

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	21-2401
Introduction Date	10-27-21
Enactment Number	21-1767
Enactment Date	10/27/2021 CJH



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

## Memo

**To** Board of Education

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

**Board Meeting Date** October 27, 2021

**Subject** Agreement for Architectural Services – Perkins Eastman Architects DPC –  
McClymonds High School Site Renovation Project – Division of Facilities Planning  
and Management

**Action Requested** Approval by the Board of Education of Agreement for Architectural Services by and between the District and Perkins Eastman Architects DPC, Oakland, California, for the latter to provide architectural services to include design drawings, site plan floor plans and goals, documentation of meetings, project specific education specifications, preparation of cost estimate related to Architectural, Mechanical, Plumbing, Electrical, Civil, Utilities, Off-site construction, landscape Design and bridging documents for the design-build McClymonds High School Site Renovation Project, in the not to-exceed amount of **\$1,234,302.00**, which includes a not-to-exceed amount of **\$107,936.00** for additional services, a not-to-exceed amount of **\$47,000.00** for reimbursable expenses, as the selected consultant, with work scheduled to commence on **October 28, 2021**, and scheduled to last until **July 31, 2025**, pursuant to the Agreement.

**Discussion** Consultant will provide Architectural Services for developing Bridging Documents for the design-build McClymonds High School Site Renovation project. Consultant was selected through the use of a fair, competitive RFP process based on their demonstrated competence and professional qualifications. (Government Code §§4529.10 et seq.)

**LBP** (Local Business Participation Percentage) 95.00%

**Recommendation** Approval by the Board of Education of Agreement for Architectural Services by and between the District and Perkins Eastman Architects DPC, Oakland, California, for the latter to provide architectural services to include design drawings, site plan floor plans and goals, documentation of meetings, project specific education specifications, preparation of cost estimate related to Architectural, Mechanical, Plumbing, Electrical, Civil, Utilities, Off-site construction, landscape Design and bridging documents for the design-build McClymonds High School Site Renovation Project, in the not to-exceed amount of **\$1,234,302.00**, which includes a not-to-exceed amount of **\$107,936.00** for additional services, a not-to-exceed amount of **\$47,000.00** for reimbursable expenses, as the selected consultant, with work scheduled to commence on **October 28, 2021**, and scheduled to last until **July 31, 2025**, pursuant to the Agreement.

**Fiscal Impact** Fund 21, Measure Y

- Attachments**
- Agreement
  - Scope of Work
  - Insurance Certificate



## CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 21-2401

Department: Facilities Planning and Management

Vendor Name: Perkins Eastman Architects DPC

Project Name: McClymonds High School Renovation Project

Project No.: 21110

Contract Term: Intended Start: 10-28-2021

Intended End: 7-31-2025

Total Cost Over Contract Term: \$1,234,302.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy? ☒ Yes (No if Unchecked)

How was this contractor or vendor selected?

This consultant was selected through an RFP process based on specialized services and experience. Given the Consultant's experience with similar projects and the level of complexity of the project, the district identified the chosen consultant as the most qualified at the most reasonable price.

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

Perkins Eastman Architects DPC will provide Architectural services for developing Bridging Documents for the McClymonds High School Site Renovation Project.

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

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. Perkins Eastman Architects DPC price was fair and reasonable compared to the prices submitted by the other responding consultants.

.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 – *contact legal counsel to discuss if applicable*
- ☐ Sole source contractor – *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 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:

- ☐ Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- ☒ Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- ☐ Architect or engineer when state funds being used – use of 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 \$96,700 or less (as of 1/1/21)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- ☐ 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 \$96,700 (as of 1/1/21)
- ☐ 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 developing Bridging Documents for the District.
- The Consultant's price was fair and reasonable and based on its experience with similar projects and the level of complexity of the project, the District identified the chosen architect as the most qualified at the most reasonable price.

