

**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT
WITH MILLER PACIFIC ENGINEERING GROUP
FOR LINCOLN MIDDLE SCHOOL MODERNIZATION:**

This Amendment to the professional services agreement ("Amendment") between Brelje & Race Consulting Engineers ("Consultant") and the Alameda Unified School District, a California public school district located in Alameda, California ("District") (collectively, the "Parties") is made and entered into this 11th day of April, 2019,

RECITALS

- A. WHEREAS, on August 2, 2017, Consultant and District entered into an agreement for the performance of professional services ("Agreement"), more particularly described in the Agreement, a copy of which is attached hereto as **Exhibit A**.
- B. WHEREAS, the Agreement currently states that the compensation for work performed shall be for a flat fee not to exceed **\$950**.
- C. WHEREAS, the Parties agree that the compensation to Consultant for work performed under the Agreement should be increased because of the need for **topographic design survey for new fire service connection per proposal dated November 28, 2018 attached hereto as Exhibit B**.
- D. WHEREAS, the Parties agree that the compensation to Consultant for work performed under the Agreement should be increased to an amount not to exceed **\$4,930**.
- E. WHEREAS, it is now the desire and intention of the Parties to amend the Agreement as set forth below.

NOW, THEREFORE, in light of the foregoing facts and in further consideration of the promises and agreements of the Parties set forth herein below, it is mutually agreed as follows:

TERMS AND CONDITIONS

Except as revised herein, all other provisions of the Agreement shall remain in full force and effect and are reaffirmed. If there is any conflict between this Amendment and any provision of the Agreement, the provisions of this Amendment shall control.

THE FOLLOWING CHANGE SHALL BE MADE TO THE AGREEMENT:

- 1. The amount not to exceed identified in section 3.1 shall be increased to **\$4,930**.

ACCEPTED AND AGREED on the date indicated below:

**ALAMEDA UNIFIED
SCHOOL DISTRICT**

Date: 4/13/19

By: 

Print Name: Robbie Lyng

Print Title: Director

Date: _____

By: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

Date: _____

By: _____

Print Name: _____

Print Title: Board President

CONSULTANT

By: 

Print Name: PAUL V BARTHOLOMEW

Print Title: PRINCIPAL

EXHIBIT A

ALAMEDA UNIFIED SCHOOL DISTRICT

Excellence & Equity For All Students

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and Brelje & Race (CONTRACTOR). AUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, account, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services.** The CONTRACTOR shall provide the following services:

Lincoln Middle School Modernization, AUSD Project #211602:

To provide additional services for topographic design surveys. Conduct detailed ground based surveys in areas out the original scope and limits if prior survey along with office support services to prepare detailed level surveys to document the finished floor elevations of various buildings on the site, as well as paired elevation shots on existing flatwork and pavements throughout the site as shown on the attached "Exhibit B-1", to support current design efforts. Per Brelje & Race's proposal dated July 28, 2017, attached as "Exhibit A".

2. **Terms.** CONTRACTOR shall commence work on 8/2/17, or the day immediately following approval by an executive cabinet member, if the total amount the CONTRACTOR has contracted with the District is below \$88,300 in the current fiscal year, or the Board of Education if total Agreement equals or exceeds \$88,300, whichever is later. All contracts over \$25,000 must be presented to the Board of Education for approval within sixty (60) days of work commencing. The work shall be completed no later than 8/31/17.

3. **Compensation.** Check one of the following boxes:

This sum shall be for full performance of this Agreement and includes fees, costs, and expenses incurred by CONTRACTOR including, but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

3.1 ☒ CONTRACTOR is providing services for a flat fee which shall not exceed \$ 950.00.

3.2 ☐ CONTRACTOR will be compensated at an hourly rate. Contractor will provide a maximum of hours of service at a rate of \$ _____ per hour for a total not to exceed \$ _____.

3.3 ☐ Other: _____

AUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred or equipment, materials or supplies used by CONTRACTOR in performing services for AUSD, except as follows: _____

Payment for the work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to AUSD for work actually completed and after AUSD's written approval of the work, or the portion of the work for which payment is to be made.

The granting of any payment by AUSD or the recipient thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by District and in that case must be replaced by CONTRACTOR without delay.

4. Strategic Alignment. Check one of the following boxes:

4.1 ☒ **School-based Agreements:** How does this service support your academic goals and increase student achievement as described in the Board-approved School Site Plan? To improve facilities.

