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Enactment Number	
Enactment Date	



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

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

Board Meeting Date August 21, 2024

Subject Award of Agreement Between Owner and Alternative Design-Builder – C. Overra & Co.- Coliseum College Preparatory Academy Site Expansion Project, - Division of Facilities Planning and Management

Action Requested Approval by the Board of Education, upon recommendation by the Facilities Committee, of Award of Bid to, rejection of all other Bids, if any, and of Agreement Between Owner and Alternative Design-Builder by and between the District and C. Overra & Co., Richmond, CA, for the latter to design and construct the new gymnasium and classroom building, including fourteen (14) standard classrooms and two (2) laboratory classrooms, on the southwest portion of the campus for the Coliseum College Preparatory Academy Site Expansion Project, in the lump sum amount of \$2,882,578.00, with the work scheduled to commence on August 29, 2024, and scheduled to last until September 30, 2027.

Discussion Design-Builder is providing Alternative Design Build Services at the Coliseum College Preparatory Academy Site Expansion Project and was selected pursuant to Education Code sections 17250.60 et seq.

LBP (Local Business Participation Percentage) Based on LBU Worksheet Affirmation Sheet attached.

Recommendation Approval by the Board of Education, upon recommendation by the Facilities Committee, of Award of Bid to, rejection of all other Bids, if any, and of Agreement Between Owner and Alternative Design-Builder by and between the District and C. Overra & Co., Richmond, CA, for the latter to design and construct the new gymnasium and classroom building, including fourteen (14) standard classrooms and two (2) laboratory classrooms, on the southwest portion of the campus for the Coliseum College Preparatory Academy Site Expansion Project, in the lump sum amount of \$2,882,578.00, with the work scheduled to commence on August 29, 2024, and scheduled to last until September 30, 2027.

Fiscal Impact Fund 21, Building Funds, Measure Y

Attachments

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



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 24-1884

Department: Facilities Planning and Management

Vendor Name: C. Overra & Co.

Project Name Coliseum College Preparatory Academy Site Expansion

Project No.: 21113

Contract Term: Intended Start: 8-29-2024

Intended End: September 30, 2027

Total Cost Over Contract Term: \$2,882,578.00

Approved by: Preston Thomas

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

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

C. Overra & Co. was chosen directly based on scores through an RFP process.

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

C. Overra & Co. will provide design build services which consists of design and construction of the new gymnasium and new classroom building on southwest portion of the campus for the Coliseum College Preparatory Academy Site Expansion 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?

The district received proposals through an RFQ/P process, which includes review/scoring of proposals. C. Overra & Co. was selected based on the highest interview scores and because their prices were 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 (including sole source) – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$114,500 or less (as of 1/1/24)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$114,500 (as of 1/1/24)
- 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 \$114,500 (as of 1/1/24)
- 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:

- Contractor is providing alternative design build services for the Coliseum College Preparatory Academy Site Expansion project for the District.



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Department of Facilities Planning and Management

LOCAL BUSINESS UTILIZATION AFFIRMATION WORKSHEET

Design-Build Team: C. Overaa & Co. / Noll & Tam

The Design-Build Entity affirms that it will achieve OUSD's minimum Local Business Utilization (LBU) requirements. Included in our proposal is a detailed narrative and strategy describing how the DBE intends to meet or exceed the District's LBU requirements.

The narrative shall describe previously implemented methods used for successful local business utilization and shall be inclusive of at least one relevant California K-12 DBE example.

The narrative shall include our LBU strategy, but not limited, to the following:

- Identified Joint-Venture partnership agreements at the prime and sub level
- An outline of small and local firms with planned partnership
- Areas and/or scopes that have been identified as carve out opportunities for small, local partners
- Other identified opportunities for local and small local utilization

The submitted narrative and strategy will be scored and awarded up to 5 additional points by the District's LBU Consultant.

Minimum Local Business Participation per District Policy can be found in the following link:

<https://www.ousd.org/facilities-planning-management-department/opportunities/local-business-utilization-lbu-policy>

Signature: Carl Overaa

Date: 7 / 12 / 2024

Approach to Exceed LBU Requirements

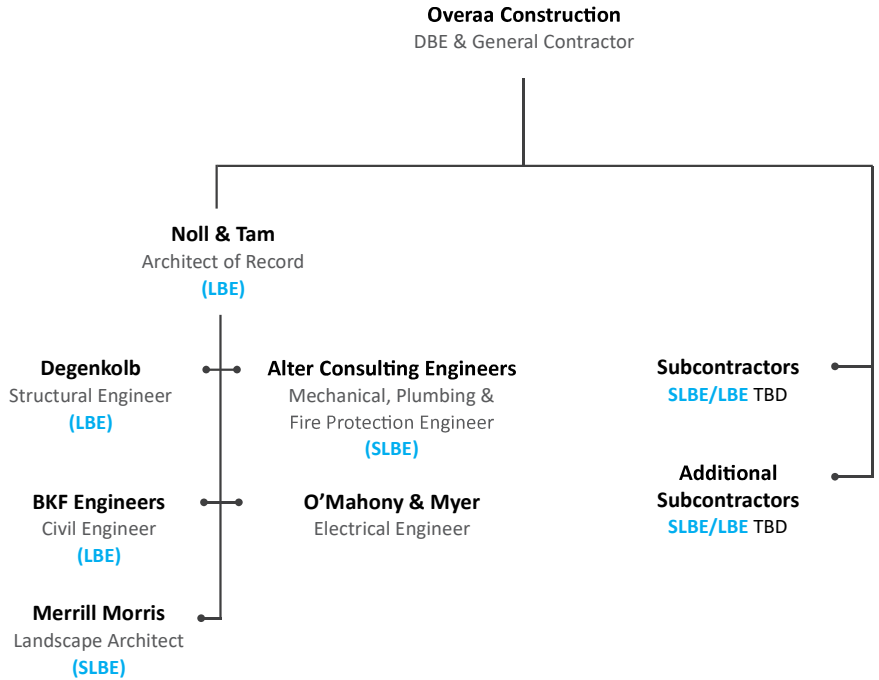


Our team's lead architect **Noll & Tam** is certified as a City of Oakland Local Business Enterprise (LBE).