**AGREEMENT**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
**AND**  
**PERKINS EASTMAN ARCHITECTS DPC**  
**FOR**  
**ARCHITECTURAL SERVICES FOR DESIGN-BUILD PROJECT,**  
**INCLUDING BRIDGING DOCUMENTS**  
**FOR THE**  
**MCCLYMONDS HIGH SCHOOL SITE RENOVATION PROJECT**

October 28, 2021

OAKLAND UNIFIED SCHOOL DISTRICT  
955 High Street  
Oakland, California 94601

## TABLE OF CONTENTS

<b>ARTICLE 1 - DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE 2 - RETENTION OF ARCHITECT; STANDARD OF CARE .....</b>	<b>2</b>
<b>ARTICLE 3 - DESCRIPTION OF PROJECT .....</b>	<b>3</b>
<b>ARTICLE 4 - COMPENSATION .....</b>	<b>3</b>
<b>ARTICLE 5 - BASIC SERVICES TO BE RENDERED BY ARCHITECT .....</b>	<b>5</b>
<b>ARTICLE 6 - ADDITIONAL SERVICES TO BE RENDERED BY ARCHITECT .....</b>	<b>15</b>
<b>ARTICLE 7 - RESPONSIBILITIES OF DISTRICT .....</b>	<b>16</b>
<b>ARTICLE 8 - PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE .....</b>	<b>17</b>
<b>ARTICLE 9 - WORKER'S COMPENSATION INSURANCE .....</b>	<b>19</b>
<b>ARTICLE 10 - ERRORS AND OMISSIONS INSURANCE.....</b>	<b>19</b>
<b>ARTICLE 11 - COMPLIANCE WITH LAWS .....</b>	<b>21</b>
<b>ARTICLE 12 - TERMINATION OF AGREEMENT .....</b>	<b>21</b>
<b>ARTICLE 13 - ARCHITECT AN INDEPENDENT DESIGN-BUILDER .....</b>	<b>23</b>
<b>ARTICLE 14 - STANDARDIZED MANUFACTURED ITEMS .....</b>	<b>23</b>
<b>ARTICLE 15 - OWNERSHIP OF DOCUMENTS .....</b>	<b>23</b>
<b>ARTICLE 16 - LICENSING OF INTELLECTUAL PROPERTY.....</b>	<b>24</b>
<b>ARTICLE 17 - ACCOUNTING RECORDS OF ARCHITECT .....</b>	<b>25</b>
<b>ARTICLE 18 - INDEMNITY .....</b>	<b>25</b>
<b>ARTICLE 19 - TIME SCHEDULE.....</b>	<b>26</b>
<b>ARTICLE 20 - MISCELLANEOUS PROVISIONS .....</b>	<b>26</b>

## **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 Perkins Eastman Architects, DPC, license number C-38439 (the “Architect”), with respect to the following recitals:

A. District proposes to undertake the construction of a work of improvement using a design-build delivery method, which requires the services of a duly qualified and licensed architect to prepare design requirements for the Design-Builder (the “Bridging Documents”) and oversee the Design-Builder’s design and construction services.

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 preparation of Bridging Documents and the oversight of a design-builder’s design and construction of a public school project.

C. The Parties have negotiated the terms under which Architect will provide such services and reduced 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 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 Perkins Eastman Architects DPC, 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, and electrical engineering services) required by this Agreement, as further defined in Article 5. In addition to preparation of the Bridging Documents, the Architect shall provide other necessary services to oversee (a) the Design-Builder’s performance of its design services, including completion of the design of the Project, (b) and the Design-Builder’s construction. To the extent that the District hires a construction manager for the Project, the District may request the construction manager to perform oversight services, thus reducing Architect’s oversight services under this Agreement; and District shall notify Architect and the construction manager in writing

of such request.

**1.5. Bridging Documents.** “Bridging Documents” shall mean the District’s requirements and restrictions for the Design-Builder’s complete design of the Project, including all documents required to be prepared by the District under Education Code section 17250.25(a).

**1.6 Contract and Contract Documents.** “Contract Documents” shall mean those documents which are part of and included in the contract between the District and the Design-Builder, including the Bridging Documents (“Contract”).

**1.6 Design-Builder.** “Design-Builder” shall mean the design-build entity with which the District enters a design-build contract to design and construct the Project (the “Contract”). “Design-Builder” includes the architect of record on the Design-Builder’s team, who shall prepare the complete design of the Project (see the architectural obligations of Design-Builder in the Design-Build Agreement).

**1.7 District.** “District” shall mean Oakland Unified School District, and its governing board members, employees, agents, and authorized representatives (including any construction manager or other consultant retained by the District for the Project).