4.2 ☐ **Central Office Agreements:** How does this service support the overall strategic goals of the department and increase student achievement? _____

5. Conduct of Contractor. CONTRACTOR will adhere to the following staff requirements and provide AUSD with evidence of staff qualifications, prior to commencing the work under this Agreement and consistent with invoicing requirements outlined in Section 9, which include:

5.1 Tuberculosis Screening. Check one of the following boxes:

5.1.1 ☐ TB Clearance will be completed through the AUSD Human Resources Department prior to starting work.

5.1.2 ☒ **Waiver of TB Screening.** CONTRACTOR is not required to provide evidence of TB Clearance because

CONTRACTOR will not work directly with students on more than an occasional basis.

JD (CONTRACTOR initials)

Re (District Representative initials)

5.2 Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by AUSD or acting as independent contractors of CONTRACTOR, who may have contact with AUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code Section 45122.1. CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviewed subsequent arrest records for all Employees who may come into contact with AUSD pupils in providing services to the District under this Agreement."

5.2.1 ☐ Fingerprint Clearance will be completed through the AUSD Human Resources Department prior to starting work.

- 5.2.2 ☒ **Waiver of Fingerprint Requirement.** CONTRACTOR is not required to comply with section 7.2 because CONTRACTOR's services are of limited duration and District employees will directly supervise CONTRACTOR at all times that CONTRACTOR is in the presence of students.

 (CONTRACTOR initials)
 (District Representative initials)

- 5.3 **Removal of CONTRACTOR's Employee(s).** In the event that AUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CONTRACTOR related persons, employee, representative, or agent from an AUSD school site and/or property, CONTRACTOR shall immediately upon receiving notice from AUSD of such desire, cause the removal of such person or persons.

6. **Insurance.** CONTRACTOR will provide AUSD with evidence of the following insurance coverage prior to commencing the work under this Agreement:

- 6.1 **Workers' Compensation Insurance.** Check one of the following boxes. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check only one of the boxes below:

- ☐ The CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- ☐ The CONTRACTOR does not employ anyone in the manner subject to the Workers' Compensation laws of California.

- 6.2 **General Liability Insurance.** CONTRACTOR shall maintain general liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to AUSD and shall name AUSD as an additional insured. Evidence of insurance is attached. Inclusion of AUSD as an additional insured shall not affect AUSD's right to a claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and AUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the insurer would have been liable if only one interest were named as an insured.

- 6.3 **Professional Liability Insurance.** If CONTRACTOR is offering AUSD professional advice under this Agreement, CONTRACTOR shall maintain errors and omissions insurance or professional liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

- 6.3.1 ☐ **Waiver of Insurance.** CONTRACTOR is not required to maintain any insurance under this Agreement. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

 (CONTRACTOR initials)
 (District Representative initials)

7. **Notices.** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

AUSD Representative:

Name: Robbie Lyng
E-mail: rlyng@alameda.k12.ca.us
Site/Dept: AUSD-MOF
Address: 2060 Challenger Dr., Alameda, CA 94501
Phone: 510-337-7090

CONTRACTOR:

Name: Paul Bartholow
Title: Principal
Address: 475 Aviation Blvd., Suite 120
Santa Rosa, Ca 95403
Phone: 707-576-1322

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.

8. **Invoicing.** Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to AUSD. All amounts paid by AUSD shall be subject to audit by AUSD.

8.1 Invoice shall include but not be limited to: Consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of service, number of hours of service, brief description of services provided, hourly rate, and total payment requested.

8.2 In addition, unless specifically waived by AUSD as set forth above, invoices from Agencies or Organizations must include evidence of compliance with section 7 herein.

9. **Licenses and Permits.** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

10. **Contractor Qualifications / Performance of Services.**

10.1 **Contractor Qualifications.** CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.

10.2 **Standard of Care.** CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of AUSD. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

11. **Status of Contractor.** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of AUSD, and are not entitled to benefits of any kind or nature normally provided employees of AUSD and/or to which AUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent

contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work. AUSD's interest is only in the results obtained.

12. **Assignment.** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of AUSD.
13. **Anti-Discrimination.** It is the policy of AUSD that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and AUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractors. Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation.
14. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on AUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to smoke or use drugs or alcohol on these sites.
15. **Indemnification.** CONTRACTOR agrees to hold harmless, indemnify, and defend AUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend AUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of the Agreement. This provision survives termination of this Agreement.
16. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of AUSD and cannot be used without AUSD's express written permissions. AUSD shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of AUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any other original works of authorships, or other documents prepared by CONTRACTOR or its subcontractors in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of AUSD.
17. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.