To fortify our local percentages, Overaa/Noll & Tam started early in selecting small and local designers on our team.

Our design team includes **Alter Consulting Engineers** (SLBE), **BKF Engineers** (LBE), **Merrill Morris** (SLBE), **Degenkolb** (LBE) and **O'Mahony & Myer**.

Regarding Trade Partnerships, we have identified carve out opportunities and have a path to exceed 50% LBE/SLBE participation. Please see table on following page for more information.



Overaa / Noll & Tam will exceed full LBU requirements on the CCPA Project. As outlined in our SOQ, Overaa/Noll & Tam has demonstrated success leveraging opportunities like the CCPA Project to develop and build relationships with Oakland businesses that have not always had equitable access to contracts in the procurement process.

To begin with, the composition of the team shown above is the beginning of the LBU roadmap for the CCPA Project. This direction illustrates a positive affirmation that the Overaa/Noll & Tam team takes LBU commitment very seriously with the District, Oakland District Board Members, and community members in exceeding District's requirement. The CCPA Project introduces many tangibles and uncertainty on scope and the Overaa/Noll & Tam team will begin developing buckets spends for each scope as design progresses and define the opportunities for trade partners to assist in the process. A project that spans for several years like the CCPA

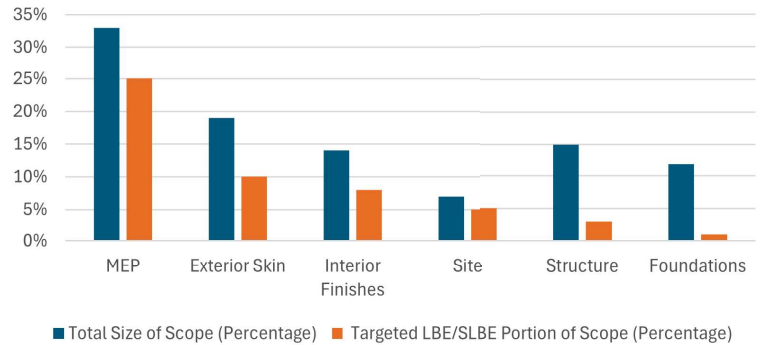
Project provides many opportunities to engage, develop, and support small and disadvantaged local Oakland business enterprises.

After participating in the District's **Virtual Outreach Matchmaking Session**, Overaa added subcontractors to our subcontractor database and followed up with them to complete an internal prequalification. This is an early communication engagement of the process to contract with Overaa on future projects.

LBU Strategy

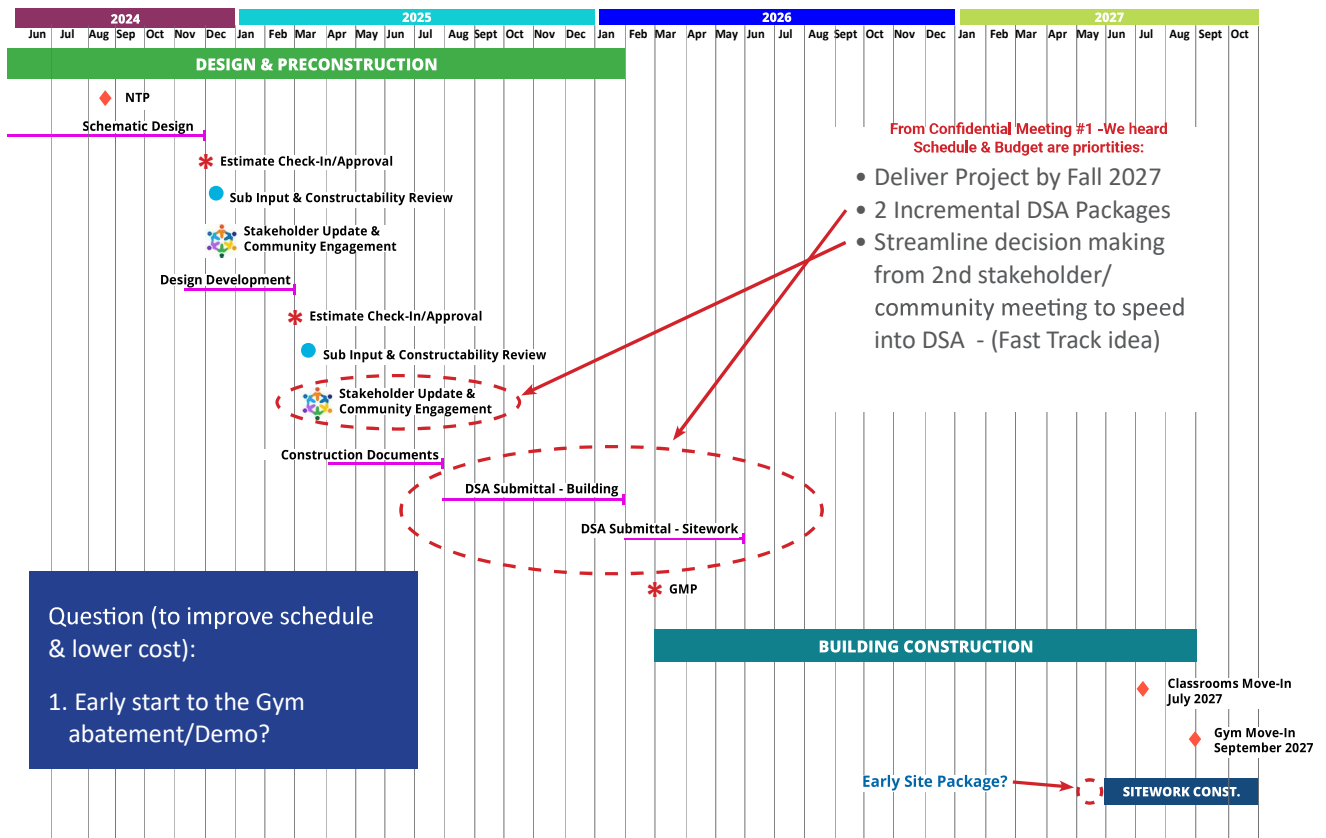
In a series of confidential meetings, while design and budgeting were underway, we researched and pulled our sub trade data from several sources—City of Oakland, the Matchmaking Network participant list and Building Connected—to generate a list of subcontractors certified as LBE /SLBE’s. We then mapped major scopes of work on the CCPA Project and the carve out opportunities for local and small certified partner participation in these scopes. The table to the right shows these major scopes on the CCPA Project and where LBU percentages can build up this requirement. Of course this is all contingent upon that the trade partners are capable, available, prequalified, and experienced to perform these services. During our GMP development, our preconstruction department will begin developing trade relationships as the process unfolds.

