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| Enactment Date                           | 4/10/2024 CJH |



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

## Memo

**To** Board of Education

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

**Board Meeting Date** April 10, 2024

**Subject** Master Standby Agreement for Engineering Services – Jensen Hughes, Inc. - Fire Alarm, Intrusion Alarm, & Sprinkler Systems Engineering Services Project – Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of an Master Standby Agreement for Engineering Services by and between the District and Jensen Hughes, Inc., Concord, CA., for the latter to provide engineering design services for the District’s fire alarm, intrusion alarm, and fire sprinkler systems for which future projects assigned to Jensen Hughes, Inc. will be executed with amendments for the Fire Alarm, Intrusion Alarm, and Sprinkler Systems Engineering Services Project, in the not-to-exceed amount of \$0, with work scheduled to commence on April 11, 2024, and scheduled to end April 10, 2029, pursuant to the Agreement.

**Discussion** Consultant was selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), and (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)

**LBP (Local Business Participation Percentage)** Waived

**Recommendation** Approval by the Board of Education of an Master Standby Agreement for Engineering Services by and between the District and Jensen Hughes, Inc., Concord, CA., for the latter to provide engineering design services for the District’s fire alarm, intrusion alarm, and fire sprinkler systems for which future projects assigned to Jensen Hughes, Inc. will be executed with amendments for the Fire Alarm, Intrusion Alarm, and Sprinkler Systems Engineering Services Project, in the not-to-exceed amount of \$0, with work scheduled to commence on April 11, 2024, and scheduled to end April 10, 2029, pursuant to the Agreement.

**Fiscal Impact** Fund 25 Capital Facilities Fund

**Attachments**

- 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.** 24-0194

**Department:** Facilities Planning and Management

**Vendor Name:** Jensen Hughes, Inc.

**Project Name:** Master Standby Agreement For Engineering Services **Project No.:** 24105  
Fire & Intrusion Alarm & Sprinkler Engineering Services

**Contract Term:** Intended Start: April 11, 2024 Intended End: April 10, 2029

**Total Cost Over Contract Term:** \$0

**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?**

Jensen Hughes, Inc., was chosen through an RFP solicitation and based on similar projects they completed in the past for the District.

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

This is a Master Standby Agreement, and individual projects will be assigned through Amendments.

**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. Jensen Hughes, Inc., has done and is currently working for the District. Based on expertise with this particular type of work, the District found that the Consultant performed work quickly, accurately, efficiently, and at a reasonable cost to the District.

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 \$109,300 or less (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- 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 \$109,300 (as of 1/1/23)
- 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 fire alarm, intrusion alarm, and sprinkler systems engineering services associated with the current and future projects for the District.

## Memorandum:

**Date:** September 18, 2023

**To:** Kenya Chatman, Colland Jang

**CC:** David Colbert, Mark Newton, Ty Taylor, Juanita Hunter, Shonda Scott, Shonnell Frost-Gibbs, Tiffany Knuckles

**From:** Blake Brown

**Memo Re:** LBU Availability Analysis & Waiver Recommendation - Scope Specific - Fire/Alarm Intrusion Engineering Services

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Greetings Ms. Chatman and Mr. Jang,

As per the Oakland Unified School District's Local Business Policy Program Requirements Section of AR 7115: Prior to the issuance of a formal invitation for bid, the District shall ensure that there are at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SL/SLRBEs are not certified, then the requirement may, subject to the discretion of the District, be waived, or the 50% requirement may be reset from 50% all the way to 0%, depending on the particular circumstances at time of bid.

An availability analysis has been conducted for NAICS Code: 541330 (**Engineering Services**) with specifications in fire alarm, intrusion alarm, and fire sprinkler engineering services to determine the availability of certified firms that meet local business utilization on projects. We identified 50+ Oakland-based firms that may be eligible to meet the District's local business requirements and conducted outreach to verify scope, capacity, and interest. In our outreach, fewer than 4 firms, which have qualifiable certification per District requirements, were identified. Based on our analysis, it is determined that due to the limited availability of local certified firms specializing in engineering services, it is recommended that the District waive the entire 50% LBU requirement for the following scope/project(s):

- **NAICS: 541330 (Engineering Services)**
  - **Specialized Scope:** Fire Alarm, Intrusion Alarm, and Fire Sprinkler Engineering Services

If you have any questions, please feel free to contact our team at any time.