18. **Termination.** AUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. AUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, AUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, AUSD may secure the required services from another contractor. If the cost to AUSD exceeds the cost of providing the services pursuant to the Agreement, CONTRACTOR shall pay the additional cost.
19. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
20. **AUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** AUSD may evaluate the CONTRACTOR's work in any way that AUSD is entitled to do so pursuant to applicable law. The AUSD's evaluation may include, without limitation:
- 20.1 Requesting that AUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - 20.2 Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
21. **Limitation of AUSD Liability.** Other than as provided in this Agreement, AUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall AUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
22. **Confidentiality.** The CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agree to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. CONTRACTOR will be permitted access to student data only where permissible under state and federal law and only after executing AUSD's Confidentiality Agreement Regarding Student Data.
23. **Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable AUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of AUSD to perform any service by this Agreement. CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to AUSD's attention in writing. Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify AUSD of this information.

24. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

25. **Litigation.** This Agreement shall be performed in Alameda, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.

26. **Agreement Contingent on Governing Board Approval.** The District shall not be bound by the terms of this Agreement until it has been formally approved or ratified by the District's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval.

27. **Signature Authority.** Each party has the full power and authority to enter into and perform the Agreement and the person signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.

28. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

29. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

30. **Other.** Additional terms set forth in this paragraph 30 must be approved by AUSD General Counsel:
_____(General Counsel initials)

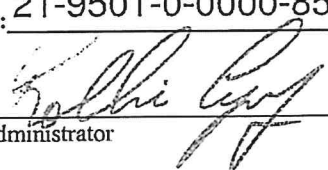
I. SITE

CONTRACTOR

Print Name & Title: PAUL BARTHOLOMEW, PRINCIPALCONTRACTOR Signature: Date: 8/1/17

SOURCE OF FUNDS

Unrestricted Funds (general fund) _____ Donated Funds _____

Restricted Funds (categorical) _____ with Appropriate Director Approval: _____
(Director Signature)Budget Code: 21-9501-0-0000-8500-6140-018-77-3036Requesting Administrator Date 8/1/17

FORWARD TO: Business Services Administrative Assistant for Processing

II. HR

Human Resource Approval ☐ Yes ☐ No

Signature of Human Resource Administrator _____

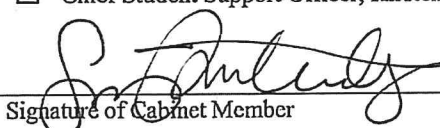
Date _____

FORWARD TO: Business Services Administrative Assistant for Processing

III. CABINET

- ☒ Superintendent, Sean McPhetridge
- ☐ Chief Human Resources Officer, Tim Erwin
- ☐ Chief Academic Officer, Steven Fong
- ☐ Chief Student Support Officer, Kirsten Zazo

- ☐ General Counsel, Chad Pimentel
- ☐ Chief Business Officer, Shariq Khan

Signature of Cabinet Member Date 8/1/2017

BOE Approval Required For Contracts Equal To Or Greater Than \$88,300:

Signature of President, Board of Education _____

Date _____

Signature of Secretary, Board of Education _____

Date _____

IV. BOARD

EXHIBIT B



EXHIBIT "A"
SCOPE OF SURVEYING SERVICES
**LINCOLN MS TOPOGRAPHIC DESIGN SURVEY
FOR NEW FIRE SERVICE CONNECTION**
PREPARED FOR
ALAMEDA UNIFIED SCHOOL DISTRICT
PREPARED BY
BRELJE & RACE ENGINEERS
November 28, 2018

1. **Detailed Design Survey**

Conduct detailed ground based survey and office support services to prepare detailed design level survey necessary for the design of the fire service and connection to the public water main. Detailed survey will be at either the Furnside Blvd frontage or the Eastshore Drive location based on fire flow availability, calculations and preliminary designs.

See the attached Exhibit "B" for approximate limits of each survey. Topographic mapping within the limits shown will include existing building corners, existing walkways and hardscape features, top of curb elevations, visible utility features including dips of sewer and storm drain manholes or inlets; surface locations of water valves or other utilities; and any existing trees with a trunk diameter of 3" or more as measured at 4 ft above existing grade. Mapping to be prepared at a scale of 1" = 10', on the same horizontal and vertical datum as used for other surveys conducted at the site. Provide completed mapping to client and design team in digital and hard copy format.

3. **Fees**

Our fees for this work will be billed monthly on a lump sum, percentage of completion basis, as follows:

Item 1.: \$3,980.00;

Including fees for miscellaneous plotting and reproduction services in conjunction with preparation of the mapping product.

4. **Assumptions and Limitations**

-All Assumptions and Limitations of the original proposal apply.

-Survey will not include features (cleanouts, manholes, drop inlets, etc.) that are obscured by vegetation, debris, or otherwise hidden.

