_OUSD Urban Promise Academy_IA Design_20230823.docx

Billing Contact Information

Please provide the following information regarding project billing with your signed proposal:

Primary Billing Contact (Accounts Payable)

.....
Name:

.....
Email:

.....
Phone:

.....
Invoice Delivery Method + ☐ Email Address(es)
Destination

.....
☐ Mailing Address:

.....
☐ Other (web portal or other special instruction):

.....
Statement Destination: ☐ Same as Invoice Destination

 ☐ Primary Billing Contact

 ☐ Primary Technical Contact

 ☐ Other

.....
Client or Project Special ☐ Yes (provide if necessary) ☐ No
Billing Instructions

.....
Client/Project or reference ☐ Yes (provide if necessary) ☐ No
number to be included on
invoices: Client Project P.O. or Reference Number:

Jensen Hughes, Inc. Remittance Information

Payment Terms: 30 Days

Via check and postal delivery:

Jensen Hughes, Inc.
P.O. Box 7410242
Chicago, IL 60674-0242

Via check and express delivery to street address:

Bank of America Lockbox Services
Jensen Hughes 10242
540 W. Madison, 4th Floor
Chicago, IL 60661

Wire and ACH Information:

Bank of America
100 N. Tryon Street
Charlotte, NC 28255

| | |
|---------------------------|--|
| Account Title: | Jensen Hughes, Inc. |
| Account Number: | 446026640228 |
| ACH/EFT Routing Number: | 052001633 |
| Wire Routing Number: | 026009593 |
| International SWIFT Code: | BOFAUS3N (if incoming wire is in USD) |
| | BOFAUS6S (if incoming wire is in foreign currency) |

If you have questions, please contact:

receivables@jensenhughes.com

Exhibit A – Terms + Conditions

JENSEN HUGHES STANDARD TERMS AND CONDITIONS FOR GENERAL CONSULTING SERVICES – US (EXCLUDING FL, NC, NY)

1. AGREEMENT – Jensen Hughes, Inc. (hereinafter "Consultant") shall provide the scope of services (the "Services") described in Consultant's Proposal attached hereto (the "Proposal") for and on behalf of the Client in connection with the project as defined therein (the "Project"). These Standard Terms and Conditions are incorporated into the Proposal, and the Proposal and these Standard Terms and Conditions together shall be referred to as the "Agreement." Authorization to proceed with the Services by Client shall constitute Client's acceptance to the terms of the Agreement.

2. PERFORMANCE - Consultant shall perform its Services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar conditions and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). No other warranty, representation or covenant, either express or implied, is intended to be made with respect to the Services and the same are specifically disclaimed. Consultant shall endeavor to meet all reasonably imposed deadlines for performance of the Services. Client shall inform Consultant of all pertinent deadlines and dates in order to allow Consultant to effectively and efficiently perform the Services and shall provide Consultant with reasonable notice and time to complete any "Deliverables", as defined in Section 18 below. Any Deliverables requested of the Consultant by Client on an expedited time schedule may be subject to increased fees as determined by Consultant. Client and Consultant are aware that many factors outside the Consultant's control may affect the Consultant's ability to complete the Services.

3. FORCE MAJEURE - Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays or other causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to: strikes or other labor disputes; unusual delay in deliveries; unavoidable casualties; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; pandemics or epidemics, including, but not limited to, related costs and delays and impacts; failure of any government agency to act in a timely manner; delay or other failure of performance by Client or Client's contractors or consultants; discovery of any hazardous substances or differing site conditions; or any causes referenced in Section 5 below. The time schedule and Consultant's compensation shall be equitably adjusted to compensate for any of these causes.

4. INDEPENDENT CONTRACTOR - Client is engaging Consultant as an independent contractor, and not as an agent, employee, director or partner of Client. The parties agree that this Agreement does not establish a joint venture, employment or agency relationship. Nothing contained in this Agreement or any action by Consultant shall be construed to impose a fiduciary duty on Consultant or create a fiduciary relationship

between Consultant and Client or between Consultant and any third party.

5. LIMITATIONS ON RESPONSIBILITY - Consultant shall not be responsible for the acts or omissions of Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons performing work or services on the Project. Consultant shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work by any other person on any Project site. Consultant shall not be responsible for Client's or other employers' implementation of or compliance with its, their or others' safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above, nor shall Consultant be responsible for the adequacy or completeness of any of the above safety programs, procedures or precautions.

6. APPLICABLE LAWS - Consistent with Consultant's Standard of Care, Consultant's Services shall endeavor to comply with all applicable laws, rules, codes, regulations and orders of applicable governmental or public authority having jurisdiction over the Project in force at the time of Consultant's performance of the Services.

7. TERMINATION/SUSPENSION OF SERVICES

a. For Convenience. This Agreement may be terminated by either party upon not less than fourteen (14) days' written notice for such party's convenience and without cause. In the event that Client requests termination of the Services prior to completion of the Services, such notice shall state the reason(s) for termination. Consultant reserves the right to complete such records as are necessary to place its files in order and, where considered necessary by Consultant to protect its professional reputation, to complete a report on the Services performed to the date of termination. If the Project is cancelled prior to completion or suspended by Client for more than sixty (60) days, Client shall pay and reimburse Consultant for services rendered and costs incurred up to and including the date of termination. If the payment terms are based upon a fixed fee price, then Consultant shall be paid on a pro rata basis in proportion to the contract price based on the level of effort expended up to and including the date of termination, as invoiced by Consultant.

b. For Cause. This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In addition, if Client fails to make payments when due or otherwise is in breach of this Agreement, Consultant may, at its option, suspend performance of Services upon five (5) calendar days' notice to Client. Consultant shall have no liability whatsoever to Client for any costs or damages as a result of such suspension

APRIL 12, 2021.KSC

caused by any breach of this Agreement by Client. Upon payment in full by Client after a suspension, Consultant shall resume Services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. If Client still fails to make payment or otherwise cure the breach following a suspension of Services, Consultant may terminate this Agreement upon an additional seven (7) days' notice.

8. PAYMENT

a. No deductions shall be made from Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which Consultant has been adjudged to be liable. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within fifteen (15) calendar days of receipt of the invoice. Failure to notify Consultant within the specified period will constitute a waiver of any claim with respect to the content or accuracy of the invoice, as well as constitute acceptance of the Services provided. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute with supporting documentation and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due that is not resolved within twenty-five (25) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved thereafter in accordance with the Dispute Resolution provision of this Agreement.

b. Reimbursable Expenses include the actual expenses incurred directly or indirectly in connection with the Services, such as those for: travel, including transportation and associated expenses; printing and reproduction of Project related documents including reports, specifications, drawings, Project administration documents and correspondence; filing and permit fees; renderings, models, and mock-ups required for the Services; all state and local taxes (except U.S., state, local income taxes or payroll taxes); delivery and courier services; and Project materials including photographic film and processing. Except as otherwise specified, reimbursable expenses will be billed at cost plus 15%. If requested as part of the billing information, detail of charges showing the date, amount and type of each charge will be included as a part of the invoice. Copies of time sheets and expense reports will not be provided since they may also contain confidential information related to other clients.

9. ADDITIONAL SERVICES - Additional Services of Consultant, not specifically included as part of the Scope of Services defined in the attached Proposal shall be mutually agreed upon in writing by Client and Consultant prior to commencement of such Additional Services. The Consultant shall be entitled to an increase in compensation or time or both for performance of the Services where any changes are required or made to the scope of the Services to the extent that such changes do not arise from the negligence of the Consultant. The Consultant shall not be required to perform any Services related to a change unless the parties have agreed on the amount of or the basis for calculating the time and compensation associated with such change.

10. INFORMATION PROVIDED BY CLIENT - On Consultant's request, Client shall furnish services of other consultants, information, and reports as reasonably necessary for the performance of Consultant's Services. The services, information, and reports requested shall be furnished at no expense to Consultant. Consultant shall be entitled to rely upon, but shall not be responsible for, the accuracy,

completeness, and timeliness of services, information, and reports furnished by Client and Client's consultants.

11. INDEMNIFICATION

a. Consultant agrees to indemnify and hold Client harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent such Claims are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligent acts, errors or omissions or willful misconduct of Consultant. This obligation shall not apply to the extent said Claims arise out of, pertain to, or relate to the negligence of Client or Client's other agents, other servants, or other independent contractors, including the contractor, subcontractors of contractor or other consultants, or others who are directly responsible to Client, or for defects in design or construction furnished by those persons.

b. Client agrees to indemnify and hold Consultant harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense), to the extent they are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligent acts, errors or omissions or willful misconduct of Client.

c. Neither party shall have an upfront duty to defend the other in connection with the indemnification obligations above.

12. INSURANCE

a. Consultant shall provide Certificates of Insurance and maintain, for the duration of this Agreement, the following insurance coverage:

| | |
|------------------------------|-----------------------------------|
| Workers' Compensation | Statutory Amount |
| General Liability | \$1,000,000 per occurrence |
| Employer's Liability | \$1,000,000 per occurrence |
| Professional Liability (E&O) | \$1,000,000 per claim / aggregate |

b. Client shall be responsible for purchasing and maintaining its own liability and property insurance.

c. Client and Consultant waive all rights against each other for loss, damage and/or liability to the extent covered by the insurance policies required to be maintained hereunder.