Sincerely,  
Blake Brown

**AGREEMENT**  
**FOR**  
**ENGINEERING SERVICES**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT**  
**AND**  
**JENSEN HUGHES, INC.**  
**FOR**  
**FIRE ALARM, INTRUSION ALARM AND FIRE SPRINKLER ENGINEERING**  
**SERVICES PROJECT**

**APRIL 11, 2024**

**OAKLAND UNIFIED SCHOOL DISTRICT**  
**955 HIGH STREET**  
**OAKLAND, CA. 94601**

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**AGREEMENT  
FOR  
ENGINEERING SERVICES**

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This agreement for engineering services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and JENSEN HUGHES, INC., license number     N/A     (the “Engineer”), with respect to the following recitals:

A. District proposes to undertake the construction of multiple improvement projects under the Measure Y bond construction program which require the services of a duly qualified and licensed engineer.

B. Engineer represents that Engineer is licensed to provide engineering services in the State of California and is specially qualified to provide the services required by the District, specifically the design and construction oversight of public school projects.

C. The Parties have negotiated the terms under which Engineer will provide design and contract administration for some or all of the individual construction projects under Measure Y, and the Parties have reduced such terms to writing by this Agreement. As each work of improvement arises that District wished to assign to Engineer., the District and Engineer shall fully execute, and the District’s governing board shall approve, an addendum to this Agreement in the form of *Exhibit A or B*.

The Parties therefore agree as follows:

**ARTICLE 1  
DEFINITIONS**

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

1.2 **Agreement.** “Agreement” shall mean this Agreement for Engineering Services.

1.3 **Engineer.** “Engineer” shall mean Jensen Hughes, Inc., and its officers, shareholders, owners, partners, employees, agents, and authorized representatives.

1.4 **Basic Services.** Engineer’s Basic Services consist of the investigation, design and construction oversight services normally required to complete the Project, as further defined in Article 5 and *Exhibit C*.

1.5 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of a work of improvement, including but not limited to the Agreement between Owner and Contractor, complete working drawings and specifications setting



forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

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

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

1.8 **Project.** “Project” shall mean the design and contract administration of the works of improvement , including construction and post-construction closeout thereof, added by an amendment in the form of *Exhibit A or B*, as described in this Agreement including but not limited to Article 3.

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

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

## **ARTICLE 2 RETENTION OF ENGINEER; STANDARD OF CARE; TERM**

2.1 District retains Engineer to perform, and Engineer agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the engineering services specified in this Agreement for the Project and subsequent amendments for each work of improvement added to the Project, and related incidental services. The Engineer agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The term for the performance of Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Engineer shall complete the Services within the Term. All services performed by the Engineer under and required by this Agreement shall be performed (a) in compliance with this Agreement and subsequent amendment for the Project, and (b) in a manner consistent with the level of care and skill ordinarily exercised by engineers 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”). Engineer shall be responsible for the

completeness and accuracy of its plans and specifications for the Project.

### **ARTICLE 3 DESCRIPTION OF PROJECT**

3.1 The Project includes each specific work of improvement for which Engineer will provide Basic Services for design and contract administration, which shall be set forth in the form of *Exhibit A or B* as an amendment to this Agreement, and upon full execution and approval of such amendment it shall amend this Agreement to include such work of improvement, and the Parties' rights and obligations for that work of improvement shall be governed by this Agreement, except as specifically provided in the amendment for that work of improvement.

### **ARTICLE 4 COMPENSATION**

4.1 **Basic Services.** For the Basic Services satisfactorily performed under this Agreement, for any work of improvement added to the Project, Engineer shall be compensated as provided in the fully executed addendum that has been approved by the District's governing board based on *Exhibit A or B* for that work of improvement. Rather than add a future work of improvement to this Agreement via *Exhibit A or B*, District may retain another engineer for services on such work of improvement. District is not obligated to use Engineer for any or all of its future works of improvement.

Engineer will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Engineer acknowledges that the amount for Basic Services, 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.** Engineer may invoice separately for Additional Services if provided by Engineer under Article 6, to be paid on an hourly basis using the rates stated in Section 4.8, but Engineer's total compensation for Additional Services on a particular work of improvement shall not exceed the amount specified in the addendum that added that work of improvement to the Project. Engineer 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 Engineer's performance of Basic or Additional Services under this Agreement. Engineer 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 Engineer and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of

publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Engineer 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 Engineer shall be reimbursed by District for its Reimbursable Expenses on any work of improvement added to the Project as provided in the fully executed and approved **Exhibit A or B** for that work of improvement.