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

**1.9 Design-Build Cost.** “Design-Build Cost” shall mean the estimate of total design-build costs to the District as initially submitted by the Architect under this Agreement and accepted by the District, and as subsequently revised under Article 5 of this Agreement.

**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. All services performed by the Architect under and required by this Agreement 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**

3.1 The Project consists of design and construction, providing architectural services to include design drawings, site plan floor plans and goals, documentation of meetings; project specific education specifications; preparation of cost estimate related to Architectural, Mechanical, Plumbing, Electrical, Civil, Utilities, Off-site construction; landscape Design, and bridging documents for the design-build McClymonds High School Site Renovation Project.

### **ARTICLE 4 COMPENSATION**

4.1 **Basic Services.** For the Basic Services satisfactorily performed under 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 **\$1,079,366.00**, which is Architect’s estimate of the maximum total cost of its Basic Services on the Project, based on its September 17, 2021, fee estimate. 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, but the Architect’s total compensation for Additional Services shall not exceed **\$107,936.00**. 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 Article 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 \$47,000.00, 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 \$1,234,302.00. 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 Design-Builder-caused delay in completion of the project. However, District may withhold from payments to Architect to the extent 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 5.5.21. 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, required by law, this Agreement, and the applicable standard of care. The Basic Services also include the services described in this Article 5, below, including but not limited to preparation of the Bridging Documents, performance of other pre-Contract bridging services, Contract administration and supervision services for the District (including responding to requests for information from the Design-Builder, review of the Design-Builder's design prior to DSA submission for compliance with the Bridging Documents, preparation and processing of amendments and change orders to the Design-Build Agreement, and general advice), and all services described in the September 17, 2021, proposal attached as *Exhibit C*. 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.

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

5.1.3 Whenever the Architect's services include the presentation to the District of the estimated Design-Build 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 estimated Design-Build 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 Bridging Documents and other pre-Contract bridging services and work product (plans, specifications, studies, drawings, estimates, etc.) relating to the Project are constructible and otherwise include all of the District's needs for the Project. If there are project meetings during the bridging and design-build 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 Bridging 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 sufficient personnel 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 five (5) 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, including design services, review of schedules, shop drawings, samples, and other submittals, and of 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, including assistance to Architect in performance of its duties under this Agreement.

5.2.3 If required by District, the Architect shall procure a certified survey of the site, 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 If required by District, 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. Design-Builder and its architect or record 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 Bridging Phase**

5.3.1 The Architect shall review all information concerning the Project delivered or communicated by the District to the Design-Builder and its architect of record to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the District.

5.3.2 The Architect shall provide a preliminary evaluation of the District's Project, schedule, and design-build budget requirements, each in terms of the other.

5.3.3 The Architect shall review with the District alternative approaches to the Bridging Documents and the design-build scope of the Project, and shall include alternatives that may reduce the cost and/or duration of the Project.

5.3.4 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 the Bridging Documents, which shall include, but not be limited to, the following: (a) Schematic design studies; (b) site utilization plans; (c) a description of the Project showing, among other things, size, type, design character, the scale and relationship of the components of the Project; (d) a complete description of all elements of design that the Design-Builder must include in its final design, including but not limited to (i) those elements specifically requested by the District, (ii) those elements not specifically requested by the District but which are nevertheless necessary to meet the District's requirements for the Project, (iii) performance specifications for HVAC and other systems or elements of the Project that shall be based on and in compliance with the latest version of the District's design guidelines and material standards, and (iv) quality or quantity of materials, equipment, or furnishings; (e) identification of all elements of the Design-Builder's final design that must be approved by the District; and (f) a written schedule for the performance of the Contract that itemizes constraints and critical path issues, including deadlines for Design-Builder's submission of the final design to DSA and a maximum number of calendar days for the Design-Builder to construct the Project. The Architect shall also prepare for the District's governing board's written approval a written estimated statement of Design-Build Cost. The Design-Build Cost estimate 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 Bridging Documents, including but not limited to the written statement of Design-Build 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 Bridging Documents.

