

Professional Services Agreement

This Agreement is entered into between the Alameda Unified School District (AUSD) and Brelje & Race Consulting Engineers (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 (include location, dates, to whom services are provided):

For Otis Elementary School Measure B Modernization New Construction project, Brelje & race Consulting Engineers will prepare a design level topographic map, boundary resolution, and underground utility survey to support a future anticipated campus modernization.

See Exhibit A at page 10 - 14 for additional details.

2. **Terms.** The term of this agreement shall be from 02/01/24 (or the day immediately following approval by the Superintendent or Assistant Superintendent(s) per (Education Code(s) §35161 and §17604) if the aggregate amount CONTRACTOR contracted with AUSD is below \$114,500; or, approval by the Board of Education if the total contract(s) exceeds \$114,500) to 07/31/25. The work shall be completed no later than 06/30/25.

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.

3.1.1 ☐ CONTRACTOR is providing services for a flat fee which shall not exceed \$_____.

3.1.2 ☐ 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 \$_____.

3.1.3 ☒ Other: \$38,500.00 per attached proposal dated December 19, 2023.

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 _____; which shall not exceed a total cost of \$_____.

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:

- 4.1 ☒ **School-based Agreements:** How does this service support academic goals and increase student achievement as described in the Board-approved School Site Plan? _____
Provide civil engineering services for the project to ensure safe construction of the school aligned with code and district standards.
- 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 AUSD prior to starting work or records are already on file.
- 5.1.2 ☐ Agency certifies that they require all employees or subcontractors to complete TB testing and maintain such records.
- 5.1.3 ☒ **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.
PVB (CONTRACTOR initials)
RL (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 AUSD prior to starting work or records are already on file.

5.2.2 ☐ Agency certifies that they require all employees or subcontractors to complete fingerprinting and maintains such records.

5.2.3 ☒ Waiver of Fingerprint Requirement. Waiver of Fingerprint Requirement. CONTRACTOR is not required to comply with section 5.2 because (check which applies):

☐ CONTRACTOR'S staff will have no contact or interactions with students outside of the immediate and constant supervision and control of the pupil's parent or guardian or a school employee; or

☒ CONTRACTOR'S services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility, and CONTRACTOR'S employees shall have only limited contact with students. Accordingly, the requirements of Education Code section 45125.2 shall not apply to services under this Agreement;

PVB (CONTRACTOR initials)

RL (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 provide AUSD proof of coverage before commencing the performance of the work of this Agreement. *CONTRACTOR acknowledgement Pev B

☐ 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 when applicable, with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall endorse AUSD as an additional insured. 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. CONTRACTOR must provide insurance documentation prior to the commencement of work. Failure to maintain coverage during the term of the contract will result in termination.

*CONTRACTOR acknowledgement

Pev B

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 Professional Liability Insurance.** CONTRACTOR is not required to maintain professional liability insurance as they are not offering professional advice. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

_____ (CONTRACTOR initials)

_____ (District Representative initials)

7. Notices. All notices 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

Title: Senior Director or Construction

Address: 2060 Challenger Drive

Alameda, CA 94501

Email: rlyng@alamedaunified.org

CONTRACTOR:

Name: Paul Bartholow

Title: President of Brelje & Race

Address: 475 Aviation Blvd., Suite 120

Santa Rosa, CA 95403

Email: bartholow@brce.com

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.

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 Invoices shall be emailed directly to accountspayable@alamedaunified.org or mailed to Attn: Accounts Payable at 2060 Challenger Drive, Alameda, CA 94501. 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.

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 certifies that s/he performs work that is outside the usual course of the District's business. CONTRACTOR further certifies s/he is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. 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.** CONTRACTOR and all personnel designated by CONTRACTOR to perform under this Agreement shall maintain the confidentiality of all information received in the course of performing this Agreement. This requirement shall extend beyond the effective termination or expiration date of this Agreement. In the event CONTRACTOR receives student data protected by the Family Educational Rights and Privacy Act ("FERPA"), Provider shall abide by Education Code section 49073, including the following: (a) Provider shall not use the student data provided, for an unauthorized purpose, transfer the student data to an unauthorized third party, or sell said data (b) Provider shall delete or otherwise dispose of student data in its possession after the termination of services under this Agreement (c) Provider shall undertake reasonable precautions to protect the student data and shall promptly report to the District any unauthorized access to the 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. 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/or Executive Cabinet as its designee, and no payment shall be owed or made to CONTRACTOR absent formal approval.
- 27. 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. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
- 28. Contract Publicly Posted.** This contract, its contents, and all incorporated documents are public documents and will be made available by AUSD to the public online via the Internet.
- 29. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
- 30. Force Majeure.** At the District's discretion, the Parties shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine/shelter in place order, strike, lockout, labor dispute, or any other occurrence which is beyond the control of the parties, when evidence thereof is presented to the other party. The District shall not be responsible for any costs associated with this Agreement while performance is so excused.
- 31. Other.** Additional terms attached or edits to must be approved by AUSD.

I. SITE

CONTRACTOR

Print Name & Title:

Brelje & Race Consulting Engineers

CONTRACTOR Signature:



Date: 2/1/24

SOURCE OF FUNDS (check appropriate):

Unrestricted Funds (Fund 01)

☐

Donated Funds

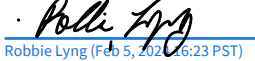
☐

Restricted Funds

☒

Budget Code:

21-9504-0-0000-8500-6140-013-77-3037


Robbie Lyng (Feb 5, 2024 16:23 PST)

02/05/2024

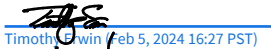
Requesting Administrator

Date

The person(s) signing this Agreement on behalf of each party has been given the proper authority and empowered to enter into this Agreement.