13. SOLE REMEDY - It is intended and agreed by the parties to this Agreement that Client's obligations and Consultant's Services in connection with the Project shall not subject Client's or Consultant's individual shareholders, employees, officers or directors to any personal legal exposure for the risks associated with this Project; and therefore any claim, demand or suit shall be directed and/or asserted only against the business entities that are the parties to this Agreement, which shall be the sole remedy for any dispute hereunder.

14. LIMITATION OF LIABILITY

a. THE CLIENT AND CONSULTANT HAVE DISCUSSED THE RISKS AND BENEFITS OF THE PROJECT AND THE COMPENSATION TO BE PAID TO CONSULTANT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT EXPRESSLY AGREES, FOR ITSELF AND ANYONE CLAIMING BY, THROUGH OR UNDER IT, THAT THE LIABILITY OF CONSULTANT, ITS SUBSIDIARIES, AFFILIATES AND SUBCONTRACTORS, INCLUDING THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUCCESSORS AND ASSIGNS FOR ANY AND ALL CAUSES OF ACTION WHATSOEVER, INCLUDING WITHOUT LIMITATION, TORT, CONTRACT,

APRIL 12, 2021.KSC

STRICT LIABILITY, INDEMNITY OR OTHERWISE, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR CONSULTANT'S PROFESSIONAL SERVICES, SHALL NOT EXCEED THE FEE PAID TO CONSULTANT. NEITHER CONSULTANT NOR THE CLIENT WILL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE, LOSS OF USE OR OTHER OPPORTUNITY, LOSS OF GOODWILL OR OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES. Client acknowledges that (i) without the inclusion of this limitation of liability provision, Consultant would not have performed the Services; (ii) it has had the opportunity to negotiate the terms of this limitation of liability as part of an "arm's-length transaction"; (iii) the limitation amount may differ from the amount of professional liability insurance required of Consultant under this Agreement; and (iv) the limitation of liability provision is merely a limitation, and not an exculpation, of Consultant's liability.

15. NO THIRD-PARTY BENEFICIARIES - Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant.

16. ASSIGNMENT - This Agreement shall be binding upon Client and Consultant and their respective successors, assigns, and legal representatives. Neither party shall transfer or assign any rights or obligations under or interest in this Agreement without the prior written consent of the other party; provided, however, that Consultant may assign its rights and obligations under this Agreement without the consent of Client if such assignment is to a subsidiary, affiliate or successor in connection with a "Change of Control" and provided that such assignee shall expressly assume the obligations under this Agreement. As used in this section, a "Change of Control" shall mean (i) a merger, consolidation or similar transaction providing for the acquisition of the direct or indirect ownership of more than fifty percent (50%) of a party's interests in the company, or (ii) the sale of all or substantially all of a party's assets.

17. CONFIDENTIALITY - In the event Consultant or Client receives Confidential Information (as defined below) from the other party, whether disclosed in writing or verbally, the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services solely and exclusively for the Project, or (3) its consultants whose contracts include similar restrictions on the use of confidential information. As used herein, "Confidential Information" shall mean information relating to the other party or its business and which is specifically designated by the disclosing party as "confidential". These provisions shall not apply to information in whatever form that is in the public domain, was previously known to and/or generated by Consultant, nor shall it restrict Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for Consultant to defend itself from any legal action or claim.

18. OWNERSHIP OF INTELLECTUAL PROPERTY AND DELIVERABLES

a. All rights to patents, trademarks, copyrights, and trade secrets (hereafter, "**Intellectual Property**") owned by Consultant, as well as any modifications, updates or enhancements made to such Intellectual Property during the performance of the Services, shall remain the exclusive property of Consultant throughout the world in perpetuity, and

except as necessary for the license to use and reproduce the Deliverables set forth in 18.c. below, Consultant does not grant Client any right or license to such Intellectual Property.

b. All concepts, drawings, plans, designs, reports, field data, field notes, calculations, processes, graphic representations, electronic media, estimates, records, memoranda and all other documents, information, products and works prepared by or on behalf of Consultant, its employees, sub-consultants or sub-contractors for or related to the Services, (collectively, "**Deliverables**"), including all Intellectual Property therein and thereto, shall remain the property of Consultant. Consultant shall be deemed the sole and exclusive author and owner of the Deliverables and shall retain all common law, statutory and other reserved rights, including copyrights, throughout the world in perpetuity.

c. Upon execution of this Agreement, Consultant grants to Client a nonexclusive, limited and revocable license to use and reproduce the Deliverables solely for purposes of designing, administering, using and maintaining the Project, provided Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Client agrees that all Deliverables furnished to the Client or its agents, which are not paid for in a timely manner, will be returned upon demand and will not be used by Client for any purpose whatsoever.

d. Except for the license granted above, no other license or right shall be deemed granted or implied. Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of Consultant.

e. Client shall not use, reuse or adapt the Deliverables in connection with extensions of the Project or for any other project, unless Client obtains the prior written agreement of Consultant. Any unauthorized use, reuse or modifications of the Deliverables shall be at Client's sole risk and without liability to Consultant, and Client agrees to defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of the unauthorized use, reuse, or modification of the Deliverables.

19. CERTIFICATE OF MERIT REQUIREMENT - The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the state where the Project is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the Standard of Care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the Standard of Care. This certificate shall be provided to the Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

20. GOVERNING LAW, VENUE, AND JURISDICTION - This Agreement shall be governed by the laws of the State of Maryland, and the state and federal courts in the State of Maryland shall be the exclusive venue for any and all dispute resolution proceedings unless the parties mutually agree otherwise in writing. Client consents to personal jurisdiction of the state and federal courts in the State of Maryland.

APRIL 12, 2021.KSC

21. DISPUTE RESOLUTION - The parties agree to first try in good faith to settle between themselves any dispute arising out of or related to this Agreement ("Dispute"). In the event a Dispute between the parties is not resolved within thirty (30) days by direct discussions between the parties, the parties agree to submit the Dispute to non-binding mediation conducted by the American Arbitration Association or such other mediation service upon which the parties agree. In the event the parties are not able to resolve the Dispute by mediation, either party may elect to have the pending Dispute resolved by arbitration in accordance with the procedural rules of the American Arbitration Association as presently published and existing. Unless otherwise agreed, the arbitration proceeding shall take place in the state where the project is located. The cost and expenses of the arbitrator(s) shall be shared equally by the parties. Each party shall be responsible for its own costs and expenses in presenting the Dispute for arbitration. The parties agree to be bound by the decision of the arbitrator(s) and the award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY DISPUTE. In any event, the maximum amount recoverable by Client will not exceed the amount or include the types of damages waived in the Limitation of Liability provision above.

22. OPINIONS OF COST - When included in Consultant's scope of Services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Client's budget or from Consultant's opinions or estimates of probable construction cost.

23. ENVIRONMENTAL CONDITIONS, FIRES & ACTS OF TERRORISM

a. For purposes of this section, "Environmental Conditions" means the presence at the Project site of hazardous wastes, hazardous substances, asbestos, asbestos-containing materials ("ACM"), suspected asbestos-containing materials ("SACM"), polychlorinated biphenyls, lead, lead-based paint, urea-formaldehyde-containing materials, mold, biohazards, biological agents, radioactive materials, or any other hazardous or toxic substances as defined by any federal, state, or local statute, regulation, code, or ordinance. Client acknowledges that Consultant shall have no responsibilities or duties relating to the identification, discovery, presence, handling, removal, abatement or disposal of, or exposure (including exposure assessment or control) of persons to, Environmental Conditions in any format the Project site, including any ACM or SACM located at or transported from the Project. Client acknowledges that it accepts responsibility for notifying the appropriate state and local Environmental Protection Agency and the United States Environmental Protection Agency for any ACM or SACM delineation, demolition, construction or repair work. Client further acknowledges that it accepts responsibility for any inspection required by the National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), or any related state-delegated authority.

b. In no event shall Consultant be held liable or otherwise responsible for preventing any financial or physical damage, resulting from acts of terrorism or fires ensuing therefrom, including, but not limited to, chronic or acute injuries relating thereto (or arising out of), subsequent remedial activities undertaken relating thereto, or any other event or consequence thereof, associated countermeasures pursued or implemented by any federal, state, or local government representatives, or any of their contractors, or subcontractors, or any other public or private party in any way connected with addressing or dealing with anything covered by the Scope of Services, including, without limitation, acts of terrorism and fires ensuing therefrom.

24. RESPONSIBILITY FOR CODE COMPLIANCE - Where the Services include the provision of code compliance consulting services, Consultant, in exercising its professional judgment consistent with the Standard of Care, will endeavor to perform the Services in accordance with applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders and codes relating to the design, construction, use and/or occupancy of the Project (collectively "Governmental Requirements") in effect as of the date of completion of the Services. Such Governmental Requirements may include, for example, fire protection, life safety, building occupancy, accessibility or the Americans with Disabilities Act, as applicable to the Services. Client acknowledges and agrees that interpretation of Governmental Requirements by the authority or official having jurisdiction ("AHJ") may vary and may be subject to change even after completion of the Services. In performing the Services, Consultant shall be entitled to rely on initial interpretations provided by the AHJ. If, after completion of the Services, any modification or amendment to the construction documents (or other related documents) is required because of a subsequent interpretation of the Governmental Requirements by the AHJ, Consultant shall not be liable for any consequences resulting therefrom; provided, however that Consultant shall make the required modification or amendment as an additional service and shall be entitled to compensation for such additional service at the hourly rates set forth in the Proposal, or as otherwise agreed by the parties in writing.