4.4 For services satisfactorily performed on the Project, 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 Engineer'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. Engineer'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 Engineer of the dispute and, upon Engineer's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Engineer shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Engineer shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Engineer 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; Engineer otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Engineer's compensation for a work of improvement added to the Project shall be paid notwithstanding a Contractor-caused delay in completion of the work of improvement or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Engineer to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, or (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Engineer is responsible under Section 5.7.20

4.6 Should District cancel the Project, or any portion of the Project, under section 12.1 of this Agreement at any time during the performance of this Agreement, Engineer shall, upon notice of such cancellation, immediately cease all work under this Agreement related to the canceled Project or portion of the Project. In such event, Engineer'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 Engineer's records and files regarding, or relating to, any of the work performed by Engineer for District on the Project during or after the Project. Engineer shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Engineer will be responsible for Engineer's consultants keeping similar records. District shall be given reasonable access to Engineer's Project related records and files for audit purposes within ten (10) days of receipt of District's request. Engineer shall keep and maintain those records and files for ten (10) years.

4.8 Engineer's hourly rate schedule for its services is attached as *Exhibit C*.

4.9 Engineer 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 ENGINEER**

### **5.1 General**

5.1.1 Engineer's Basic Services consist of the investigation, design, and construction oversight services normally required to complete the work of improvement that is described in any fully executed and approved amendment to this agreement (see *Exhibit A or B*). The Basic Services for each work of improvement also include the services described in this Agreement, especially Article 5, below, including but not limited to bid package and preparation, bid handling, preparation and processing of change orders, requests for information, and other contract administration duties. The Basic Services additionally include other engineering or consulting services as may be requested by the District. The District shall have the right to add or delete from the Engineer's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Engineer shall expeditiously and diligently perform all of its work and obligations under this Agreement. Engineer 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 Engineer acknowledges that its priority is to complete the Project and the Engineer'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 Engineer shall review the estimate described more fully below at each phase of Engineer's services, also as defined below. If such estimates are in excess of the Project budget, the Engineer shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Engineer's services include the presentation to the District of Project Construction Cost for the work of improvement, the Engineer 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 Engineer shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

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

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

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

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

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

## 5.2 Consultants

5.2.1 Engineer's Consultants. The Engineer shall employ or retain at Engineer's own expense, engineers and other consultants necessary to Engineer'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 Engineer for this Project shall be approved by District prior to their commencement of work. The Engineer's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Engineer'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. Engineer must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 District's Consultants. Engineer shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a

construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Engineer 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 Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Engineer 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 Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

5.2.5 Engineer shall assist the District with submittals required by the Division of the State Architect ("DSA"), OPSC and California Department of Education in connection with scope of services identified in Amendments.

5.3 [Not Used]

#### 5.4 Non-Design Pre-Construction Services

Engineer shall perform all non-design pre-construction engineering services required for the work of improvement that is described in any fully executed and approved amendment to this agreement (see *Exhibit A or B*).

#### 5.5 Design Services

Engineer shall perform the engineering design services required for the work of improvement that is described in any fully executed and approved amendment to this agreement (see *Exhibit A or B*)

5.6 [Not Used]

#### 5.7 Construction Phase for a Work of Improvement

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

5.7.2 [Not Used]

5.7.3 [Not Used]

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

5.7.5 Based on information provided by the Contractor and Engineer’s own knowledge of a work of improvement (including documents in Engineer’s possession or reasonably available to it), Engineer 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 a work of improvement. While Engineer cannot guarantee precise accuracy of such drawings, Engineer shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Engineer shall have no responsibility for their conformity to field conditions, except that in the event that the Engineer, consistent with standards of due care, becomes aware of non-conformity with field conditions, Engineer shall have a duty immediately to notify the District in writing. Engineer shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Engineer shall prepare and submit any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.*

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

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

and shall assist the District and inspectors in securing the Contractor's compliance.

Engineer must supervise, coordinate, and manage the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District, and architect, with the DSA Construction Oversight Process.

The Engineer must comply with any applicable requirements of the DSA Construction Oversight Process.