LBU Carve Out Opportunities & Path to Exceed 50% LBE/SLBE Participation



On Track for a Minimum of 52% LBE/SLBE Participation

After NTP, Sr. Project Manager **Rick Moore** and Precon Director **Cody Lee** will engage with **Shonda Scott** with Total 360 Concept for recommendations that will point us to several consulting firms to coordinate several community outreach meetings in soliciting interest and efforts in the LBU percentages. In our 2nd confidential meeting, we developed a LBU Roadmap graphic, shown below, outlining community engagement meetings to gain traction in our pursuit of exceeding the District’s LBU requirements. Like our success on OUSD’s The Center project, we will be transparent in reporting LBU percentages throughout the project. The preliminary LBU Roadmap will be adjusted based on the agreed schedule from initial kick-off meetings. **We will fulfill and exceed any remaining participation with our construction trade partners.** Overaa has extensive experience participating in local/small Oakland subcontracting partnerships as evidenced by our project examples on the following page.



Proven Experience Exceeding Oakland Small/Local Business Requirements

Small/Local Outreach Consultant

In our qualification package under “LBU Approach”, we described our subcontractor outreach efforts during subcontractor selection. We will extend outreach to local grassroots, employment workforce department, Department of General Services, and additional agencies we have enlisted in our qualification package. On past projects with similar local participation requirements, we have had bigger, more experienced subcontractors set up mentor-protégé relationships with smaller, local firms in order to build the smaller firm’s experience and expertise. The formation of these relationships works out beneficially for all parties involved: the bigger subcontractor gets to participate in the project, the smaller subcontractor builds their resume and hones their skills, and Overaa has the pleasure of contributing to the local economy and knowledge base in under utilized service areas.

Lease-Leaseback OUSD Roosevelt Middle School Modernization

On the current Roosevelt Middle School Modernization Project, we are partnered with SLBE’s Tulum and Focon. **We achieved 78% SLBE/SLRBE on the Science Modular Increment of the Project.**

Lease-Leaseback OUSD Central Commissary

Overaa provided preconstruction and construction services for the new \$51M centralized kitchen and food distribution facility for the entire Oakland Unified School District that provides 40,000 meals a day to those in the area who are in need. The District had a very intentional small local business plan for this project: 50% local hire and 50% small local business participation.

We made the District’s goals our goals. We partnered with two small/local minority owned contractors, Eclipse Electric and Tulum (which is also woman owned) in a mentorship environment to provide opportunities in harmony with the spirit of OUSD’s mission. We also worked with our JV partners to subcontract a high percentage of small local minority Owned businesses. We hired a local community liaison, a single mother, to provide her opportunity and to increase communication about the project with the

community. Our JV partners were amazing and helped us better connect with the local community. **Ultimately, we surpassed OUSD’s 50% SLBE/SLRBE/LBE requirements by 11%.** The project was driven by immense passion of bridging gaps in social equity and we feel fortunate to have played a part in it.

Lease-Leaseback OUSD Sankofa Academy / Washington Elementary Modernization

For this LLB project, Overaa hired a small/local workforce outreach consultant to keep documented records of outreach efforts and to contract such activities as trade associations, small business developments networks and conferences, plus trade fairs to locate LBEs. This resulted in us partnering with small/local minority owned contractor, Eclipse Electric, whom we later also partnered with on OUSD’s Central Commissary Project. We maintained records of internal guidance and encouraged participation in workshops, seminars, and training while monitoring performance to evaluate compliance with OUSD’s requirements. **Ultimately, we surpassed OUSD’s 70% LBE/SLBE/SLRBE requirement by 2%.**

Design-Build Willie L. Brown, Jr. STEM Middle School

For this \$51M Design-Build project, the site was located in Hunters Point of San Francisco and community relations were very important. We hosted outreach meetings, coordinated with public agencies, and actively participated in community events and local mixers. We also partnered with Aboriginal Blackmen United (ABU) on the project, meeting with the organization leaders to establish a plan for targeted opportunities. We encouraged our plumbing subcontractor to bring on a plumbing apprentice from the ABU, who has taken well and flourished in the industry. Ultimately, the local hire goal was 20% and we achieved 18% on the project.

Subcontractor Procurement: Carving Out Opportunities For Small/Local Partners

Regarding confirming our commitments with subcontractors in the GMP phase and exceeding OUSD’s full compliance, our database of pre-qualified subcontractors contains nearly 5,000 companies and we have established a reputation as a trusted industry partner over our 117+ year history in the Bay Area.