25. ETHICS AND CONFLICTS OF INTEREST - Both parties shall perform their obligations with integrity, including but not limited to:

a. Conflicts of interest shall be avoided or disclosed promptly to the other party.

b. Neither party has conducted or shall engage in any transaction or dealing with any prohibited person in violation of the U.S. Patriot Act or any OFAC rule or regulation.

c. Both parties shall comply with all regulations of the Foreign Corrupt Practices Act ("FCPA"), other applicable United States laws, and other applicable foreign laws (including, but not limited to the OECD Convention on Combating Bribery of Foreign Public Officials) relating to the soliciting and performing work in foreign countries.

d. Neither party shall receive any contingent fees or gratuities to and from the other party, including their agents, officers, employees and sub consultants or others to secure preferential treatment.

26. ANTI-RAIDING PROVISION - During the duration of the Services for the project provided for under this proposal agreement, and for a period of one (1) year after the completion of or termination of such Services, the Client shall not solicit, offer employment to, otherwise attempt to hire, or

APRIL 12, 2021.KSC

assist in the hiring of any employee or officer of the Consultant or any of its Affiliates who worked on the project; (ii) encourage, induce, assist or assist others in inducing any such person to terminate his or her employment with the Consultant or any of its Affiliates; or (iii) in any way interfere with the relationship between the Consultant or any of its Affiliates and their employees.

27. EQUAL EMPLOYMENT - Consultant believes in the principles of equal employment opportunities and encourages a diverse workplace. Consultant does not discriminate in employment against any individual on the basis of race, sex, age, religion, disability, sexual orientation, national origin, ancestry, citizenship status, veteran status, Vietnam-era status, or any other protected status. Both parties shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Both parties shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime

contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

28. ENTIRE AGREEMENT - This Agreement and corresponding Proposal represents the entire and integrated agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. No cancellation, modification, amendment, deletion, addition, waiver or other change in this Agreement shall have effect unless specifically set forth in writing and signed by both parties. All obligations between the parties, including any limitations upon liabilities, shall survive the completion of the Services and any earlier termination of the Services or this Agreement. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such term, condition or provision will be ineffective only to the extent of such invalidity and the remaining provisions of this Agreement shall not be affected but shall instead remain valid and fully enforceable.

29. SEVERABILITY - The parties herein acknowledge and agree that in case any provision in this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[Remainder of page left intentionally blank]

APRIL 12, 2021.KSC



Christina Stone <christina.stone@ousd.org>

22151 Urban Promise Academy - Noll & Tam LBU

Tiffany Knuckles <tiffany@360tcpr.com>

Tue, May 2, 2023 at 2:15 PM

To: Christina Stone <christina.stone@ousd.org>

Cc: Nicole Wells <nicole.wells@ousd.org>, Shonnell Frost-Gibbs <shonnell@360tcpr.com>, Shonda Scott <shonda@360tcpr.com>

Hi Christina,

Per their contract (attached for reference), I believe there is 0% LBP on this project. It is funded by Fund 35 and therefore not monitored for local business. Additionally, I do not believe either Noll and Tam nor Atium are small/local firms.

Thank you,

[Quoted text hidden]



22-2932 Amendment No. 1 Agreement for Architectural Services - Noll & Tam Architects Urban Promise Academy.pdf
4462K



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

| | | | |
|---|---|-------------|-----|
| Project Name | Urban Promise Academy (UPA) Campus Portable Relocation Project | Site | 236 |
| Basic Directions | | | |
| Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board. | | | |
| Attachment Checklist | <input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider | | |

Contractor Information

| | | | | | | | |
|--------------------|---|------------------|---|-------|----|-----|-------|
| Contractor Name | Noll & Tam Architects | Agency's Contact | Scott Salge | | | | |
| OUSD Vendor ID # | 008175 | Title | Principal | | | | |
| Street Address | 729 Heinz Avenue, #7 | City | Berkeley | State | CA | Zip | 94710 |
| Telephone | 510-542-2200 | Policy Expires | | | | | |
| Contractor History | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | |
| OUSD Project # | 22151 | | | | | | |

Term of Original/Amended Contract

| | | | |
|---|------------|--|------------|
| Date Work Will Begin (i.e., effective date of contract) | 12-15-2022 | Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date) | 12-31-2024 |
| | | New Date of Contract End (If Any) | |

Compensation/Revised Compensation

| | | | |
|--|----|---|-------------|
| If New Contract, Total Contract Price (Lump Sum) | \$ | If New Contract, Total Contract Price (Not To Exceed) | \$ |
| Pay Rate Per Hour (If Hourly) | \$ | If Amendment, Change in Price | \$29,645.00 |
| Other Expenses | | Requisition Number | |

Budget Information

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

| Resource # | Funding Source | Org Key | Object Code | Amount |
|------------|----------------|--|-------------|-------------|
| 7710/9916 | Fund 35 | 350-7710-0-9916-8500-6215-236-9180-9003-9999-22151 | 6215 | \$29,645.00 |

Approval and Routing (in order of approval steps)

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

| | | | | | |
|----|---|---------------|--------------|------------|--------------|
| | Division Head | Phone | 510-535-7038 | Fax | 510-535-7082 |
| 1. | Executive Director, Facilities Planning & Management | | | | |
| | Signature | Date Approved | Nov 1, 2023 | | |
| 2. | General Counsel, Department of Facilities Planning and Management | | | | |
| | Signature | Date Approved | 11/1/23 | | |
| 3. | Chief Systems & Services Officer, Facilities Planning and Management | | | | |
| | Signature | Date Approved | Nov 1, 2023 | | |
| 4. | Chief Financial Officer | | | | |
| | Signature | Date Approved | | | |
| 5. | President, Board of Education | | | | |
| | Signature | Date Approved | 11/17/2023 | | |

| Board Office Use: Legislative File Info. | |
|---|---------------|
| File ID Number | 22-2932 |
| Introduction Date | 2-8-2023 |
| Enactment Number | 23-0266 |
| Enactment Date | 2-8-20223 CJH |



Memo

To Board of Education

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

Board Meeting Date February 9, 2023

Subject Amendment No. 1, Architectural Services Agreement – Noll & Tam Architects – Urban Promise Academy (UPA) Campus Portable Relocation Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education of Amendment No. 1, to the Architectural Services Agreement by and between the **District** and **Noll & Tam Architects, Berkeley, California**, for the latter to provide assessment and design services which consist of reviewing existing documentation, creating drawings backgrounds, conducting a site visit to document existing conditions, meet with district representatives to discuss existing conditions, for the **Urban Promise Academy (UPA) Campus Portable Relocation Project**, in an additional total amount of **\$59,460.00**, which includes a not-to-exceed contingency of **\$5,400.00**, for Additional Services, increasing Agreement's total not-to-exceed amount from **\$31,988.00** to **\$91,448.00**, and extending the term of the Agreement from **December 31, 2023**, to **December 31, 2024**, (an additional 366 days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

Discussion This Amendment is for additional environmental services and three hundred sixty-six (366) calendar days' extension to the term date.

LBP (Local Business Participation Percentage) 00%

Recommendation Approval by the Board of Education of Amendment No. 1, to the Architectural Services Agreement by and between the District and Noll & Tam Architects, Berkeley, California, for the latter to provide assessment and design services which consist of reviewing existing documentation, creating drawings backgrounds, conducting a site visit to document existing conditions, meet with district representatives to discuss existing conditions, for the Urban Promise Academy (UPA) Campus Portable Relocation Project, in an additional total amount of \$59,460.00, which includes a not-to-exceed contingency of \$5,400.00, for Additional Services, increasing Agreement's total not-to-exceed amount from \$31,988.00 to \$91,448.00, and extending the term of the Agreement from December 31, 2023, to December 31, 2024, (an additional 366 days), and authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant.

Fiscal Impact Fund 35 County School Facilities Fund

Attachments • Amendment No. 1, including exhibits

- Certificate of Insurance
- Routing Form
- File IDs 22-2681

AMENDMENT NO. 1

ARCHITECTURAL SERVICES AGREEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Noll & Tam Architects**. OUSD entered into an agreement with CONTRACTOR for services on **December 15, 2022** ("Agreement"), and the parties agree to amend the Agreement for the Services with **The Urban Promise Academy (UPA) Campus Portable Relocation Project** as follows and in the attached Exhibit A:

1. **Services:** ☐ The scope of work is unchanged. ☒ **The scope of work has changed.**
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.
 The CONTRACTOR agrees to provide the following amended services: To provide assessment and design services which consist of reviewing existing documentation, creating drawings backgrounds, conducting a site visit to document existing conditions, meet with district representatives to discuss existing conditions, as described in the Proposal dated November 1, 2022, attached to this Amendment as Exhibit A.
2. **Terms (duration):** ☐ The term of the contract is unchanged. ☒ The term of the contract has changed.
If term is changed: The contract term is extended by an additional **Three Hundred Sixty-six days (366)**, and the amended expiration date is **December 31, 2024**. The current end date is **December 31, 2023**.
3. **Compensation:** ☐ The contract price is unchanged. ☒ The contract price has changed.
If the compensation is changed: The not to exceed contract price is
☒ Increased by: Fifty-Nine Thousand, Four Hundred Sixty Dollars and No/100 (\$59,460.00), which includes \$54,060.00 for Basic Services and \$5,400.00 for Additional Services.
☐ Decreased by _____ dollars and no/100 (\$_____).