## **5.4 Proposals and Negotiations Phase**

5.4.1 Following District's governing board's written approval of the Bridging Documents, and District's governing board's written acceptance of Architect's final estimate of Design-Build Cost and the design-build schedule, Architect shall continue to assist the District in finalizing the District's Request for Qualifications, Request for Proposals, and Contract Documents. Architect shall reproduce the Bridging Documents in the number requested by the District and distribute them among interested design-builders. Architect shall also assist the District in obtaining Statements of Qualifications and Proposals, and shall assist the District in evaluating the Statements and Proposals from interested design-builders, and in awarding the Contract. All sets of Contract Documents, other than those for the use of the Architect or its consultants, requested by the District in excess of 5 shall be reproduced at District's expense. Architect may not participate in the preparation of a proposal, or the work performed, by a design-build entity as it would be a conflict of interest with the Architect's duties as the District's consultant representing the District's interests.

5.4.2 Should the proposal with the best value in response to the Request for Proposals exceed Architect's most recent approved estimate of the Design-Build Cost 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 Bridging Documents as shall be necessary to bring new proposals within ten percent (10%) of such Design-Build Cost. 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 Design-Build Cost.

5.4.3 In cooperation with the District, the Architect shall review the qualifications of all design-builders interested in the Project, and shall make recommendations to the District as to whether, in the Architect's professional opinion, the design-builder should be prequalified or short-listed.

5.4.4 If, in the District's discretion, the District will seek total or partial State funding for this Project, the Architect shall require interested design-builders to meet all applicable Disabled Veteran Business Enterprises requirements and goals. The Architect shall also prepare and submit the appropriate documentation to the OPSC.

## **5.5 Design-Build Phase**

5.5.1 The design-build phase shall begin as described in the Contract.

5.5.2 All instructions to the Design-Builder 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.

5.5.3 Prior to submission of Design-Builder's design to the DSA for review and approval, Architect shall review Design-Builder's design for compliance with the Contract Documents, including but not limited to the Bridging Documents. Such review shall be completed within fourteen (14) days of receipt of Design-Builder's design.

5.5.4 The Architect shall timely provide District with copies of all of its correspondence with the Design-Builder.

5.5.5 The Architect shall provide prompt and timely direction to the District, Project inspectors and/or Design-Builder as to the interpretation of Contract Documents. Architect shall respond to all requests for information ("RFI's") from a Design-Builder 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 Design-Builder 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 Design-Builder in the meantime to mitigate delays and/or costs.

5.5.6 Upon completion of construction, Architect shall review the Design-Builder's 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 coordinate with Design-Builder for its assembly and delivery to District of all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of the Design-Builder.

5.5.7 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 the Design-Builder if such power to delegate was included in the Contract Documents and Request for Proposal, but Architect shall remain responsible for supervising such Design-Builder to ensure performance of this task. Architect shall provide a copy of all such notifications to the District.

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

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

Unless assigned to another party (such as a construction manager) by the District in writing, Architect has the primary responsibility for the Project to supervise, coordinate and manage the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Design-Builder (including its architect of record), any Construction Manager, laboratories,

District, and Architect itself with the DSA Construction Oversight Process.

The Architect shall supervise the Design-Builder's compliance with the applicable requirements of the DSA Construction Oversight Process, including but not limited to Design-Builder and its architect of record (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, Design-Builder, any Construction Manager, laboratories, and the IOR to meet the DSA Construction Oversight Process requirements without delay or added costs to the Project.

5.5.10 The Architect shall visit the site, both as the Architect deems necessary and as requested by the District, but under no circumstances less than 1 time per week, to maintain familiarity with the quality and progress of the Project, to determine that the Design-Builder's work substantially complies with, and is substantially progressing in accordance with, all documents, drawings, plans, and specifications (including but not limited to the Contract Documents and the Design-Builder's DSA-approved design). Such observations are to be distinguished from the continuous inspection provided by the Project Inspector.

5.5.11 The Architect shall notify the District promptly of any significant defect in materials, equipment, or workmanship, and of any default by Design-Builder 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.

5.5.12 The Architect shall review all schedules, shop drawings, samples, and other submissions of the Design-Builder to determine general conformance with Design-Builder's Project design and specifications as approved by the DSA. Such review shall be performed within fourteen (14) days of receipt of the submittals. 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 Design-Builder 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 Design-Builder 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 Design-Builder's Project design and specifications as approved by the DSA. 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.

5.5.13 Architect shall assist the District in requiring Design-Builder 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.

5.5.14 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 Design-Builder, subDesign-Builders, 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.