Key steps in our outreach efforts include:

- Exchange local listings and databases with local unions, local apprenticeship agencies, Carpenters Pre-Apprentice Program, Laborers Apprentice Program and the projects’s targeted cities in Alameda County
- Heavily solicit and advertise the bidding opportunity in multiple channels –trade papers, websites, and grassroots newspapers.
- Community outreach meetings, like at **Cypress Mandela Vocational Training Center in Oakland**, to inform and educate potentially interested subcontractors about the opportunity, and provide guidance on the prequalification and document requirements.
- Clear bidder instructions describing the local participation goals and requesting larger trades to utilize local suppliers.



Community Outreach meeting at Cypress Mandela Vocational Training Center in Oakland for Oakland USD’s Sankofa Academy / Washington Elementary School Modernization Project.

During the bidding period, Overaa/Noll & Tam will solicit to small/local business categories for all appropriate categories or divisions of work. Project assigned Small/Local Business Contract Manager, **Elizabeth Brown**, will oversee our effort in addressing any subcontractor questions about the bidding and prequalification process. Elizabeth has over 15 years of experience with local/small/diverse business subcontracting compliance. Her contact information:



Elizabeth Brown
Small/Local Business Contract Manager
200 Parr Blvd., Richmond, CA 94801
Office: 510-234-0926 / Fax: 510-237-2435
Email: elizabethb@overaa.com

Elizabeth will work closely with Cody Lee, Preconstruction Director, throughout the bidding and prequalification process outlined below:

1. Utilizing our internal subcontractor database, we fax and email via **BuildingConnected** an “Invitation to Bid” to begin the prequal bidding process, which is further detailed in Tab “Technical Design & Construction Experience” Tab.
2. We place multiple advertisements in local/grassroots newspapers soliciting the involvement and participation of qualified businesses.
3. We plan on contacting identified participants to verify their interest in this project. Extra attention will be paid to encouraging local businesses to research and provide pricing for the project and assisting them in defining their scope of work.
4. Follow-up notifications will be sent to all solicited businesses one week before the bid date.
5. We plan on organizing evening community outreach meetings and networking sessions via Zoom or in-person at either the CCPA site or other District facility to promote and educate businesses about opportunity for participation

In addition to the California agencies we use in contracting with certified small business categories, we will include Oakland USD’s LBU policy’s list of Oakland based firms certifying agencies plus the City of Oakland’s Resource Lists of Labor, Consultants, and Contractors mentioned on City’s website.

The list below combines all entities that will help expand the invitation for participation from certified small and local businesses:

- City of Oakland
- The Port of Oakland
- Alameda County Transportation Commission
- Alameda County
- California Public Utilities Commission
- Caltrans

AGREEMENT BETWEEN OWNER AND ALTERNATIVE DESIGN-BUILDER

This agreement is effective August 29, 2024 (the "Agreement") by and between the Oakland Unified School District, Alameda County, California, hereinafter called the "District" or "Owner," and C. Overaa & Co., hereinafter called the "Design-Builder."

WITNESSETH: That the Design-Builder and the Owner for the consideration hereinafter named agree to enter this Agreement for design and construction of the Project pursuant to Education Code sections 17250.60 et seq., as follows:

ARTICLE I. SCOPE OF WORK.

For the Owner's CCPA Site Expansion Project at Coliseum College Preparatory Academy (the "Project"), the Design-Builder agrees to furnish all labor, equipment, and materials, including tools, implements, and appliances required, and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers. The Work includes all obligations of the Design-Builder under this Agreement, the Contract, and the Contract Documents (see Article II, below), including all design and construction services necessary to complete the Project.

A. Design Services

The Design-Builder shall complete the design of the Project within the parameters of the Owner's requirements for design of the Project (the "Design Criteria," or "Bridging Documents") that were included in the Request for Proposals and on which the Design-Builder based its proposal, and within the other requirements of the Contract Documents (including Article VI, below).

Design-Builder shall, if requested by the District, meet with District staff and provide the District with progress plans during the Schematic Design and Design Development Phases as necessary to allow the District to ensure the Project is being designed in accordance with District requirements.

The Design-Builder shall prepare a 70% complete construction document set for the Owner's review and approval, and then prepare a 100% complete construction document set for the Owner's review and approval prior to the submission to the Division of the State Architect ("DSA").

Constructability review of the design and value engineering are the responsibility of the Design-Builder, but Owner may provide its own constructability or value engineering comments when reviewing the 70% construction document sets.

After obtaining Owner approval of the 100% complete construction document set, the Design-Builder shall submit it to the Division of State Architect (“DSA”) for approval. The Design-Builder shall make all changes in the design necessary to obtain DSA approval, but first must obtain Owner approval. If any such changes reduce the scope of construction, then the Owner shall be entitled to a deductive change order. If any such changes are outside the scope of the Design Requirements, then the Design-Builder shall be entitled to a change order to the extent that the change increases the Design-Builder’s design or construction costs.

B. Construction Services

The Design-Builder may not commence construction until it delivers to Owner complete DSA approval of the design for the Contract and the price for construction has been set via amendment to this Agreement (see below). The Design-Builder shall perform all construction necessary to construct the Work in compliance with its DSA-approved design (“Design”) and the Contract Documents, including the General Conditions.

ARTICLE II. CONTRACT DOCUMENTS.

The Design-Builder and the Owner agree that the following documents form the Contract Documents:

- A. The Request for Proposals, including all attachments, appendices, and addenda.
- B. The Design-Builder’s proposal in response to the Request for Proposals (“Proposal”), including all attachments, certifications, and declarations required to be submitted with the Proposal.
- C. This Agreement.
- D. The General Conditions.
- E. Any written and Board-approved agreement to modify this Agreement, such as an amendment or change order.
- F. The payment bond.
- G. The performance bond.
- H. The documents listed in Article 1.1.1 of the General Conditions.