 Prior to this amendment, the not-to-exceed total contract price was **Thirty-One Thousand Nine Hundred Eighty-eight Dollars and No/100 (\$31,988.00)**, and after this amendment, the not-to-exceed total contract price will be: **Ninety-One Thousand Four Hundred Forty- Eight Dollars and No/100 (\$91,448.00)**.

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


5. **Amendment History:**

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

| No. | Date | General Description of Reason for Amendment | Amount of Increase (Decrease) |
|-----|------|---|-------------------------------|
| | | | \$ |
| | | | \$ |


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

OAKLAND UNIFIED SCHOOL DISTRICT


Mike Hutchinson, President,
Board of Education

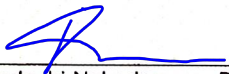
2/9/2023

Date


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

2/9/2023


Date


Tadashi Nakadegawa, Deputy Chief,
Facilities Planning and Management

1/18/2023

Date


Approval as to form:


Arne Sandberg [name]
General Counsel, Facilities, Planning and Management

1/18/23

Date

CONTRACTOR


Contractor Signature

12/16/2022

Date

Scott Salge, Principal

Print Name, Title

EXHIBIT "A"

Scope of Work for Amendment

Contractor Name: Noll & Tam Architects

1. Detailed Description of Services to be provided: To provide assessment and design services which consist of reviewing existing documentation, creating drawings backgrounds, conducting a site visit to document existing conditions, meet with district representatives to discuss existing conditions, as described in the Proposal dated November 1, 2022, attached to this Amendment as Exhibit A.

2. Specific Outcomes:

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

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

November 1, 2022

Nicole Wells

Project Manager, Facilities
Oakland Unified School District
d) 510-535-2726
955 High Street
Oakland, CA 94601
nicole.wells@ousd.org

RE: Proposal: Urban Promise Academy Re-Roofing

Dear Ms. Wells:

We appreciate the opportunity to work with you and OUSD to provide design services for the re-roofing of the main building at Urban Promise Academy at 3031 E 18th Street, Oakland, California. This proposal is based on our conversations, District provided drawings, and the previous RFQP for this work.

Project Understanding:

The Main Building (comprised of Buildings "A" and "B" built in 1949, and Building Addition "C" built in 1957) is a single-story structure with a building area of 35,300 sf. The scope of work includes a new built-up bituminous roofing per the District's latest Architectural and Material Standards. The estimated construction hard cost is \$.5 Million, excluding costs for design, construction management or inspection. Construction is projected to occur during the Spring of 2024. While this project may be exempt from DSA review based on IR A-22, the District has requested the project to be permitted through DSA. We will request that DSA provides Structural Safety review only and waives plan review by Access Compliance and Fire/Life Safety.

Scope of Services:

Phase I - Assessment and Design

- Review existing District provided documentation
- Create drawings backgrounds (campus site plan, roof plan)
- Site visit to document existing conditions, record findings
- Meet with District representatives to discuss existing conditions
- Provide Roofing Assessment report with recommendations (by WJE)
- Prepare schematic plans for District review
- Prepare construction documents - title sheet, site plan, roof plan, details - (4 drawings)
- Prepare project specifications

Phase II – Approvals, Procurement and Construction Administration

- Submit project to DSA for review
- Respond to DSA comments, backcheck and approval

- Assist the District in procuring a contract for construction (including pre-bid walk)
- Provide construction administration services: Review RFI, Submittals, prepare CCDs
- Attend biweekly meetings (4 budgeted)
- Prepare punch list, backcheck
- DSA Project closeout

Compensation:

We propose to perform the work described above on a not-to-exceed basis for **\$59,460** and broken down as follows:

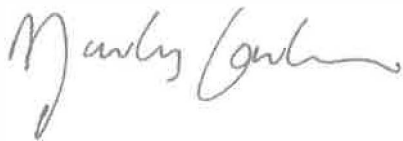
| | |
|---|-----------------|
| Noll & Tam Architecture | \$42,560 |
| <u>Wiss, Janney, Elstner Assoc. – Roofing & Waterproofing</u> | <u>\$11,500</u> |
| Sub-Total | \$54,060 |
| <u>10% Contingency*</u> | <u>\$5,400</u> |
| Grand Total | \$59,460 |

* This is a District controlled allowance.

Exclusions:

- Consultants other than those noted are not included but can be provided as needed
 - Structural Engineering is not included however, if required to address DSA comments or to remediate unforeseen conditions, this can be added at that time
 - Evaluation of rooftop mechanical equipment is not included
- Permit fees
- Cost estimating
- Hazardous Materials identification and remediation

Please don't hesitate to call with any questions regarding this proposal.
Best regards,



Zachary Goodman, AIA
Associate Principal



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

| | | | |
|---|---|-------------|-----|
| Project Name | Urban Promise Academy (UPA) Campus Portable Relocation Project | Site | 236 |
| Basic Directions | | | |
| Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board. | | | |
| Attachment Checklist | <input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider | | |

Contractor Information

| | | | | | |
|--------------------|---|------------------|---|-------|----|
| Contractor Name | Noll & Tam Architects | Agency's Contact | Scott Salge | | |
| OUSD Vendor ID # | 008175 | Title | Principal | | |
| Street Address | 729 Heinz Avenue, #7 | City | Berkeley | State | CA |
| Telephone | 510-542-2200 | Policy Expires | | | |
| Contractor History | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| OUSD Project # | 22151 | | | | |

Term of Original/Amended Contract

| | | | |
|---|------------|--|------------|
| Date Work Will Begin (i.e., effective date of contract) | 12-15-2022 | Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date) | |
| | | New Date of Contract End (If Any) | 12-31-2024 |

Compensation/Revised Compensation

| | | | |
|--|----|---|--------------|
| If New Contract, Total Contract Price (Lump Sum) | \$ | If New Contract, Total Contract Price (Not To Exceed) | \$ |
| Pay Rate Per Hour (If Hourly) | \$ | If Amendment, Change in Price | \$ 59,460.00 |
| Other Expenses | | Requisition Number | |

Budget Information

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

| Resource # | Funding Source | Org Key | Object Code | Amount |
|------------|--|--|-------------|-------------|
| 7710/9916 | Fund 35, County School Facilities Fund | 350-7710-0-9916-8500-6215-236-9180-9003-9999-22151 | 6215 | \$59,460.00 |

Approval and Routing (in order of approval steps)

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

| | | | | | |
|----|--|---------------|--------------|------------|--------------|
| | Division Head | Phone | 510-535-7038 | Fax | 510-535-7082 |
| 1. | Executive Director, Facilities Planning & Management | | | | |
| | Signature | Date Approved | 1/18/23 | | |
| 2. | General Counsel, Department of Facilities Planning and Management | | | | |
| | Signature Lozano Smith, approved as to form | Date Approved | 1/18/23 | | |
| 3. | Deputy Chief, Facilities Planning and Management | | | | |
| | Signature | Date Approved | 1/18/2023 | | |
| 4. | Chief Financial Officer | | | | |
| | Signature | Date Approved | | | |
| 5. | President, Board of Education | | | | |
| | Signature Mike Hutchinson, President, Board of Education | Date Approved | 2/9/2023 | | |

| Board Office Use: Legislative File Info. | |
|--|---------------|
| File ID Number | 22-2681 |
| Introduction Date | 12/14/2022 |
| Enactment Number | 22-2088 |
| Enactment Date | 12/14/2022 er |



Memo

To Board of Education

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

Board Meeting Date December 14, 2022

Subject Agreement for Architectural Services – Noll & Tam Architects – Urban Promise Academy (UPA) Campus Portable Relocation Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education to the Agreement for Architectural Services by and between the **District** and **Noll & Tam Architects**, Berkeley, California, for the latter to provide relocating three existing portables from one location on the Achieve Academy Charter School campus to another on the same site where they will be used by the Urban Promise Academy (UPA) ~~Charter School~~. The buildings will be set on a new foundation (per the original DSA approved PC) with reused or new ramps and connected to UPA utilities and systems, for the **Urban Promise Academy (UPA) Campus Portable Relocation Project**, in the total not-to-exceed amount of **\$31,988.00**, which includes a not-to-exceed amount of **\$29,080.00**, for Basic Services, a not-to-exceed amount of **\$2,908.00** for additional services, as the selected consultant, with work scheduled to commence on **December 15, 2022**, and scheduled to last until **December 31, 2023**, pursuant to the Agreement.

Discussion Consultant was selected without competitive bidding based on (a) demonstrated; competence and professional qualifications (Government Code §4526), “(b)” using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)

LBP (Local Business Participation Percentage) 0.00%

Recommendation Approval by the Board of Education to the Agreement for Architectural Services by and between the **District** and **Noll & Tam Architects**, Berkeley, California, for the latter to provide relocating three existing portables from one location on the Achieve Academy Charter School campus to another on the same site where they will be used by the Urban Promise Academy (UPA) ~~Charter School~~. The buildings will be set on a new foundation (per the original DSA approved PC) with reused or new ramps and connected to UPA utilities and systems, for the **Urban Promise Academy (UPA) Campus Portable Relocation Project**, in the total not-to-exceed amount of **\$31,988.00**, which includes a not-to-exceed amount of **\$29,080.00**, for Basic Services, a not-to-exceed amount of **\$2,908.00** for additional services, as the selected consultant, with work scheduled to commence on **December 15, 2022**, and scheduled to last until **December 31, 2023**, pursuant to the Agreement.