5.5.15 The Architect shall supervise the submission by Design-Builder (including the architect of record) of regular reports as shall be required by agencies having jurisdiction over the Project, and Architect shall keep the District informed in writing of the progress of the Project.

5.5.16 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 ensure that the Design-Builder and its architect of record include the consultant's recommendations and specifications in the final design documents for DSA review and shall provide designs and other bid documents consistent therewith.**

When construction is properly completed, Architect shall ensure that the Design-Builder's architect of record provides such certification as to Hazardous Substances as is required of architects of record for such projects by the OPSC.

5.5.17 Based on the Architect's observations, and an evaluation of each Application for Payment from Design-Builder, the Architect will estimate the amount of work completed by Design-Builder, and assist the District in (a) determining the amount owed to the Design-Builder, 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 Design-

Builder 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 Design-Builder is entitled to payment for the completed work.

5.5.18 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 Design-Builder 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 Design-Builder against District until Design-Builder's claims are fully and finally resolved. This tolling period commences upon Design-Builder'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.

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

5.5.20 The Architect shall recommend, prepare, and process all necessary amendments or change orders to the Contract, except to the extent that the District directs a construction manager to perform, or assist in the performance of, such tasks. Payment of fees to the Architect as a result of change orders shall be handled as follows:

5.5.20.1 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.

5.5.20.2 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.

5.5.20.3 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.

5.5.21 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:

5.5.21.1 In the event of such a change order, Architect shall be responsible for the difference between (a) what the Design-Builder 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 Design-Builder 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.

5.5.21.2 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, Design-Builder 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.

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

5.5.23 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 (unless the other required documents are being provided by the Design-Builder), 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.

5.5.24 Architect shall make reasonable professional efforts (e.g., a peer review) to ensure that Design-Builder’s finished design and construction of the 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 Architect unreasonably fails to do so, Architect shall remedy the lack of compliance 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 due to Architect's negligence, recklessness or willful misconduct.** The Architect shall not be responsible for acts or omissions of the Design-Builder 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 that the Design-Builder'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.

**5.6 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 or directed in writing by District. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and may be directed as Additional Services 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 Design-Build Phase;

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

6.2.4 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;

6.2.5 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;

6.2.6 providing services made necessary by the default of the Design-Builder;

6.2.7 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;

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

6.2.9 selecting moveable furniture, equipment or articles which are not included in the Contract Documents;

6.2.10 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.5.20.1), above; and

6.2.11 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 the Design-Builder through the Architect, a construction manager, another District representative, or a District employee;

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 or Design-Builder;

7.8 Provide hazardous materials (including asbestos) review and abatement, including identification of 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, the Contract Documents, or the Design-Builder's DSA-approved design, 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 or the Design-Builder's DSA-approved design of which the District becomes aware. However, the District's failure to do so shall not relieve the Architect of its responsibilities under this Agreement and, to the extent applicable, under Title 21, Title 24, and the Field Act for this Project.

## **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 One Million Dollars (\$1,000,000) general aggregate, Two Million Dollars (\$2,000,000) personal and advertising injury aggregate, with a per occurrence limit of One Million Dollars (\$1,000,000); Automobile liability insurance covering motor vehicles

shall be in an amount not less than Two Million Dollars (\$2,000,000) 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) 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 or directed 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 direction 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 due 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 after completion of the Project.

## **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 provided for, referred to, or in any way connected with any work, services, or functions to be performed 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, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Architect.**

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 com-

pletion, 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 Section 5.6 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 of this Agreement. The Architect shall timely complete its Basic and Additional 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** 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  
Attn: Tadashi Nakadegawa, Deputy Chief  
955 High Street  
Oakland, California 94601

**Architect:** Perkins Eastman Architects, DPC  
Attn: Lance Kutz, Principal-in-Charge  
1212 Broadway, Suite 1000  
Oakland, California 94612

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, 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 all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

20.12 A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute (including a dispute related to indemnity by the Architect for claims against the District by a contractor or design-builder 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](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."