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

5.7.9 The Engineer shall visit the site, both as the Engineer deems necessary and as requested by the District, but under no circumstances less than weekly, to maintain familiarity with the quality and progress of a work of improvement, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that a work of improvement is progressing in substantial accordance with the Contract Documents.

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

5.7.11 The Engineer shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with a work of improvement design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of a work of improvement is impacted in which case Engineer shall take such action as soon as possible. If Engineer is not able to take such action within the required time due to reasons beyond Engineer's control, the Engineer may take action within a reasonable period of time under the circumstances; however, the Engineer shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Engineer cannot take action within the time required, what the Engineer is doing to expedite its response, when the Engineer expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Engineer will have the authority to reject work and materials which do not conform to the Contract Documents. The Engineer's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Engineer's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer 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 Engineer will also recommend substitution of materials or equipment



when, in the Engineer's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

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

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

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

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

**Unless indicated otherwise, with respect to asbestos and asbestos containing materials, the parties acknowledge that the Engineer 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. Engineer 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, Engineer shall provide such certification as to Hazardous Substances as may be required of engineers for such projects by the OPSC.

5.7.16 Based on the Engineer's observations, and an evaluation of each Project Application for Payment, the Engineer will estimate the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Certificates for

Payment incorporating such amount, all in accordance with the Contract Documents.

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

5.7.18 The Engineer will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of a work of improvement.

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

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Engineer'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 Engineer shall be paid for time spent on the proposed change order.

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

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

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

5.7.20.1 In the event of such a change order, Engineer shall be responsible for the difference between (a) what the contractor would have added to its original bid or proposal for a work of improvement if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order.

The amount of added value of any change order work shall be based on the circumstances of the Engineer's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

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

The District may back charge, and withhold payment from, the Engineer 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 back charges and withholds, upon Engineer's request District and Engineer 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 Engineer as described above. If District and Engineer do not reach agreement on all four of these items when meeting and conferring, then District and Engineer shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Engineer can initiate a court action to resolve the dispute.

5.7.21 [Not Used]

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

5.7.23 [Not Used]

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

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

## **ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY ENGINEER**

6.1 “Additional Services” shall be provided by Engineer if authorized and directed in writing by District. Compensation for Additional Services shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement and the addendum that added the work of improvement to the Project. Any services performed by Engineer without such written authorization and direction shall be presumed to be Basic Services.

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

6.2.1 providing financial feasibility or other special studies;

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

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

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

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

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

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

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

6.2.9 providing services of consultants for other than the normal engineering services for the Project;

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

6.2.11 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted engineering 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 Engineer 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 Engineer and advise the Engineer of decisions thereon within a reasonable time after submission;

7.5 issue appropriate orders to Contractors through the Engineer;

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 Engineer;

7.7 furnish the services of consultants not routinely provided by the Engineer when such services are reasonably required by the scope of the Project and are requested by the Engineer;

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

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

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

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

## **ARTICLE 8 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

8.1 Prior to the commencement of services for each work of improvement added to the Project under this Agreement, the Engineer 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 Engineer and District against loss from liability imposed in relation to such services 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 Engineer, or otherwise resulting directly or indirectly from the Engineer'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 Engineer for the Project in full force and effect during the entire period of performance of the Project, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than Two Million Dollars (\$2,000,000) 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); and Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Engineer 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 for the Project under a claims-made form, Engineer 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 completion of the Project (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 Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Engineer's insurance policies for the Project shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Engineer shall name, on any policy of insurance required for the Project, 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 for the Project shall not be reduced by the existence of such other insurance. Engineer shall not commence work on services under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements for such services have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Engineer shall produce a 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 on the Project, Engineer shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Engineer fails to maintain such insurance for the Project, 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 during the Project on account of the Engineer's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

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

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

8.10 Insurance companies providing the above policies on the Project 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 on the Project 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 for each work of improvement added to the Project under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance for the Project 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 Engineer 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 of the Project including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District for each Project.

9.2 Prior to the commencement of services for each work of improvement added to the Project under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out employer's liability insurance or the Project with an insurance carrier satisfactory to the District. During the course of Engineer's services, if Engineer ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Engineer 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 Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District for each Project.