Fiscal Impact

Fund 35, County School Facilities Fund

Attachments

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



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

Legislative File ID No. 22-2681

Department: Facilities Planning and Management

Vendor Name: Noll & Tam Architects

Project Name: Urban Promise Academy Portable Relocation Project

Project No.: 22148

Contract Term: Intended Start: 12-15-2022

Intended End: 12-31-2023

Total Cost Over Contract Term: \$31,988.00

Approved by: Tadashi Nakadegawa

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

Local Business Policy? ☐ Yes (No if Unchecked)

How was this contractor or vendor selected?

Noll & Tam Architects was chosen through an RFP based on demonstrated competence, professional qualification, expertise, and experience with similar projects they completed in the past for the District.

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

Noll & Tam Architects will provide relocating three existing portables from one location on the Achieve Academy Charter School campus to another on the same site where they will be used by the Urban Promise Academy (UPA) ~~Charter School~~. The buildings will be set on a new foundation (per the original DSA approved PC) with reused or new ramps and connected to UPA utilities and systems, for the Urban Promise Academy (UPA) Campus Portable Relocation.

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

If "No," please answer the following questions:

1) How did you determine the price is competitive?

Noll & Tam Architects, Inc. was selected because they are currently working on the site improvement project at Achieve Academy. They are familiar with the site and project scope, which provide cost savings from drawings produced and time saved on start up. They are part of the pre-qualified pool of architectural services.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

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

Consultant Contract:

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

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- ☐ Certain instructional materials (Public Contract Code §20118.3)
- ☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)
- ☐ Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*

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

Maintenance Contract:

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

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

- Consultant is providing architectural services for the Urban Promise Academy Campus Portable Relocation Project.

AGREEMENT
FOR
ARCHITECTURAL SERVICES
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND
NOLL & TAM ARCHITECTS
FOR
URBAN PROMISE ACADEMY (UPA) CAMPUS PORTABLE RELOCATION PROJECT

December 15, 2022

OAKLAND UNIFIED SCHOOL DISTRICT
955 High Street
Oakland, California 94601

TABLE OF CONTENTS

| | |
|---|----|
| ARTICLE 1 - DEFINITIONS..... | 2 |
| ARTICLE 2 - RETENTION OF ARCHITECT; STANDARD OF CARE | 3 |
| ARTICLE 3 - DESCRIPTION OF PROJECT..... | 3 |
| ARTICLE 4 - COMPENSATION..... | 4 |
| ARTICLE 5 - BASIC SERVICES TO BE RENDERED BY ARCHITECT | 6 |
| ARTICLE 6 - ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT | 18 |
| ARTICLE 7 - RESPONSIBILITIES OF DISTRICT | 19 |
| ARTICLE 8 - PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE..... | 20 |
| ARTICLE 9 - WORKER'S COMPENSATION INSURANCE..... | 22 |
| ARTICLE 10 - ERRORS AND OMISSIONS INSURANCE | 22 |
| ARTICLE 11 - COMPLIANCE WITH LAWS | 23 |
| ARTICLE 12 - TERMINATION OF AGREEMENT | 24 |
| ARTICLE 13 - ARCHITECT AN INDEPENDENT CONTRACTOR | 25 |
| ARTICLE 14 - STANDARDIZED MANUFACTURED ITEMS | 25 |
| ARTICLE 15 - OWNERSHIP OF DOCUMENTS..... | 26 |
| ARTICLE 16 - LICENSING OF INTELLECTUAL PROPERTY | 26 |
| ARTICLE 17 - ACCOUNTING AND OTHER RECORDS OF ARCHITECT | 27 |
| ARTICLE 18 - INDEMNITY | 27 |
| ARTICLE 19 - TIME SCHEDULE | 28 |
| ARTICLE 20 - MISCELLANEOUS PROVISIONS | 28 |

AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Architectural Services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and **NOLL & TAM ARCHITECTS**, license number **C-30033**, (the “Architect”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed architect.
- B. Architect represents that Architect is licensed to provide architectural/engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school(s).
- C. The Parties have negotiated the terms under which Architect will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

ARTICLE 1 DEFINITIONS

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

1.2 Agreement. “Agreement” shall mean this Agreement for Architectural Services.

1.3 Architect. “Architect” shall mean Noll & Tam Architects, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.4 Basic Services. Architect’s Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, plumbing, and electrical engineering services, normally required to complete the Project, as further defined in Article 5.

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

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

1.7 **District.** “District” shall mean Oakland Unified School District, and its governing board members, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean the work of improvement described in Article 3 including the Architect's services thereon, as described in this Agreement.

1.9 **Project Construction Cost.** “Project Construction Cost” shall mean the estimate of total construction costs to the District as initially submitted by the Architect under this Agreement and accepted by the District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time the District enters a construction contract to equal the construction contract amount.

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

ARTICLE 2 RETENTION OF ARCHITECT; STANDARD OF CARE

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

ARTICLE 3 DESCRIPTION OF PROJECT AND TERM

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

Urban Promise Academy Campus Portable Relocation.

The project is not intended to be split into multiple prime contracts.

The Project is expected to be complete as of December 31, 2023 but may not be completed until later if delays in design or construction arise.

ARTICLE 4 COMPENSATION

4.1 Basic Services. For the Basic Services satisfactorily performed under Sections 5. 1-5.3 of this Agreement, Architect shall be compensated according to its hourly rate schedule (Section 4.8, below). Architect's total compensation for its Basic Services shall not exceed **TWENTY-NINE THOUSAND EIGHTY DOLLARS NO/100 (\$29,080.00)**, which is Architect's estimate of the maximum total cost of its Basic Services on the Project under Sections 5. 1-5.3, based on its July 28, 2022, fee proposal. However, Architect will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Architect acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 Additional Services. Architect may invoice separately for Additional Services if provided by Architect under Article 6, and the total contingency compensation for Additional Services shall not exceed **TWO THOUSAND NINE HUNDRED EIGHT DOLLARS AND NO/100 (\$2,908.00)**. However, Architect will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

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

4.3.2 Architect shall be reimbursed by District for its Reimbursable Expenses on the Project. Architect's total reimbursement for Reimbursable Expenses shall not exceed **(\$0)**, which is Architect's estimate of the maximum total cost of Reimbursable Expenses on the Project.

4.4 The total not-to-exceed price under this Agreement based on Sections 4.1, 4.2, and 4.3 above is **THIRTY-ONE THOUSAND NINE HUNDRED EIGHTY-EIGHT DOLLARS AND NO/100 (\$31,988.00)**. For services satisfactorily performed, payment for Basic Services, Additional Services and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Architect's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and

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

4.5 The Architect's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Architect to the extent (i) that the withholding is permitted by law, (ii) that Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, or (iii) that Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Architect is responsible under Section 5.7.20. \$1,000.00 will be withheld from any Construction Phase payments until District receives certification of Field Act approval. If the total amount invoiced by Architect reaches the not-to-exceed Basic Services amount before Architect's Basic Services under this Agreement are complete, Architect must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

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

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

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

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

ARTICLE 5

BASIC SERVICES TO BE RENDERED BY ARCHITECT

5.1 General

5.1.1 Architect's Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, normally required to complete the Project. The Basic Services also include the services described in this Article 5, below, including but not limited to bid package preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The District shall have the right to add or delete from the Architect's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Architect shall expeditiously and diligently perform all of its work and obligations under this Agreement. Architect may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Architect acknowledges that its priority is to complete the Project and the Architect's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project. The Basic Services shall also include a feasibility study that includes programming services and three optional schematic designs for the Project.

5.1.2 The Architect shall review the estimate described more fully below at each phase of Architect's services, also as defined below. If such estimates are in excess of the Project budget, the Architect shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Architect's services include the presentation to the District of Project Construction Cost, the Architect shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

5.1.4 The Architect shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Architect and Architect's consultants shall cooperate with District and the District's consultants in verifying that Architect's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Architect shall attend those meetings.

5.1.6 The Architect shall investigate existing conditions of facilities and thoroughly account for, and list in the construction documents, any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Architect's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Architect shall provide a minimum of one (1) full-time employee before construction commences, and one (1) full-time employee after construction commences, to perform its duties and responsibilities under this Agreement. All personnel provided by Architect shall be qualified to perform

the services for which they are provided. Architect shall obtain District's written approval of each employee of Architect who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon seven (7) days' written notice, cause Architect to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Architect shall provide them immediately.

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

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

5.2 Consultants

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

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

5.2.3 The Architect shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Architect shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Architect any designs, plans,

specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Architect shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Architect shall be responsible for all submittals required of the Architect by the Division of the State Architect (“DSA”), OPSC and California Department of Education in connection therewith.

5.3 Project Assessment and Conceptual Design Phase; Schematic Design Phase

5.3.1 Project Assessment and Conceptual Design Phase

5.3.1.1 Upon authorization by the District to proceed, the Architect shall perform a Project Assessment and Conceptual Design. The Basic Services shall also include a feasibility study that includes programming services and three optional schematic designs for the Project.

5.3.1.2 Architect shall receive from the District, all available reports, record documents, surveys and assessments.

5.3.1.3 Upon completing the assessment of the existing condition and site, the Architect shall provide documentation of existing conditions in the anticipated path of, or where affected by, construction. This work includes, but is not limited to, site visits by the architectural and engineering disciplines to visually observe existing conditions at the project inception and as required for design and documentation of the work and as part of the Architect’s design document quality control process. District will provide Architect with access to the site for these purposes.