This Agreement incorporates the above Contract Documents by reference, and together they constitute the “Contract.”

The Contractor and its subcontractors must use the Owner’s program software (ColbiDocs and Accountability) for projects. The District will provide training for the Contractor and its subcontractors on how to use ColbiDocs and Accountability

After award, the Design-Builder shall timely submit the bonds, fingerprinting certification, and Student Contact Form, as required by the Request for Proposals.

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.

Time is of the essence in this Contract, and the time of Completion for the Work (the “Contract Time”) shall be One Thousand One Hundred Twenty-Eight (1128) calendar days which shall start to run on (a) the date of commencement of the Work as established in the Owner’s Notice to Proceed, or (b) if no such date is established in a Notice to Proceed from Owner, the date ten (10) calendar days after award of the Contract, whichever being the shorter project duration that meets a completion date of September 30, 2027.

In addition, the Design-Builder shall meet the following milestone deadlines:

- Owner approval of the 70% construction document set of the Project within Three Hundred Fifty-Two (352) calendar days from (a) the date of commencement of the Work as established in the Owner’s Notice to Proceed, or (b) if no other date is established in a Notice to Proceed from Owner, the date ten (10) calendar days after award of the Contract by the Board on August 28, 2024;
- Submittal for Board approval of the GMP for the Building Package within 40 calendar days of DSA approval of the Final 100% Plans and Specifications; Submittal for Board approval of the GMP for the Site Package within 7 days of DSA approval of the Final 100% Plans and Specifications.
- Completion of the construction of the Project within Six Hundred Eight (608) calendar days from DSA approval of the Final 100% Plans and Specifications for the Building Package and Three Hundred Ninety-Eight (398) calendar days from DSA approval of the Final 100% Plans and Specifications for the Site Package.

The time period between (a) Design-Builder’s submission of the Board-approved Final 100% Plans and Specifications to DSA, and (b) DSA’s first comments regarding the Final 100% Plans and Specifications, shall not count against the Contract Time, and the Design-Builder shall be entitled to a time extension for such time period.

The site for the Project will not be available to the Design-Builder for construction on the following dates: Student Testing Days (TBD). The Design-Builder shall not be entitled to time extensions for lack of access to the site on these dates.

Failure to Complete the Work within the Contract Time, or by the milestone deadlines noted above, in the manner provided for by the Contract Documents shall subject the Design-Builder to liquidated damages. For purposes of liquidated damages, the concept of “substantial completion” shall not constitute Completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time, or by the milestone deadlines noted above, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.

Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration, supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that \$4,000.00 per calendar day of delay shall be the damages which the Owner shall directly incur upon failure of the Design-Builder to Complete the Work within the Contract Time or Complete any specified portion of the Work by a milestone deadline, as described above. Liquidated damages will accrue for failure to meet milestone deadlines even if the Design-Builder Completes the Project within the Contract Time.

Accordingly, the parties agree that the following amounts shall be the damages which the Owner shall directly incur for the specified failures of the Contractor:

- For failure to Complete the Work within the Contract Time, \$4,000.00 for each calendar day of delay.

If the Design-Builder becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Design-Builder until the liability of the Design-Builder under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Design-Builder incurred under this Article, the Design-Builder and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time for Completion and liquidated damages.

ARTICLE IV. PAYMENT AND RETENTION.

The Owner shall pay to Design-Builder in current funds a total of Two Million Eight Hundred Eighty-Two Thousand Five Hundred Seventy-Eight Dollars (\$2,882,578.00) for the design of the Project satisfactorily performed ("Design Price") according to the following schedule:

- *Up to • 50% upon Owner approval of the 70% design package (see the Request for Proposals).
- *Up to • 30% upon full DSA approval of the Final 100% Plans and Specifications (see the Request for Proposals).
- 20% upon completion of design services after DSA approval (including but not limited to design services during construction).

Once the complete design has been approved by DSA and the subcontractors have

been selected, the District will set the price for all of the construction work (“Construction Price”) based on the following formula: (Price of all subcontracts for construction work + Price of the construction work (if any) to be performed by the design-build entity) × 1.0996. The design-build entity and District shall sign an amendment to the design-build agreement stating the price set for the construction work, to be approved by the District’s governing board. No construction may commence until the amendment is approved by the District’s governing board.

Owner may elect to include a special allowance or general contingency allowance (“Allowance”) in the Construction Price, from which the Owner may, in its sole discretion, elect to pay any additional amounts that are owed to the Design-Builder under the Contract Documents, rather than pay the Design-Builder by a Board-approved change order. Any payment from an Allowance is entirely at the discretion, and only with the advanced written approval, of the Owner. To request payment from an Allowance, the Design-Builder must fully comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4 and 7 of the General Conditions and its provisions regarding waiver of rights for failure to comply. If the Owner approves in writing a payment from an Allowance, no change order approved by Owner’s governing body shall be required, but Design-Builder must sign an Allowance expenditure form, after which the Design-Builder may include a request for such payment in its next progress payment application. Design-Builder’s acceptance of a progress payment that includes such payment shall act as a full and complete waiver by Design-Builder of all rights to recover additional amounts, or to receive a time extension or other consideration, related to the underlying basis of such payment; and such waiver shall be in addition to any other waiver that applies under the Contract Documents (including Article 4 of the General Conditions). If Design-Builder requests a time extension or other consideration in connection with or related to a requested payment from an Allowance, Design-Builder must comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4, 7, and 8 of the General Conditions and their provisions regarding waiver of rights for failure to comply, and no such time extension or other consideration may be issued until a change order is approved by the Owner’s governing body pursuant to the Contract Documents. The amount of an Allowance may only be increased by a change order approved by Owner’s governing body. Once an Allowance is fully spent, the Design-Builder must request any additional compensation pursuant to the procedures in the Contract Documents for Notices of Potential Claim, Change Order Requests, and Claims, and payment must be made after a change order approved by the Owner’s governing body pursuant to the General Conditions. Upon Completion of the Work, all amounts in an Allowance that remain unspent and unencumbered shall remain the property of the Owner, Design-Builder shall have no claim to such funds, the Owner shall be entitled to a credit for such unused amounts against the above Construction Price, and the Owner may withhold such credit from any progress payment or release of retention.