20.14 The following forms are incorporated into the contract:

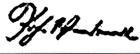
- ~~Roof project certification (if required; see Public Contract Code §3006).~~
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- ~~Buy American Certification.~~
- Local Business Participation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

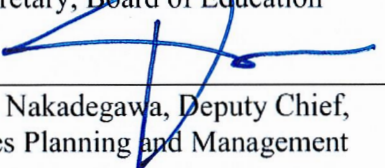
Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

\* \* \* \* \*

**DISTRICT:  
OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Shanthi Gonzales, President,  
Board of Education  
Date

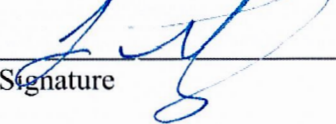
  
\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent  
and Secretary, Board of Education  
Date

  
\_\_\_\_\_  
Tadashi Nakadegawa, Deputy Chief,  
Facilities Planning and Management  
Date

**Approved As To Form:**

  
\_\_\_\_\_  
OUSD Facilities Legal Counsel  
Date

**ARCHITECT:  
Perkins Eastman Architects, DPC**

  
\_\_\_\_\_  
Signature  
Date

Lance Kutz, Principal  
\_\_\_\_\_  
Name & Title

***Exhibit A***  
**RATE SCHEDULE**



Executed services will be billed monthly against the “not-to-exceed” fee outlined above using the following Hourly Fee Rate schedule. The rates / hourly fees indicated below include those individuals/staff most likely to be involved with the project.

---

**2021 HOURLY RATES**

TITLE	RATE
Principal	\$265.00
Senior Architect/Project Analyst	\$225.00
Senior Project Manager	\$220.00
Sustainability Coordinator	\$200.00
Interior Designer/Space Planning	\$190.00
Senior Designer	\$200.00
Intermediate Designer	\$180.00
Technical Job Captain	\$160.00
All CADD/BIM	\$117.00
All Administrative Support	\$95.00
<b>SUB-CONSULTANT</b>	<b>RATE</b>
MKThink	\$260.00
Civil Engineer	\$215.00
Structural Engineer	\$237.00
Mechanical/Plumbing Engineer	\$237.00
Electrical Engineer	\$237.00
Landscape Architecture	\$250.00
Cost Estimating	\$225.00
Community Engagement	\$275.00
Equity Consultant/Facilitator	\$275.00
Communications/Outreach	\$150.00

***Exhibit B***

**PROJECT SCHEDULE**

**Contract Term:**   **Intended Start:**   **October 28, 2021**  
**Intended End:**   **July 31, 2025**

***Exhibit C***

**September 17, 2021, proposal**

# PERKINS — EASTMAN

9/17/2021

Mark Newton  
Bond Program Director  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

Subject: Architect Services Fee Proposal for Bridging Documents for McClymonds High School

Mr. Newton:

Perkins Eastman is pleased to provide the following fee proposal for providing Architectural Services to Oakland Unified School District for developing Bridging Documents for the McClymonds High School site. Expected deliverables for the services provided will include:

- Conceptual design drawings including: sketches, site relationship diagrams, site plan, conceptual floor plans, elevations, narratives that describe the guiding principles and goals of the project;
- Written narrative of building codes, State/local agency regulations, documentation of meetings;
- Basis of Design narratives and or graphics for Civil, Structural, MEP, and Landscape Design;
- Project Specific Educational Specifications and Space Summary Checklist that define elements necessary to include in the cost estimate reflective the District's vision, standards and quality.
- Preparation of cost estimate using primary systems approach – Architectural, Mechanical, Plumbing, Electrical, Civil, Utilities, Off-site Construction;
- Draft Phasing Plan incorporated into the Cost Estimate;
- Meeting notes and presentations.
- Stakeholder and Community Outreach participation

We propose to provide the required Architectural Services to develop the Bridging Documents as a “not-to-exceed” fee of **\$1,234,302**.

The fee is allocated as follows:

Basic Services:

Bridging Documents	\$ 634,136
Post Bridging Documents	\$ 382,730
<u>Constructability Review of DB Package</u>	<u>\$ 62,500</u>
<b>Sub Total</b>	<b>\$1,079,366</b>

Allowances:

Additional Services (10%)	\$ 107,936
<u>Reimbursable</u>	<u>\$ 47,000</u>
<b>Sub Total</b>	<b>\$ 154,936</b>



#### **REIMBURSABLE EXPENSES**

The need for reimbursable expenses is anticipated to be related to reproduction for scheduled submittals, reviews, and hard copy presentations. It is assumed that the Criteria Document Architect is not responsible for plan check / back check and construction support services as related to reimbursable expenses. It is possible that reimbursable expenses may also be required for overnight delivery and courier services. Electronic communications will be utilized to limit these expenses whenever possible. There is no cost for travel or overnight accommodations. Reimbursable expenses are proposed to be invoiced at direct cost.