5.3.1.4 Architect shall review the District’s Facility Condition Assessment (FCA) for the projects, and incorporate the scope of work into the program.

5.3.1.5 Architect shall meet with DSA and OUSD department representatives including, but not limited to, the Buildings and Grounds Department, Student Nutrition Services, OUSD Athletic League lead, Early Education Program (if required), and site representatives in order to document noted deficiencies and requested improvements.

5.3.1.6 Architect shall research and identify projects associated with the work that have not been certified with DSA.

5.3.1.7 Architect shall prepare a draft the Project Assessment Report addressing the District’s established project priorities for review and publish a formal program recommendation subsequent to the District’s review.

5.3.1.8 Based on the review comments and instructions by the District’s PM, Architect shall prepare modifications to the final Project Assessment Report for review and approval by the district.

5.3.1.9 Architect shall prepare the Initial Conceptual Design:

5.3.1.9.1 Based upon the District's established project priorities, prepare initial conceptual designs to the extent necessary to define the major elements of the Project. The Architect shall develop conceptual designs as required to obtain District approval of the project scope.

5.3.1.9.2 The Architect shall submit conceptual drawings for the selected design to the District. The Architect shall develop conceptual designs as required to obtain District approval of the project scope.

5.3.1.9.3 The Architect and District PM shall meet at least once with DSA to review the project scope and identify potential design issues that will need to be addressed by the Architect. Architect shall take meeting minutes and distribute as directed.

5.3.1.10 Prepare the cost and scope document and provide an estimated cost of each item listed. Provide three hard copies of the Project Assessment Report in three ring binders and PDF format.

5.3.2 Schematic Design Phase

5.3.2.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Architect to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule and construction budget requirements, each in terms of the other.

5.3.2.3 The Architect shall review with the District alternative approaches to the design and construction of the Project, and shall include alternatives that may reduce the cost of the Project.

5.3.2.4 Based on a mutual understanding of the District's budget and scope of work requirements, the Architect shall prepare for the District's governing board's written approval, schematic design documents, which include but are not limited to, schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written estimated statement of Project Construction Cost and a written schedule for the performance of the work that itemizes constraints and critical path issues. The schematic design documents shall represent a 15% complete design. The Project Construction Cost shall be based on current area, volume and other unit costs, shall conform to District's total construction cost budget, and shall include reasonable contingencies for all construction and construction management work. The written schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by increasing the District's total construction cost budget, or by altering the District's completion deadlines. If District incorporates any recommended changes, then Architect shall revise the schematic design documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the schematic design documents.

5.4 Design Development Phase (NIC - Future Scope of Work)

5.4.1 Following District's governing board's written approval of the schematic design documents, including the estimate of Project Construction Cost and schedule, Architect shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. During the design development phase, Architect will keep the Project within all budget and scope constraints set by the District. The design development documents shall represent a 50% complete design. The design development documents shall include a revised Project Construction Cost, and a revised construction schedule. The revised Project Construction Cost shall be based on current area, volume and other unit costs. The revised Project Construction Cost shall conform to District's total construction cost budget and shall include reasonable contingencies for all construction and construction management work. The revised construction schedule shall conform to District's milestone and completion deadline requirements. Nevertheless, Architect is encouraged to make recommendations to District regarding additional benefits that could be realized by altering the District's total construction cost budget or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Architect shall revise the design development documents, including but not limited to the written statement of Project Construction Cost and written schedule for the performance of work, as necessary until District's governing board approves them in writing. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

5.4.2 The Architect shall assist the District and its consultants in the preparation and/or modification of the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

5.4.3 Architect shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Architect shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Architect shall provide a copy of all such documents to the District. 5.4.4 The Architect shall advise the District of any adjustments to the preliminary Project Construction Cost.

5.4.5 Architect shall identify areas of construction for which unit pricing shall be required as part of the Contractor's bid.

5.4.6 Architect shall provide at no expense to the District one complete set of design development documents for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5.5 Contract Documents Phase

5.5.1 Following the District's governing board's written approval of the design development

documents, including the Project Construction Cost and construction schedule, the Architect shall prepare Contract Documents for the written approval of District's governing board consisting of 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. Architect shall ensure that the drawings and specifications are, among other things, complete, accurate, and coordinated so as to eliminate errors, omissions and conflicts, especially between the work of a (sub)consultant and other (sub)consultants or the Architect; and Architect may not shift its responsibility for completeness, accuracy and coordination to the Contractor, except on a clearly designated design-build project. Architect shall also update the construction schedule and the Project Construction Cost for written approval of District's governing board. The Contract Documents shall conform to, comply with, and satisfy all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the Contract Documents, Architect shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages. If the project is intended to be split into multiple prime contracts, then the Contract Documents shall be structured in order to maximize the ability to create multiple prime bid packages for the Project, and shall identify the bid packages to be created.

5.5.2 Architect shall consult with, and involve, the District in development of the bid documents and bid package, and shall forward them to the District for written approval prior to their use. If the District is using a multiple prime delivery method for the Project with multiple bid packages, then Architect shall consult with and involve the District in identification and development of the bid documents and bid packages, and shall forward them to the District for written approval prior to their use.

5.5.3 Prior to submission of the Contract Documents to DSA for plan check, the Architect shall submit the Contract Documents, including the 100% complete working drawings and specifications, to the District for an opportunity to review them for various issues, including but not limited to constructability, scheduling, general completeness, clarity, consistency, coordination, cost-effectiveness, value engineering, identification of possible add/delete bid alternatives, time of construction, and suitability for separation of the Project design, plans and specifications into bid packages for various categories and/or portions of the work. However, such review by District is not required and does not affect Architect's obligations under this Agreement.

5.5.4 After approval by the District's governing board and any constructability review, the Architect shall submit the Contract Documents to DSA for plan check, and make the necessary corrections to secure DSA approval. At Architect's expense, Architect shall arrange for the scanning of the DSA approved Contract Documents and for the return of the originals and an electronic copy to DSA.

5.5.5 The Architect shall give the District, at the time of DSA approval of the final form of the Contract Documents, Architect's final estimate of Project Construction Cost and construction schedule, which shall be given final written approval by District's governing board along with the Contract Documents. The revised Project Construction Cost shall be based on current area, volume and other unit costs, and on a mutually acceptable recognized building cost index, and shall include a reasonable contingency. In preparing the revised estimate of Project Construction cost and construction schedule for

the Contract Documents, the Architect shall consult with, and involve, the District in the process to maximize accuracy and completeness. If the District is intending to enter multiple prime contracts, the Project Construction Cost shall include separate bid estimates for each bid package, plus a reasonable contingency; and the construction schedule shall reflect that multiple contractors will be performing separate bid packages, including a general conditions bid package. The revised Project Construction Cost estimate shall conform to District's total Project budget, and the revised construction schedule shall conform to District's milestone and completion deadline requirements. Architect shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's written approval of the Contract Documents.

5.6 Bidding and Negotiations Phase

5.6.1 Following DSA's and District's governing board's written approval of Contract Documents, and District's governing board's written acceptance of Architect's final estimate of Project Construction Cost and construction schedule, Architect shall continue to work with the District in finalizing the bid documents and bid package, as described in Section 5.5.2, above. Architect shall reproduce the bid documents and bid package in the number requested by the District and distribute them among interested contractors. Architect shall also assist the District in obtaining bids, and shall assist the District in evaluating contract proposals or bids and substitutions proposed by contractors, and in awarding the bids. All sets of Contract Documents, which does not include those for the use of the Architect or its consultants, requested by the District in excess of five (5) shall be reproduced at District's expense.

5.6.2 Architect's estimate of Project Construction Cost at the time of DSA approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the Architect's total construction cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.

5.6.3 Should the lowest responsible and responsive bid received on a bid package exceed Architect's most recent approved estimate of Project Construction Cost for that bid package (or amount adjusted according to the then current mutually agreed upon recognized building cost index) as accepted by District by more than ten percent (10%), Architect shall, on request by District and as part of Architect's Basic Services, make such changes in the plans and specifications as shall be necessary to bring new bids within ten percent (10%) of such Project Construction Cost, but Architect will not be entitled to payment for any Basic Services related to making such changes and re-bidding the Project. In making such changes, Architect will exercise Architect's best judgment in determining the balance between the size of the Project, the type of construction, and the quality of the construction to achieve a satisfactory project within ten percent (10%) of Architect's Project Construction Cost. To avoid the potential for bids to exceed the estimate by more than 10% at bid opening, the Architect may, as an alternative, include in the Contract Documents one or more deductive alternatives so that Architect and District may evaluate different means to achieve a satisfactory project within ten percent (10%) of the Architect's Project Construction Cost.

5.6.4 Either on its own or in cooperation with the District, the Architect shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, a bidder meets the minimum requirements.

5.6.5 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall, in addition to the above, publish the invitation to bid in the appropriate regional trade papers and publications devoted to Disabled Veteran Business Enterprises. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 All instructions to the Contractor shall be forwarded through the Architect unless otherwise directed by the District. The Architect shall advise and consult with the District in the general administration of the Project. The Architect will have authority to act on behalf of the

District only to the extent provided in the Contract Documents, unless District grants additional authority in writing.