The Design-Builder shall be responsible for all of its costs related to the Work, including home office, administration, copies, and travel expenses.

The Design-Builder may not request an increase in the Design or Construction Price except as permitted in the Contract Documents; and under no circumstances may the Design-Builder request an increase in the Design or Construction Price based on costs caused by Design-Builder's errors in design of the Work or construction of the Work, based on unforeseen site conditions, or based on DSA corrections to the Design-Builder's design of the Work.

ARTICLE V. CHANGES.

Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions, and shall be in the form of a written amendment or change order to this Agreement approved by the Owner's governing body.

ARTICLE VI. DESIGN RESPONSIBILITIES OF THE DESIGN-BUILDER.

A. Definitions.

1. Design Services. "Design Services" shall mean the Design-Builder's design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, foreseeably required under law, the standard of care, and this Agreement, to complete the design of the Work, obtain DSA approval of the design of the Work, and administer the construction of the Work, as further defined in this Article.

2. Wrongful Acts or Omissions. "Wrongful Acts or Omissions" shall mean Design-Builder's acts or omissions in breach of this Agreement, the applicable standard of care, or law.

B. Standard of Care.

District retains Design-Builder to perform, and Design-Builder 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 Design-Builder 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 Design-Builder under or 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"). Design-Builder shall be responsible for the completeness and accuracy of the plans and specifications.

C. Design Services.

1. General.

The Design-Builder shall complete the design for the Project in conformance to the Contract Documents, including the Bridging Documents prepared by the District's Architect, and applicable law.

The District shall have the right to add or delete from the Design-Builder's scope of Design Services as it may determine is necessary for the best interests of the Project and/or the District. Design-Builder shall expeditiously and diligently perform all of its work and obligations under this Agreement. Design-Builder may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District. The Design-Builder acknowledges that its priority is to complete the Project and its Design Services, and that any payment disputes with the District, if not resolved during the Project, must wait for resolution after the Project.

All personnel provided by Design-Builder shall be qualified to perform the services for which they are provided. Design-Builder shall obtain District's written approval of each employee of Design-Builder who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon ten working (10) days' written notice, cause Design-Builder 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, Design-Builder shall provide them immediately.

Design-Builder is an agent of District and shall reasonably represent the District at all times in relation to the Project.

Design-Builder shall be fully licensed as required by law at all times when providing services under this Agreement.

2. Consultants.

The Design-Builder shall employ or retain at Design-Builder's own expense, engineers and other consultants necessary to Design-Builder'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 Design-Builder for this Project shall be approved by District prior to their commencement of work. The Design-Builder's consultants shall be employed or retained to provide assistance during all aspects of performance of the Design Services for the Project, including but not limited to review of schedules, shop drawings, samples, submittals, and requests for information. The Design-Builder's consultants shall also conduct periodic inspections of the site to determine conformance with the DSA-approved design and shall participate in the final inspections

and development of any "punch list" items. Design-Builder must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

Design-Builder shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain an architect or construction manager to assist District in performance of District's duties for the Project.

If not done by the District's architect for the Project ("Architect"), the Design-Builder shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or Completion of the Project, shall have returned to it by Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

If not done by the Architect, Design-Builder 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 Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

3. Schematic Design Phase.

The Design-Builder shall treat the Bridging Documents as the schematic design for the Project. The Design-Builder shall complete the design of the Project in conformance with the Bridging Documents, as described in this Agreement.

4. Design Development Phase.

Design-Builder shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. The design development documents shall represent a 70% complete design, and shall conform to the Bridging Documents and other Contract Documents. Design-Builder shall submit the 70%

development design to the District for its review and for Board approval. Design-Builder is encouraged to make recommendations to District regarding benefits that could be realized by altering the scope of work or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Design-Builder shall revise the design development documents as necessary until District's governing board approves them in writing. Design-Builder shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

The Design-Builder shall prepare the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

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

Design-Builder shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5. Completion of Design Phase.

Following the District's governing board's written approval of the design development documents, the Design-Builder shall prepare for the written approval of District's governing board the 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. The 100% complete design shall conform to, comply with, and satisfy the Bridging Documents and other Contract Documents, as well as all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the 100% complete design, Design-Builder shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages.

Prior to submission of the 100% complete construction documents to DSA for plan check and approval, the Design-Builder shall submit the design to the District for review and for board approval. Design-Builder shall attend, and present at, as many meetings of

the District's governing board as may be necessary to obtain the board's written approval of the 100% complete construction documents.

After approval by the District's governing board, the Design-Builder shall submit the 100% complete construction documents to DSA for Electronic Plan Review ("EPR") and approval, and make the necessary corrections to secure DSA approval. If the DSA requires any changes in the 100% complete construction documents, Design-Builder shall submit its changes to the District for review and Board approval before submitting them to DSA for approval.

6. Construction Phase.

The construction phase shall begin on the date that Design-Builder has obtained complete DSA approval of the 100% complete design and the Construction Price has been set by amendment to this Agreement (see above). The construction shall be performed as required by the Contract Documents.