**ARTICLE 10  
ERRORS AND OMISSIONS INSURANCE**

10.1 Prior to the commencement of services for each work of improvement added to the Project under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer has, for the period of such services, errors and omissions insurance on an occurrence basis, with limits of at least One Million Dollars (\$1,000,000) 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, Engineer shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Engineer's professional sub-consultants (including consultants of Engineer's) on the



Project shall comply with this Article 10, and Engineer shall include such provisions in its contracts with them.

10.3 Said errors and omissions 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 above required insurance be provided for the Project under a claims-made form, Engineer 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 Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Engineer shall not commence work on the Project 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 Engineer shall produce a 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 on the Project, Engineer shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Engineer fails to maintain such insurance on the Project, 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 Engineer under this Agreement.

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

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

10.10 Insurance companies providing the above policies on the Project 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 on the Project may, at District's sole option, be sufficient cause for termination of this Agreement.

## ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Engineer shall be familiar with, and Engineer and Engineer'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 in its entirety, or only as to an amendment for a work of improvement added to the Project (see *Exhibits A and B*), or only as to a portion thereof, 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 Engineer. In such event, the Engineer shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, on the Project under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, on the Project after termination which are authorized by the District in writing, and (c) any costs incurred on the Project by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services on a Project necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Engineer, the District may also terminate the Agreement in its entirety, or only as to an amendment for a work of improvement added to the Project (see *Exhibits A and B*), or only as to a portion thereof, for cause by delivering written Notice of Intent to Terminate to the Engineer. 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 Engineer must cure such breach. In response to such Notice, if the Engineer 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 in its entirety, or only as to an amendment for a work of improvement added to the Project (see *Exhibits A and B*), through written notice delivered to the Engineer, which shall be effective upon such delivery. In such event, the Engineer shall be compensated for all services completed under this Agreement through the date of termination, together with compensation for such services performed after termination on the Project 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, Engineer shall perform any and all services necessary to complete the work in progress as of the date of the termination.

**12.2 Termination by Engineer** – For any material breach of contract by the District on the Project other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Engineer may partially terminate the Agreement as to the work of improvement to which the payment or invoice dispute relates (but not as to the rest of the Project) 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 services 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 on the work of improvement. 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 Engineer may partially terminate the Agreement as to that work of improvement 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 Engineer, Engineer shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, on that work of improvement 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, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress on that work of improvement as of the date of termination.

### **12.3 Miscellaneous Termination Provisions**

12.3.1 Following the termination of this Agreement in its entirety, or only as to an amendment (see **Exhibits A and B**), 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 Engineer, not only as they relate or may relate to the Project under the Agreement (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 the Project under the Agreement (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Engineer 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 in its entirety, or only as to an amendment (see **Exhibits A and B**), 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 Engineer or any of its agents for the Project under this Agreement shall immediately upon request by the District be delivered to the District. Engineer 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 Engineer may have against the District or a claim by the Engineer to an ownership interest in the intellectual property embodied in the documents or materials.

**ARTICLE 13  
ENGINEER AN INDEPENDENT CONTRACTOR**

13.1 It is specifically agreed that in the making and performance of this Agreement, the Engineer 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 Engineer shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project under this Agreement. 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 Engineer for the Project 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 the Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the 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 the 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 Engineer 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 Engineer for the Project 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 Engineer's files for a period of no less than fifteen (15) years. Engineer 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 Engineer for the Project under this Agreement, not only as they relate or may relate to the Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the 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 the Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to the Project) under Education Code Section 17316. The Engineer 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 on the Project under this Agreement.

16.2 The compensation for the Project under this Agreement includes compensation not only for any use in connection with the Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to the 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 Engineer for a Project and retains a certified engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Engineer 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 Engineer represents and warrants that Engineer 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 Engineer or its consultants prepares or causes to be prepared for the Project under this Agreement. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Engineer's negligence, recklessness or willful misconduct.** The Engineer 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 Engineer and provided to Engineer by the District.

**ARTICLE 17**  
**ACCOUNTING RECORDS OF ENGINEER**

17.1 Engineer's records of accounts regarding the Project under this Agreement shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times. District has the right to audit Engineer's records and files regarding any of the work Engineer performed for District on the Project during or after the Project. District shall be given reasonable access to Engineer's records and files for audit purposes within ten (10) days of receipt of District's request. Engineer shall keep and maintain these records and files for ten (10) years.