5.7.3 The Architect shall timely provide District with copies of all of its correspondence with the Contractor.

5.7.4 The Architect shall provide prompt and timely direction to the District, Project inspectors and/or Contractor as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the Project and is causing, or may cause, delay, in which case the Architect shall respond as soon as reasonably possible, if not immediately. If the Architect is not able to take action within the time required due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Architect's own knowledge of the Project (including documents in Architect's possession or reasonably available to it), Architect shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Architect cannot guarantee precise accuracy of such drawings, Architect shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Architect shall have no responsibility for their conformity to field conditions, except that in the event that the Architect, consistent with standards of due care, becomes aware of non-conformity with field conditions, Architect shall have a duty immediately to notify the District in writing. Architect shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Architect shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* The Architect may delegate this responsibility to a Contractor if such power to delegate was included in the Contract Documents and bid package, but Architect shall remain responsible for supervising such Contractor to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

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

5.7.8 In the discharge of its duties of observation and interpretation, the Architect shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Architect shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

The Architect must comply with the applicable requirements of the DSA Construction Oversight Process, including but not limited to (a) submitting the inspection card request form (DSA 102-IC), (b) providing a verified report (DSA 6-AE) at the completion of each block and section of each inspection card, and (c) directing and monitoring the IOR and laboratories of record, and (d) coordinating with the Owner, Contractor, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

The Architect shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved construction documents, to the extent Architect's negligence, recklessness or willful misconduct caused the additional DSA fees, and for delay damages to the extent required under Section 5.7.20.2 below.

5.7.9 The Architect shall visit the site, both as the Architect deems necessary and as requested by the District, but under no circumstances less than once a week to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project Inspector unless Architect has agreed in writing to serve as the District's Project Inspector.

5.7.10 The Architect shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Architect will exercise reasonable care in the discharge of Architect's obligation to discover significant defects and faults.

5.7.11 The Architect shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such

action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Architect shall take such action as soon as possible. If Architect is not able to take such action within the required time due to reasons beyond Architect's control, the Architect may take action within a reasonable period of time under the circumstances; however, the Architect shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Architect cannot take action within the time required, what the Architect is doing to expedite its response, when the Architect expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Architect will have the authority to reject work and materials which do not conform to the Contract Documents. The Architect's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Architect's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Architect will also recommend substitution of materials or equipment when, in the Architect's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Architect shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

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

5.7.14 The Architect shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Architect will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Architect is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Architect nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

With respect to asbestos and asbestos containing materials, the parties acknowledge that the Architect has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and

subsequently may be required to certify that they have been properly removed or otherwise remediated. Architect shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Architect shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

5.7.16 Based on the Architect's observations, and an evaluation of each Project Application for Payment, the Architect will estimate the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents. The Architect's estimation of the amount of work completed by Contractor shall constitute representations by the Architect to the District that the quality of the completed work is in accordance with the Contract Documents based upon Architect's observations of the completed work, and that the Contractor is entitled to payment for the completed work.

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

5.7.18 The Architect will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Architect shall recommend, prepare and process the necessary change orders. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Architect's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Architect shall be paid for time spent on the proposed change order.

5.7.19.2 Change orders due to Architect. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Architect's services in connection with that change order are not compensable and Architect shall not include those services on any invoice.

5.7.19.3 Change orders beyond District or Architect control. If a change order is

necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

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

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

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

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

5.7.21 The Architect shall provide a color schedule of all finish materials in the Project for the District's review and approval.

5.7.22 The Architect shall assist District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Architect shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 The Architect shall assist the District in issuing the final certificate for payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.

5.7.24 Architect shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Architect has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Architect shall remedy the violation at its own cost. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph arising from, pertaining to, or related to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Architect, nor shall Architect be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Architect's design is reviewed by DSA. In the event that the Architect is or becomes aware of possible non-compliance with the foregoing standards, Architect shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect, whether supplied by District or by Architect, which are relied upon, altered or otherwise utilized by Architect, Architect shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Architect under this Agreement.

ARTICLE 6

ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT

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

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

6.2.1 providing financial feasibility or other special studies;

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

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

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories

of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Architect;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

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

6.2.9 providing services of consultants for other than the normal architectural, civil, soils, structural, mechanical and electrical engineering services for the Project;

6.2.10 at the District's request, selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.11 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.7.19.1), above; and

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

ARTICLE 7 RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

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

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

7.3 furnish, at the District's expense, the services of a Project Inspector;

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

7.5 issue appropriate orders to Contractors through the Architect;

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

7.7 furnish the services of a hydrologist or other consultants not routinely provided by the Architect when such services are reasonably required by the scope of the Project and are requested by the Architect;

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

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

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

7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware. However, the District's failure to do so shall not relieve the Architect of Architect's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this Agreement.

ARTICLE 8

PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

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

8.2 The following insurance shall be maintained by the Architect in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than Two Million Dollars (\$2,000,000.00) general aggregate, Two Million Dollars (\$2,000,000.00) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000.00); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Architect shall provide liability insurance on a claims-made basis.

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

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

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

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

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

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

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

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the

State of California. All such insurance companies shall have no lower than an “A-, VIII” in Best’s Rating Guide and shall be satisfactory to the District.

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

ARTICLE 9 WORKER'S COMPENSATION INSURANCE

9.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect and all engineers, experts, consultants and subcontractors the Architect intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. All such insurance shall include a waiver of any subrogation rights as against the District. If the Architect employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Architect is self-insured, the Architect shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

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

ARTICLE 10 ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Architect shall furnish to the District satisfactory proof that the Architect has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000.00) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Architect shall provide errors and omissions insurance on a claims-made basis.

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

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

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

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

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

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

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

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

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

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

ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Architect shall be familiar with, and Architect and Architect's design shall comply with, all State and

Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act (“ADA”).

ARTICLE 12

TERMINATION OF AGREEMENT

12.1 Termination by District – This Agreement may be terminated, or the Project may be canceled, by the District for the District’s convenience and without cause at any time immediately upon written notice to the Architect. In such event, the Architect shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District’s written request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

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

12.2 Termination by Architect – For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Architect may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Architect may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery. In the event of such termination by Architect, Architect shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing. Upon

the District's written request and authorization, Architect shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Termination Provisions

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

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

ARTICLE 13 ARCHITECT AN INDEPENDENT CONTRACTOR

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

ARTICLE 14 STANDARDIZED MANUFACTURED ITEMS

14.1 The Architect shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15 OWNERSHIP OF DOCUMENTS

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

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

ARTICLE 16 LICENSING OF INTELLECTUAL PROPERTY

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

16.2 The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Architect and retains another certified architect or structural engineer for the preparation of those plans for the re-use,

the District shall indemnify and hold harmless the Architect and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Architect represents and warrants that Architect has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Architect or its consultants prepares or causes to be prepared under this Agreement. **Architect shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 arising from, pertaining to, or related to Architect's negligence, recklessness or willful misconduct.** The Architect makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Architect and provided to Architect by the District.

ARTICLE 17 ACCOUNTING AND OTHER RECORDS OF ARCHITECT

17.1 Architect's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles. District has the right to audit Architect's records and files regarding any of the work Architect performed for District on the Project during or after the Project. District shall be given reasonable access to Architect's records and files for audit purposes within ten (10) days of receipt of District's request. Architect shall keep and maintain these records and files for ten (10) years.

ARTICLE 18 INDEMNITY

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

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

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

This indemnification shall apply to all liability, as provided for above.

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

ARTICLE 19 TIME SCHEDULE

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

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

ARTICLE 20 MISCELLANEOUS PROVISIONS

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

20.2 This Agreement shall be effective upon execution by the Architect and approval by the District's governing board. The Architect shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

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

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

Architect: Noll & Tam Architects
729 Heinz Avenue #7
Berkeley, CA 94710
Attention: Scott Salge, Principal in Charge

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

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

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties. No action or failure to act by the District shall constitute a waiver of any right or duty afforded the District under this Agreement, nor shall such action or failure to act constitute approval of, or acquiescence in, a breach under this Agreement, except as may be specifically agreed to in a written amendment to this Agreement.

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

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

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

20.10 Prior to executing this Agreement, and if not already done, the Architect shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision

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

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

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

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

- Fingerprinting Notice and Acknowledgement.
- ~~Iran Contracting Act Certification.~~
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- Local Business Participation Form.

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

20.15 CHPS Verified Only; No OPSC HPI Eligibility Track (NIC - Future Scope of Work):

20.15.1 CHPS Criteria, CHPS Verified Program As part of Basic Services, the Architect shall adhere to the District's CHPS Guidelines, and Owner's Project Requirements (OPR) based on incorporating required and voluntary design Criteria of the CHPS—2009 Criteria (or latest version per CHPS Guidelines) into the project. As a part of Basic Services the Architect shall complete all documentation and submission requirements necessary for Registration and Design and Construction Submissions of the CHPS Verified Program. The Architect shall work with the District and its CHPS Program Manager to confirm CHPS Verified review path and verify that the District's project meets the District's Project Requirements and the District's CHPS Guideline goals for a CHPS Verified school project consistent with the District's budget.

20.15.2 The Architect and Consultants shall participate early on in two CHPS integrated design workshops, led by the District's CHPS Program Manager to establish the District's CHPS Guideline goals and identify target credits. The Architect shall be responsible for registering the project on-line with the CHPS Verified Program, and submitting for design and construction verification according to CHPS Verified Program Guidelines. The Architect shall update the CHPS "Scorecard" with credit documentation,

concurrent with each design phase submittal. The status of project compliance and documentation submitted in relation to CHPS Verified credits shall be assessed with the District at the end of each phase of the work.