The Design-Builder 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.* Design-Builder shall provide a copy of all such notifications to the District.

After DSA approval of the design, the Design-Builder may select subcontractors for performance of construction work, and if the scope of a subcontractor's construction work is greater than 0.5% of the total value of the price allocable to construction work, then the Design-Builder shall use the procedures specified in Education Code section 17250.65(b) to select that construction subcontractor. The Design-Builder shall award each construction subcontract on a best value basis. If the Design-Builder wants to directly perform any scope of construction work, it must obtain proposals from at least two subcontractors for that scope of work and then establish to the District satisfaction and written approval that the Design-Builder's proposal is the best value.

The Design-Builder shall submit to the District and its Architect all schedules, shop drawings, samples and other submissions as set forth in the Contract Documents. The District and its Architect shall take action within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case District and its Architect shall take such action as soon as possible. If District and its Architect are not able to take such action within the required time due to reasons beyond their control, they may take action within a reasonable period of time under the circumstances; however, they shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the Design-Builder immediately after such determination with an explanation as to why they cannot take action within the time required, what they are doing to expedite its response, when they expect to be able to issue a response, and what action, if any, should be taken by the Design-Builder in the meantime to mitigate delays and/or costs. The District and its Architect will have the authority to reject work and materials

which do not conform to the Contract Documents, including the Bridging Documents. The approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the reasonable judgment of the District, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the District and its 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 District and its Architect will also recommend substitution of materials or equipment when, in their 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.

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

The Design-Builder will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Design-Builder 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 Design-Builder nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

Design-Builder shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon Completion of the Project. Design-Builder shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required under the Contract Documents.

With respect to asbestos and asbestos containing materials, the parties acknowledge that the Design-Builder 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. Design-Builder shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

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

Notwithstanding any other provision of this Agreement, the Design-Builder will not be entitled to a change order or additional payment if the underlying issue was caused by a Wrongful Act or Omission. At its own expense, the Design-Builder shall perform all Work caused or necessitated by the Wrongful Act or Omissions. Design-Builder is responsible to ensure that the 100% complete design, and the finished Project based on that design, comply with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Design-Builder has violated any of the above-referenced laws, or District, because of Design-Builder's Wrongful Acts or Omissions, has violated any of the above-referenced laws, Design-Builder shall remedy the violation at its own cost. **Design-Builder shall indemnify, defend and hold the District harmless under Section VI.G of this Agreement for any breach of this paragraph due to Design-Builder's negligence, recklessness or willful misconduct.** In the event that the Design-Builder is or becomes aware of possible non-compliance with the foregoing standards, Design-Builder shall have a duty immediately to notify the District in writing of the possible non-compliance.

7. 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 Design-Builder, whether supplied by District or by others, which are relied upon, altered or otherwise utilized by Design-Builder, Design-Builder shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Design-Builder under this Agreement.

D. Errors and Omissions Insurance.

Prior to the commencement of services under this Agreement, the Design-Builder shall furnish to the District satisfactory proof that the Design-Builder has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000.00) and with a deductible in an amount not to exceed the sum of Twenty-Five Thousand Dollars (\$25,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Design-Builder shall provide errors and omissions insurance on a claims-made basis.

Each of Design-Builder's professional sub-consultants (including consultants of Design-Builder) shall comply with this section, and Design-Builder shall include such provisions in its contracts with them.

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.

Should any of the required insurance be provided under a claims-made form, Design-Builder 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 completion of construction (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 Design-Builder's obligations to the District under any provision, including any duty to indemnify and defend the District.

Design-Builder 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 Design-Builder shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

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

If the Design-Builder 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 Design-Builder under this Agreement.

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

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

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.

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

E. Compliance with Laws.

Design-Builder shall be familiar with, and Design-Builder and Design-Builder'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").

F. Ownership of Documents; Licensing of Intellectual Property.

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 Design-Builder 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.

The Design-Builder 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 Design-Builder 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 Design-Builder's files for a period of no less than fifteen (15) years. Design-Builder shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

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 Design-Builder 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 Design-Builder 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.

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 Design-Builder 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 Design-Builder 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).

Design-Builder represents and warrants that Design-Builder 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 Design-Builder or its consultants prepares or causes to be prepared under this Agreement. **Design-Builder shall indemnify, defend and hold the District harmless under Section VI.G of this Agreement for any breach of this section due to Design-Builder's negligence, recklessness or willful misconduct.** The Design-Builder 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 Design-Builder and provided to Design-Builder by the District.

G. Indemnity Regarding Design.

Design-Builder Indemnification – **To the fullest extent permitted by law, including California Civil Code section 2782.8, the Design-Builder 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 to the extent that they arise out of, pertain to, or relate to negligence, recklessness or willful misconduct of the Design-Builder, the Design-Builder's officers, employees, or consultants in performing or failing to perform any design work, services, or functions provided for, referred to, or in any way connected with any design work, services, or functions to be performed under this Agreement.**

The Design-Builder'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 Design-Builder'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 Design-Builder for any amount of Defense Costs paid by Design-Builder in excess of the proportional fault of the Design-Builder to the extent specified in a settlement agreement, arbitration award, or verdict; or Design-Builder 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 Design-Builder 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.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Design-Builder shall meet and confer with other parties regarding unpaid Defense Costs.

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 Design-Builder.

District Indemnification for Use of Third Party Materials – The District shall defend, indemnify, and hold harmless the Design-Builder and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Design-Builder's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Design-Builder shall be entitled to such indemnification only if each of the following conditions are met: (a) Design-Builder actually re-draws or completes such other designs or contract documents; (b) Design-Builder complies with the provisions of this Agreement regarding use of materials prepared by other design professionals; (c) District has supplied Design-Builder with the previously prepared documents or materials; and (d) District expressly requests that the Design-Builder 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 VII. TERMINATION.