**ARTICLE 18**  
**INDEMNITY**

**18.1 Engineer Indemnification. To the fullest extent permitted by law, including California Civil Code section 2782.8, the Engineer 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 Engineer, the Engineer'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 on the Project under this Agreement.**

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

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

## **ARTICLE 19 TIME SCHEDULE**

19.1 **Time for Completion.** Time is of the essence for performance of the Services under this Agreement. The Engineer shall timely complete its Services for the Project as expeditiously as possible and according to the schedules provided in the fully executed and approved amendments for works of improvement (see *Exhibits A and B*).

19.2 **Delays.** The District recognizes that circumstances may occur beyond the control of either the District or the Engineer and extensions for such delays may be made to the schedule for a work of improvement if approved by the District. Any time during which the Engineer is delayed in the Engineer's work on a work of improvement 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 Engineer. District shall not be liable for damages to the Engineer 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 Engineer shall not assign or transfer any or all of its rights, burdens, duties or obligations



under this Agreement without the prior written consent of the District.

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

**District:** Oakland Unified School District  
955 High Street  
Oakland, California 94601  
Attention: Preston Thomas, Chief System and Services Officer, Facilities  
Planning and Management

**Engineer:** Jensen Hughes, Inc.  
1220 Concord Avenue, Suite 400  
Concord, CA 94520  
Attention: Doug Cuthbert, Operations Leader

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Engineer 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.

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 Engineer.

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 Engineer, by the execution of this Agreement, acknowledges that the Engineer has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

20.10 Prior to executing this Agreement or an amendment based on ***Exhibit A or B***, the Engineer shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects and if not already done.

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 Engineer for claims against the District by a contractor based on allegations of deficiencies in the Engineer'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 Engineer shall at all times comply with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1. Before performing any Services, Engineer shall execute and return the District's Fingerprinting Notice and Acknowledgement form and the required certification (see *Exhibit D*).

Engineer further agrees and acknowledges that if at any time during the Term of this Agreement Engineer learns or becomes aware of information which differs in any way from the information learned as a result of compliance with the above requirements, or Engineer adds personnel who will provide Services under this Agreement, Engineer shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

20.14 Prior to performing any Services, Engineer shall prepare, execute, and submit all forms that may be required by law for this Agreement or an amendment, including but not limited to a roof project certification (Public Contract Code §3006), disabled veteran business enterprises ("DVBE") certification (Education Code §17076.11), and an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Engineer shall use the District's versions of these forms, which the District shall make available upon request.

20.15 Sanctions in Response to Russian Aggression. The District requires Engineer 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.

20.16 [ Not Used]

20.17 The following forms, attached to the proposal, 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 and insurance documentation shall be submitted to the District.

\*\*\*\*\*

**DISTRICT: OAKLAND UNIFIED SCHOOL DISTRICT**

 4/11/2024  
**Benjamin Davis, President,** **Date**  
**Board of Education**

 4/11/2024  
**Kyla Johnson-Trammell, Date**  
**Superintendent & Secretary, Board of Education**

  
**Preston Thomas, Chief Systems & Date**  
**Services Officer, Facilities Planning & Management**

**ENGINEER:**


**Jensen Hughes, Inc.**

  
**Signature**

**Doug Cuthbert, Operations Leader**

March 12, 2024  
**Date**

**Approved as to Form:**

  
**OUSD General Counsel**

Mar 19, 2024  
**Date**

*Exhibit A*  
RATE SCHEDULE

*Billing Rate Schedule for Various Oakland Unified School District Projects*

Billing Rates will be based on the following schedule. Billing Rates stated herein are valid through December 31, 2024. Fees for work performed beyond this date will be reviewed and negotiated with the District.

| <i>Labor Category</i> | <i>Rate</i> |
|-----------------------|-------------|
| Technical Fellow      | Various     |
| Sr Consultant 5       | \$340       |
| Sr Consultant 4       | \$320       |
| Sr Consultant 3       | \$310       |
| Sr Consultant 2       | \$295       |
| Sr Consultant 1       | \$285       |
| Consultant 4          | \$265       |
| Consultant 3          | \$240       |
| Consultant 2          | \$225       |
| Consultant 1          | \$215       |
| Associate 4           | \$195       |
| Associate 3           | \$185       |
| Associate 2           | \$165       |
| Associate 1           | \$150       |
| Technician / Intern   | \$110       |
| Project Administrator | \$125       |
| Administrator         | \$100       |