20.15.3 Whole building energy performance analysis with a goal of a minimum of thirty percent (30%) of California Title 24 minimum energy performance standard shall be performed at least once during the following phases: Schematic Design, Design Development, and Construction Documentation. Energy Conservation Measures (ECMs) shall be proposed with Schematic and Design Development energy analysis runs to improve performance to meet or exceed goal. Daylighting analysis to identify strategies to improve daylighting to maximize goals of CHPS Credit EQ 1.1 'Daylighting,' shall also be performed at Schematic, and Design Development Phases prior to final Construction Documentation phase analysis reflecting final design incorporating daylighting improvements identified in earlier phases.

20.15.4 The Architect shall complete steps as required by the CHPS Verified Program to achieve a CHPS Verified school project, including calculations demonstrating Acoustic Performance standards per CHPS guidelines are met, and forward electronic pdf copies of all submissions and communications with CHPS, concurrently, to the District's Project Manager and CHPS Program Manager.

20.16 BIM. The Architect shall produce a Building Information Model, if the Parties so indicate by checking the adjacent box. The Building Information Model shall be created in accordance with Autodesk® BIM 360™ Building Information Modeling software and file format. The Architect shall utilize the Building Information Model to minimize costs of Services under this Agreement.



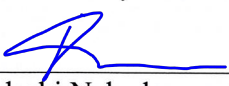
20.16.1 Model Requirements. The Architect shall make the Building Information Model in accordance to the current version of the "National BIM Standard – United States" ("NBIMS") of the National Institute of Building Sciences. The Architect shall develop each BIM Element to the Level of Development in accordance with generally accepted industry practice by the end of each Project phase.

20.16.2 Model Management and Coordination. The Architect shall manage the Model and coordinate efforts with Consultants to detect and resolve all Clashes. The Architect must require all applicable Consultants engage in Clash detection. In management of the Model, the Architect is responsible for facilitating and establishing the following: the Model coordinate system and units; file storage locations; processes for transferring and accessing Model files; Clash detection procedures; and Model access rights. Furthermore, the Architect is responsible for the following: maintaining record copies of each file received for the Building Information Model; aggregating Building Information Model files; performing Clash detection in accordance with established procedures; maintain Building Information Model Archive and backups; manage Building Information Model access rights; and any additional responsibilities set forth in NBIMS. In the event a Clash is detected, the Architect shall timely resolve the Clash in the Building Information Model, and the Architect shall timely make corresponding corrections to any plan, specification, drawing, model, analysis, estimate, file, document, or item produced under the Services of this Agreement.


20.16.3 Building Information Model Archive. At the end of each Project phase, the Architect is responsible for and shall produce a Building Information Model Archive that cannot be altered for any reason. Each Building Information Model Archive shall consist of two sets of files. The first set shall be a collection of all files the Architect received for the Building Information Model during that Project phase, in both the file format received and all converted file formats. The second set shall consist of the

Building Information Model as developed at the end of that Project phase. In the event this Agreement is terminated, the Architect shall create a Building Information Model Archive for the current Project phase up to the date of termination.

DISTRICT:
OAKLAND UNIFIED SCHOOL DISTRICT

| | |
|---|-------------------|
|  | <u>12/15/2022</u> |
| Gary Yee, President Board of Education | Date |
|  | <u>12/15/2022</u> |
| Kyla Johnson-Trammell, Superintendent, and Secretary Board of Education | Date |
|  | <u>11/18/2022</u> |
| Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management | Date |

ARCHITECT:
NOLL & TAM ARCHITECTS

| | |
|--|-------------------|
|  | <u>11/16/2022</u> |
| Signature | Date |
| <u>Scott Salge, Principal</u> | |
| Name & Title | |

Approved As to Form:

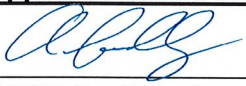
| | |
|---|-----------------|
|  | <u>11/18/22</u> |
| OUSD Facilities Legal Counsel | Date |

Exhibit A
RATE SCHEDULE

2022 SCHEDULE OF BILLING RATES
Noll & Tam Architects

Professional Billing Rates:

| | |
|--------------------------------------|-------|
| Scott Salge, Principal | \$250 |
| Zachary Goodman, Associate Principal | \$190 |
| Senior Technical Architect | \$180 |
| Senior Technical Staff | \$160 |
| Designer | \$140 |
| Project Assistant | \$110 |

Reimbursable Expenses

Reproduction, travel outside the Bay Area, renderings, computer models, physical models, postage, messengers, and other usual expenses will be billed at 1.15 times actual cost.

01122022

Exhibit B
PROJECT SCHEDULE

Contract Term: Intended Start: December 15, 2022
Intended End: December 31, 2023



NOLL&TA-01

BOYETTA

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/17/2022

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

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

| | |
|--|---|
| PRODUCER License # 0E67768 IOA Insurance Services 3875 Hopyard Road Suite 200 Pleasanton, CA 94588 | CONTACT NAME: Jessica McDonald PHONE (A/C, No, Ext): (925) 918-4535 FAX (A/C, No): E-MAIL ADDRESS: Jessica.McDonald@ioausa.com |
| | INSURER(S) AFFORDING COVERAGE INSURER A : RLI Insurance Company INSURER B : Republic Indemnity Company of America INSURER C : Hudson Insurance Company INSURER D : INSURER E : INSURER F : |
| INSURED Noll & Tam Architects 729 Heinz Avenue #7 Berkeley, CA 94710 | NAIC # 13056 22179 25054 |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | X | X | PSB0009563 | 6/25/2022 | 6/25/2023 | EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 |
| A | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | X | X | PSA0003300 | 6/25/2022 | 6/25/2023 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ | X | | PSE0004707 | 6/25/2022 | 6/25/2023 | EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 |
| B | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | X | 25496802 | 6/25/2022 | 6/25/2023 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | Professional Liab. | | | PRB0619114419 | 6/25/2022 | 6/25/2023 | Per Claim 2,000,000 |
| C | Professional Liab. | | | PRB0619114419 | 6/25/2022 | 6/25/2023 | Aggregate 4,000,000 |

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

RE: Urban Promise Academy (UPA) Campus Portable Relocation Project

All operations of the Named Insured, including the aforementioned project, if any.

Oakland Unified School District is Additional Insured on a Primary & Non-Contributory basis with Waiver of Subrogation with respect to General & Auto Liability, as required by written contract.

Workers' Compensation: Waiver of Subrogation is in favor of , as required by written contract.

Excess Liability follows form over the General Liability, Auto Liability and Employers Liability.

CERTIFICATE HOLDER

CANCELLATION

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



DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information

| | | | |
|---------------------|---|-------------|------------|
| Project Name | Urban Promise Academy (UPA) Campus Portable Relocation Project | Site | 236 |
|---------------------|---|-------------|------------|

Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

| | |
|-----------------------------|---|
| Attachment Checklist | <input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider |
|-----------------------------|---|

Contractor Information

| | | | | | | | | |
|--------------------|---|------------------|----------|---|----|-----|-------|--|
| Contractor Name | Noll & Tam Architects | Agency's Contact | | Scott Salge | | | | |
| OUSD Vendor ID # | 008175 | Title | | Principal | | | | |
| Street Address | 729 Heinz Avenue, #7 | City | Berkeley | State | CA | Zip | 94710 | |
| Telephone | 510-542-2200 | Policy Expires | | | | | | |
| Contractor History | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | |
| OUSD Project # | 22151 | | | | | | | |

Term of Original/Amended Contract

| | | | |
|--|------------|---|------------|
| Date Work Will Begin (i.e., effective date of contract) | 12-15-2022 | Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date) | 12-31-2023 |
| | | New Date of Contract End (If Any) | |

Compensation/Revised Compensation

| | | | |
|---|----|--|-------------|
| If New Contract, Total Contract Price (Lump Sum) | \$ | If New Contract, Total Contract Price (Not To Exceed) | \$31,988.00 |
| Pay Rate Per Hour (If Hourly) | \$ | If Amendment, Change in Price | \$ |
| Other Expenses | | Requisition Number | |

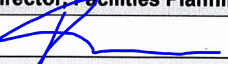
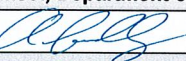
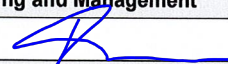
Budget Information

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

| Resource # | Funding Source | Org Key | Object Code | Amount |
|-------------------|--|--|--------------------|---------------|
| 7710/9916 | Fund 35, County School Facilities Fund | 350-7710-0-9916-8500-6215-236-9180-9003-9999-22151 | 6215 | \$31,988.00 |

Approval and Routing (in order of approval steps)

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

| | | | | | |
|----|---|---|---------------|------------|--------------|
| 1. | Division Head | Phone | 510-535-7038 | Fax | 510-535-7082 |
| | Executive Director, Facilities Planning & Management | | | | |
| | Signature |  for Kenya Chatman | Date Approved | 11/18/2022 | |
| 2. | General Counsel, Department of Facilities Planning and Management | | | | |
| | Signature |  Lozano Smith, approved as to form | Date Approved | 11/18/22 | |
| 3. | Deputy Chief, Facilities Planning and Management | | | | |
| | Signature |  | Date Approved | 11/18/2022 | |
| 4. | Chief Financial Officer | | | | |
| | Signature | | Date Approved | | |
| 5. | President, Board of Education | | | | |
| | Signature | | Date Approved | | |