The Owner or Design-Builder may terminate the Contract as provided in the General Conditions.

In addition, if the Design-Builder refuses to sign an amendment to set the Construction Price (see above), then the District may (a) terminate the entire design-build

contract, or (b) terminate just the construction portion of the design-build contract and then require the Design-Builder to provide design services during construction performed by another contractor hired by the District.

ARTICLE VIII. PREVAILING WAGES.

The Project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Design-Builder and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Design-Builder and any subcontractor under the Design-Builder as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Builder.

The Design-Builder and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Design-Builder and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner at least monthly.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor

Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

ARTICLE IX. WORKING HOURS.

In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Design-Builder or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Design-Builder and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Design-Builder shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Design-Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

ARTICLE X. APPRENTICES.

The Design-Builder agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Design-Builder for all apprenticeable occupations.

ARTICLE XI. SKILLED AND TRAINED WORKFORCE.

The Project shall be subject to the District's Project Labor Agreement.

ARTICLE XII. DSA OVERSIGHT PROCESS.

The Design-Builder must comply with the applicable requirements of the Division of State Architect (“DSA”) Construction Oversight Process (“DSA Oversight Process”), including but not limited to (a) notifying the Owner’s Inspector of Record/Project Inspector (“IOR”) upon commencement and completion of each aspect of the Work as required under DSA Form 156; (b) coordinating the Work with the IOR’s inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner’s Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Work or Project.

Design-Builder shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Design-Builder’s Wrongful Act or Omission. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Design-Builder’s expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

ARTICLE XII. INDEMNIFICATION AND INSURANCE.

The Design-Builder will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the Contract Documents, including the General Conditions.

By this statement the Design-Builder represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Design-Builder shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Design-Builder shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be Four Million Dollars (\$4,000,000.00) per accident for bodily injury and property damage combined single limit.

ARTICLE XIII. ENTIRE AGREEMENT.

The Contract constitutes the entire agreement between the parties relating to the Work, and supersedes any prior or contemporaneous agreement between the parties, oral

or written, including the Owner's award of the Contract to Design-Builder, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XIV. EXECUTION OF OTHER DOCUMENTS.

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE XV. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XVI. BINDING EFFECT.

Design-Builder, by execution of this Agreement, acknowledges that Design-Builder has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Design-Builder and the Owner and their respective successors and assigns.

ARTICLE XVII. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM.

If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. 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 of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

ARTICLE XVIII. AMENDMENTS.

The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, including a change order, signed by the parties and approved or ratified by the Governing Board.

ARTICLE XIX. ASSIGNMENT OF CONTRACT.

The Design-Builder shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of

the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XX. WRITTEN NOTICE.


Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

ARTICLE XX. SANCTIONS IN RESPONSE TO RUSSIAN AGGRESSION.

The Owner requires Design-Builder to comply with the Governor’s March 4, 2022, Executive Order N-6-22 (“Order”) relating to any existing sanctions imposed by the United States government and the State of California in response to Russia’s actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

DESIGN-BUILDER:

C. Overaa & Co.
a California corporation

Signature:  Date: 8/1/24

Name: Carl Overaa
Title: President

Signature:  Date: 8/1/24

Name: Allen Hoffman
Title: CFO

OWNER:
Oakland Unified School District

Signature: _____ Date: _____

Name: Benjamin Sam Davis
Title: Board of Education President

Signature: _____ Date: _____

Name: Kyla Johnson-Trammell
Title: Superintendent and Secretary, Board of Education

Signature:  Date: Aug 1, 2024

Name: Preston Thomas
Title: Chief Systems & Services, Officer of Facilities Planning & Management

Approved As To Form:

Signature: James Traber Date: 08/01/2024
Name: James Traber, Esq.
Title: OUSD Facilities Legal Counsel

DESIGN-BUILDER:

Doll & Tam Architects
California Architect
C14014
California Architect's License No.
Exp. 11/31/25
License Expiration Date

C. Overea, CO.
California Contractor
1016793
California Contractor's License No.
5/31/25
License Expiration Date

NOTE: Design-Builder must give the full business address of the Design-Builder and sign with Design-Builder's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

EXHIBIT A

Proposal/Scope of Work

EXHIBIT A

C. OVERAA & CO. – Design-Build CCPA Site Expansion Project - OUSD

SCOPE OF WORK

Design & construct the new gymnasium and classroom building at OUSD Coliseum College Preparatory Academy. The Project will be constructed on the southwest portion of the campus. The Project will include 14 standard classrooms and two laboratory classrooms.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Coliseum College Preparatory Academy Site Expansion	Site	232
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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
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Contractor Information

Contractor Name	C. Overaa & Co.	Agency's Contact	Mike Conrad		
OUSD Vendor ID #	009061	Title	Owner		
Street Address	200 Parr Blvd	City	Oakland	State	CA
Telephone	510-234-0926	Zip	94621	Policy Expires	
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	21113				

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	8-29-2024	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	9-30-2027
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$ 2,882,578.00	If New Contract, Total Contract Price (Not to Exceed)	\$
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
9655/9859	Fund 21, Measure Y	210-9655-0-9859-8500-6215-232-9180-9906-9999-21113	6215	\$2,828,578.00

Approval and Routing (in order of approval steps)

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

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities				
	Signature	Date Approved	Aug 1, 2024		
	<small>Kenya Zhatman (Aug 1, 2024 16:34 PDT)</small>				
2.	General Counsel, Facilities				
	Signature	Date Approved	08/01/2024		
3.	Chief Systems & Services Officer				
	Signature	Date Approved	Aug 1, 2024		
	<small>Preston Thomas (Aug 1, 2024 16:37 PDT)</small>				
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature	Date Approved			