SEND TO: Business Services

II. HR

Human Resource Approval ☒ Yes ☐ No
Timothy Erwin (Feb 5, 2024 16:27 PST)


02/05/2024

Signature of Human Resource Administrator

Date

III. BOARD DELEGATES

- ☐ Superintendent, Pasquale Scuderi
- ☐ Assistant Superintendent of Human Resources, Tim Erwin
- ☐ Assistant Superintendent of Educational Services, Kirsten Zazo
- ☒ Assistant Superintendent of Business Services, Shariq Khan


Shariq Khan (Feb 5, 2024 16:31 PST)

02/05/2024

Signature of Superintendent or Assistant Superintendent

Date

IV. BOARD

BOE Approval Required for Contracts Equal To Or Greater Than \$114,500:

Signature of President, Board of Education

Date

Signature of Secretary, Board of Education

Date

Exhibit A

EXHIBIT "A"
SCOPE OF SURVEYING SERVICES
OTIS ELEMENTARY SCHOOL
TOPOGRAPHIC MAPPING AND UTILITY SURVEY
PREPARED FOR
ALAMEDA UNIFIED SCHOOL DISTRICT
PREPARED BY
BRELJE & RACE ENGINEERS
B&R JOB NO. 4189.04
December 19, 2023

Discussion

Our office was contacted to provide a proposal to prepare a design level topographic map, boundary resolution, and underground utility survey of the Otis Elementary School campus located at 3010 Fillmore Street, Alameda California. This topographic mapping and utility survey is being performed to support a future anticipated campus modernization. The limits of ground and utility surveys are as requested by the project manager and generally as indicated on the attached exhibit B.

1. Topographic Design Survey

Conduct field surveys, supporting office calculations, and drafting for the limits as generally depicted within the yellow border on the attached Exhibit B. Topographic mapping within the limits shown will include:

- Building corners
- Grade elevations at exterior doors
- Existing building finished floor elevations where possible
- Existing walkways with paired elevations at 15' o.c. for cross slope determination
- Paved areas between buildings for access compliance determination
- Top of curbs at all angle points, BCR, ECR, and at 25' o.c. maximum
- Topographic survey will extend to the face of curb at adjacent streets.
- Grade shots through open paving or other areas at 50' o.c. maximum
- Swales or drainage courses
- Hardscape features
- Stairs and ramps
- Fences and gates
- Retaining walls, including TW and BW elevations
- Water valve boxes, irrigation boxes, dry utility structures, etc.
- Visible surface utility features including dips of sewer or storm structures where possible
- Grade at existing tree trunk with diameter greater than 4" at 4' height, identify species

Mapping to be prepared at a scale of 1" = 10' on the NAVD88 datum. Provide completed mapping in both pdf and AutoCAD format to client for use in design.

2. Boundary Resolution

Complete field survey work as necessary to locate any existing monumentation relevant to and adjacent to the school site. Research and review all available record maps, deeds, and preliminary title report provided by the district. Acquire additional deeds and maps that pertain to the site from the County Recorder's office. Analyze this historical information from surrounding subdivisions, surveys, and right of way dedications and orient this information with existing found field monuments. Develop a resolved boundary based on this information and plot the resolved record boundary including any plottable easements identified in the title report. Provide copy of resolved boundary and topographic survey to Client for review.

3. Underground Utility Survey

Location of underground utilities by Subtronic Corporation utilizing electromagnetic field induction and ground penetrating radar for location limited to the area indicated within the yellow border on the attached exhibit B:

- Metallic utilities – electric, telephone, gas, and water
- Non-metallic utilities with tracer wire visible
- Sewer and drain lines with minimum 4" cleanout or manhole access will be located by inserting a transmitter
- Incorporation of underground utility information, provided in CAD by Subtronic to Brelje & Race, into topographic mapping. Adjustment of linework, layers, and text for plan clarity.

4. Fee

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

Item 1.: Topographic Design Survey:	\$ 14,500.00
Item 2.: Boundary Resolution:	\$ 7,500.00
Item 3.: Underground Utility Survey:	\$ 16,500.00

Total Fee: \$ 38,500.00

Excluding fees for reproduction and plotting services, which will be billed in addition to the engineering fees.

5. Assumptions and Limitations

- Survey will not include features (cleanouts, manholes, drop inlets, etc.) that are obscured by vegetation, debris, or otherwise hidden.
- Subtronic Corporation shall be subcontracted by Brelje & Race to provide underground utility locating services.
- Owner to provide a current Preliminary Title Report for the parcel prior to the start of work.
- Owner to provide any available existing record utility plans.

- Proposal does not include the preparation, county review, and recordation of a Record of Survey map. No missing or new property corner monuments will be set as part of this work.
- Depths of utilities will be provided where possible within 10% accuracy.
- Proposal assumes that owner will pay all application, processing, inspection, and other fees in conjunction with this application.
- The Engineers Services Rate Schedule is adjusted March 1 of each calendar year. Any work performed after March 1, 2024 would be subject to adjustment based on the current fee schedule.