***Confidential and Proprietary.***

***Exhibit B***  
**PROJECT SCHEDULE**

Contract Term: Intended Start: April 11, 2024  
Intended End: April 10, 2029

Exhibit C  
SCOPE OF SERVICES

## 1. Letter of Interest

October 12, 2023

Kenya Chatman, Executive Director of Facilities  
Oakland Unified School District  
Department of Facilities Planning and Management  
955 High Street, Oakland, CA 94601

**SOQ sent via email: Juanita Hunter at [juanita.hunter@ousd.org](mailto:juanita.hunter@ousd.org), [kenya.chatman@ousd.org](mailto:kenya.chatman@ousd.org) and [colland.jang@ousd.org](mailto:colland.jang@ousd.org)**

RE: Statement of Qualifications  
Fire Alarm, Intrusion Alarm and Fire Sprinkler Engineering Services for Various School Sites

Dear Ms. Chatman,

The Oakland Unified School District (District) is creating a pre-qualified pool of fire alarm and building safety engineering firms so the District can execute “standby” agreements with selected firms. The District has worked with Jensen Hughes since 2004, making us more than qualified to aid the District staff with fire, intrusion alarm, and fire sprinkler engineering services. Our Project Manager, David Secoda, has been working with you for over 17 years, offering the benefit of no learning curve in providing the requested support services.

Our enclosed Statement of Qualifications showcases our fire alarm, intrusion alarm and fire sprinkler engineering experience. Whether a new facility to expand the benefits to your students and staff or modernize an existing facility, we have the expertise and capacity to support the District with any upcoming project. We support your mission to focus on high academic achievement while serving the whole child, eliminating inequity, providing each child with excellent teachers, all while ensuring the safety and security of each student and staff member and we offer the following benefits to the District:

- + **Local Presence with Global Backing:** In addition to the local support from our Concord, CA office, we have 200+ licensed fire protection engineers in 90+ global offices. With such a deep bench, we can offer the experience of working with a small company backed by the resources of a large firm.
- + **Multiple Disciplinary Teams:** Besides our fire alarm services, we provide fire protection, code compliance, accessibility, hazardous materials, security risk consulting, emergency management and training services. Due to recent events, school emergency plans must be continually updated to reflect a variety of threats, such as natural disasters, terrorist attacks, violent incidents on campuses and public health emergencies, including pandemic events.
- + **DSA Support:** We have supported DSA’s Fire and Life Safety Compliance goals for 25+ years. Our services to DSA have included reviewing school projects for compliance with the California Building Code and California Fire Code requirements. Our experience with DSA standards and operations helps expedite the approval process so project schedules can be met.



**Required Statements**

- + Jensen Hughes received a copy of the District's Agreement attached as Exhibit A to the RFQ. Jensen Hughes has reviewed the indemnity provisions in Exhibit A and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, Jensen Hughes has no objections to the use of the Agreement.
- + Jensen Hughes certifies that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

**Additional Requested Information**

**Legal Name:** Jensen Hughes Inc., 3610 Commerce Drive, Suite 817, Baltimore, MD 21227

**Local Office:** 1220 Concord Avenue, Suite 400, Concord, CA 94520, **Phone:** +1 925 938 3550

**Email:** [dsecoda@jensenhughes.com](mailto:dsecoda@jensenhughes.com)

David Secoda is authorized to submit this SOQ on behalf of Jensen Hughes.

We appreciate the opportunity to submit our statement of qualifications to continue to partner with the District. Once you have had a chance to review our SOQ, please do not hesitate to contact David at +1 925 208 0598 or [dsecoda@jensenhughes.com](mailto:dsecoda@jensenhughes.com) to discuss the next steps.

Sincerely,

*Jensen Hughes*



David Secoda, SET  
Senior Consultant

Exhibit D  
FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT FORM

**FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT**  
**FOR ALL CONTRACTS EXCEPT WHEN CONSTRUCTION EXCEPTION IS MET**  
(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:

1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a).

(Education Code §45125.1(h).)