#### **ADDITIONAL SERVICES**

Additional services provided under the standard agreement may include: acoustical consulting and other specialty contractors not specifically listed under the hourly rates. Pre-authorized additional services are invoiced at the time of service. A separate line item will be indicated for: SWPPP and WQMP and water use landscape calculations if required on projects with site work included; and A/E prepared Fire Sprinkler drawings for DSA review and approval for those projects requiring new fire sprinklers. These may or may not apply to the scope of Criteria Documents.

The Perkins Eastman team looks forward to again working with Oakland Unified School District to realize an innovative, forward thinking school facility to serve the dynamic and talented community of Oakland.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Kutz", written over a horizontal line.

Lance Kutz  
Principal

cc: File Distribution

[LK]



# CERTIFICATE OF LIABILITY INSURANCE

12/1/2021

DATE (MM/DD/YYYY)

7/16/2021

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

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

<b>PRODUCER</b> Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>E-MAIL ADDRESS:</b> <b>FAX (A/C, No):</b>														
<b>INSURED</b> PERKINS EASTMAN ARCHITECTS, DPC 1402538 1212 BROADWAY SUITE 1000 OAKLAND CA 94612	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : The Cincinnati Insurance Company</td> <td>10677</td> </tr> <tr> <td>INSURER B : The Travelers Indemnity Company</td> <td>25658</td> </tr> <tr> <td>INSURER C : Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER D : The Cincinnati Casualty Company</td> <td>28665</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : The Cincinnati Insurance Company	10677	INSURER B : The Travelers Indemnity Company	25658	INSURER C : Continental Casualty Company	20443	INSURER D : The Cincinnati Casualty Company	28665	INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : The Cincinnati Insurance Company	10677														
INSURER B : The Travelers Indemnity Company	25658														
INSURER C : Continental Casualty Company	20443														
INSURER D : The Cincinnati Casualty Company	28665														
INSURER E :															
INSURER F :															

**COVERAGES**      **CERTIFICATE NUMBER:** 17707983      **REVISION NUMBER:** XXXXXXXX

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"/> <b>COMMERCIAL GENERAL LIABILITY</b> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	COP2321102	12/1/2020	12/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	COA2321102	12/1/2020	12/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	ZUP-91M46903	12/1/2020	12/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	EWC0560093	12/1/2020	12/1/2021	<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	<b>PROFESSIONAL LIABILITY</b>	N	N	AEH591918272	3/28/2021	3/28/2022	\$1,000,000 PER CLAIM; \$1,000,000 AGGREGATE

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

**CERTIFICATE HOLDER**
**CANCELLATION**

17707983  
 EVIDENCE OF PURPOSES

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

*Joseph M. Agnello*

© 1988-2015 ACORD CORPORATION. All rights reserved.



## DIVISION OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

### Project Information

Project Name	McClymonds High School Site Renovation Project	Site	303
--------------	--	------	-----

### 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	Perkins Eastman Architects DPC.	Agency's Contact	Lance Kutz				
OUSD Vendor ID #	001423	Title	Project Manager				
Street Address	1904 Franklin Street, Suite 909	City	Oakland	State	CA	Zip	94612
Telephone	510-331-6411	Policy Expires					
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #	21110						

### Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	10-28-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	7-31-2025
		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)	\$ 1,234,302.00
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
9820/9856	Fund 21, Measure Y	210-9820-0-9856-8500-6215-303-9180-9910-9999-99999	6215	\$1,234,302.00

### 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.	Acting Director, Facilities Planning and Management				
	Signature			Date Approved	10/1/21
2.	General Counsel, Department of Facilities Planning and Management				
	Signature	Lozano Smith, as to form only		Date Approved	10/1/21
3.	Deputy Chief, Facilities Planning and Management				
	Signature			Date Approved	10/1/21
4.	Chief Financial Officer				
	Signature			Date Approved	
5.	President, Board of Education				
	Signature			Date Approved	