I, as Operations Leader [*insert "owner" or officer title*] of Jensen Hughes, Inc.  
Jensen Hughes, Inc. [*insert name of business entity*], have read the foregoing and agree that Jensen Hughes, Inc.  
Jensen Hughes, Inc. [*insert name of business entity*] will comply with the requirements of Education  
Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: March 12, 2024

Name: Doug Cuthbert

Signature: 

Title: Operations Leader

## ATTACHMENT A

### Violent and Serious Felonies

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

**ATTACHMENT B**

**Form for Certification of Lack of Felony Convictions**

*Note: This form must be submitted by the owner, or an officer, of the contracting entity before it may commence any work or services, and before it may be present on District property or be within the vicinity of District pupils.*


Entity Name: Jensen Hughes, Inc.  
Date of Entity’s Contract with District: June 2, 2023  
Scope of Entity’s Contract with District: Sprinkler design and consulting services

I, Dina J. Wong *[insert name]*, am the Assistant Secretary and General Counsel *[insert “owner” or officer title]* for Jensen Hughes, Inc. *[insert name of business entity]* (“Entity”), which entered a contract on June 2, 2023, with the District for sprinkler design and consulting.

I certify that (1) neither the Entity, nor any of its employees who are required to submit fingerprints and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1; and (2) the Entity is in full compliance with Education Code section 45125.1, including but not limited to each employee who will interact with a pupil outside of the immediate supervision and control of the pupil’s parent or guardian having a valid criminal background check as described in Education Code section 44237.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: June 6, 2023

Signature:   
Typed Name: Dina J. Wong  
Title: Assistant Secretary and General Counsel  
Entity: Jensen Hughes, Inc.





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/27/2023

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.

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.

Table with 2 main sections: PRODUCER (Alliant Insurance Services, Inc.) and INSURED (Jensen Hughes Inc.). Includes contact information, license number, and insurer details (Charter Oak Fire, Travelers Property Casualty, Starr Surplus Lines).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

Main coverage table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Professional.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Re: OUSD Child Care Services Medical Therapy Unit at Santa Fe Campus; JH Project No. 1DMS23005

Table with 2 columns: CERTIFICATE HOLDER (Oakland Unified School District) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions).



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

|                     |   |             |     |
|---------------------|---|-------------|-----|
| <b>Project Name</b> | Master Standby Agreement for Fire, Intrusion, Fire Sprinkler Engineering Services | <b>Site</b> | 918 |
|---------------------|---|-------------|-----|

### Basic Directions

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

### Contractor Information

|                    |   |                             |   |       |              |
|--------------------|---|-----------------------------|---|-------|--------------|
| Contractor Name    | Jensen Hughes, Inc.   | Agency's Contact            | David Secoda  |       |              |
| OUSD Vendor ID #   | 002281  | Title                       | Manager   |       |              |
| Street Address     | 1220 Concord Avenue, Ste. 400   | City                        | Concord   | State | CA Zip 94520 |
| Telephone          | 925-257-5145  | 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 #     | 24105   |                             |   |       |              |

### Term of Original/Amended Contract

|   |           |  |           |
|---|-----------|--|-----------|
| Date Work Will Begin (i.e., effective date of contract) | 4-11-2024 | Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date) | 4-10-2029 |
|   |           | 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) | \$0 |
| 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 |
|------------|----------------|--|-------------|--------|
| 9021/9970  | Fund 25        | 250-9021-0-9970-8500-6289-918-9180-9000-9999-22105 | 6289        | \$0    |

### 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.

|    |   |               |              |            |              |
|----|---|---------------|--------------|------------|--------------|
|    | <b>Division Head</b>  | <b>Phone</b>  | 510-535-7038 | <b>Fax</b> | 510-535-7050 |
| 1. | <b>Executive Director, Facilities Planning &amp; Management</b>                 |               |              |            |              |
|    | Signature   | Date Approved | Mar 12, 2024 |            |              |
|    | Kenya Chatman (Mar 12, 2024 18:50 PDT)  |               |              |            |              |
| 2. | <b>General Counsel, OUSD</b>  |               |              |            |              |
|    | Signature   | Date Approved | Mar 19, 2024 |            |              |
| 3. | <b>Chief Systems &amp; Services Officer, Facilities Planning and Management</b> |               |              |            |              |
|    | Signature   | Date Approved | 3.13.24      |            |              |
| 4. | <b>Chief Financial Officer</b>  |               |              |            |              |
|    | Signature   | Date Approved |              |            |              |
| 5. | <b>President, Board of Education</b>  |               |              |            |              |
|    | Signature   | Date Approved |              |            |              |