

ALAMEDA UNIFIED SCHOOL DISTRICT
Excellence & Equity For All Students

**AGREEMENT FOR PRELIMINARY SERVICES
FOR THE CONSTRUCTION OF IMPROVEMENTS**

This Agreement is made and entered into this 11 day of March, 2016, between the Alameda Unified School District hereinafter referred to as "DISTRICT" and Lathrop Construction Associates, Inc., hereinafter referred to as "DEVELOPER," for the purposes of providing preliminary consulting services to facilitate and manage the modernization of the Maya Lin School ("Project").

WHEREAS, the Project will be located at 825 Taylor Street, Alameda, CA ("Site");

WHEREAS, DISTRICT has selected DEVELOPER to provide all facets needed to complete development of the Project pursuant to Education Code section 17406, including the preliminary consulting services detailed in this Agreement;

WHEREAS, DEVELOPER desires to provide certain consulting services to the DISTRICT with respect to reviewing the Plans and Specifications for the Project, prepare cost estimates, prepare construction schedules, obtain proposals from trade contractors, and other related services in preparation for the Project's development;

WHEREAS, DEVELOPER represents that it and its referenced consultants are properly licensed and have the expertise and experience to obtain pricing from contractors, develop construction schedules, identify and order long lead items, coordinate construction activities, review and execute lease documents and perform the other development services set forth in this Agreement; and

WHEREAS, DISTRICT and DEVELOPER plan to enter into lease agreements which include construction provisions and related exhibits for the development of the Project pursuant to Education Code section 17406 (collectively, the "Lease Agreements") after DEVELOPER's performance of its duties as set forth in this Agreement.

WHEREAS, the DISTRICT is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I. -- SCOPE OF DEVELOPER SERVICES

- A. Scope.** DEVELOPER, as the DISTRICT's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described in **Exhibit B**.
- B. Warranty.** DEVELOPER agrees and represents that it is qualified to properly provide the services set forth in this Agreement in a manner which is consistent with the generally accepted standards of DEVELOPER's profession. DEVELOPER further represents and agrees that it will perform said services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines, including,

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but not limited to, State Allocation Board guidelines for school construction and labor compliance programs.

- C. Schedule.** Services outlined above will commence on the date the DISTRICT issues a notice to proceed for the Agreement, and conclude on or about May 23, 2016. It is anticipated that construction will commence on or about June 13, 2016. A more detailed schedule will be provided in the construction provisions. Any extension shall be subject to reasonable approval in writing by the parties.
- D. Limited Authority.** The duties, responsibilities and limitations of authority of DEVELOPER shall not be restricted, modified or extended without written agreement between the DISTRICT and DEVELOPER.
- E. Construction.** Upon agreement on the Guaranteed Maximum Price ("GMP") and DSA approval of the Plans and Specifications, the DISTRICT and DEVELOPER plan to enter into the formal Lease Agreements to provide for the development of the Project; therefore, DEVELOPER shall perform the services described herein in a timely manner, consistent with the commencement dates stated herein. The formal Lease Agreements shall govern the construction and delivery of the Project.

ARTICLE II. -- DISTRICT'S RESPONSIBILITIES

The DISTRICT has and shall continue to provide to DEVELOPER information regarding requirements for the Project, including information regarding the DISTRICT's objectives, schedule, constraints and criteria. DISTRICT will retain the firm of Orbach Huff Suarez & Henderson to represent the DISTRICT in negotiations and preparation of all legal documents, including the formal Lease Agreements in accordance with Education Code section 17406.

ARTICLE III. -- TERMINATION

- A. Termination by DEVELOPER.** This Agreement may be terminated by DEVELOPER upon fourteen (14) days written notice to DISTRICT in the event of an uncured substantial failure of performance by DISTRICT, unless the DISTRICT has acted to commence cure efforts in any case where a reasonable cure can not be concluded within the fourteen (14) day notice period.
- B. Termination by DISTRICT.** This Agreement may be terminated at any time without cause by DISTRICT upon fourteen (14) days written notice to DEVELOPER. In the event of such a termination by DISTRICT, the DISTRICT shall pay DEVELOPER for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by DEVELOPER pursuant to this Agreement, and expense reports up until the date of notice of termination plus any sums due DEVELOPER for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process that would best serve the DISTRICT if a completed product was presented.
- C. Ownership of Records.** It is mutually agreed that all materials prepared by DEVELOPER under this Agreement shall become the property of the DISTRICT and DEVELOPER shall have no property right therein whatsoever. DEVELOPER hereby

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assigns to DISTRICT any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the DISTRICT shall be entitled to, and DEVELOPER shall deliver to the DEVELOPER, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the DISTRICT in performing the Agreement (the "Termination Material") which is not DEVELOPER privileged information, as defined by law, or DEVELOPER's personnel information.

ARTICLE IV. -- COMPENSATION TO DEVELOPER

In consideration of DEVELOPER performance of services hereunder, DISTRICT agrees to:

Reimburse DEVELOPER in the amount not to exceed Ninety-Eight Thousand One Hundred and Fourteen Dollars (**\$ 98,114.00**) for the performance of services contemplated by this Agreement. DEVELOPER shall be paid monthly for the actual fees incurred in line with the fee schedule attached hereto as **Exhibit C** as well as for the allowed costs and expenses for all time and materials required and expended for work requested and specified by the DISTRICT as completed. Said amount shall be paid within thirty (30) days upon submittal to (and verification by) the DISTRICT of a monthly billing statement showing completion of the tasks for that month on a line item basis. When DEVELOPER and DISTRICT enter into the lease/leaseback agreements for the development of the Project, this compensation for services rendered will be included as part of the Guaranteed Maximum Price to be paid to DEVELOPER by DISTRICT.

DEVELOPER shall be responsible for any and all costs and expenses incurred by DEVELOPER, including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with DISTRICT and its representatives, long distance telephone charges, copying expenses, salaries of DEVELOPER staff and employees working on the Project, overhead, and any other reasonable expenses incurred by DEVELOPER in performance of the services contemplated by this Agreement.

ARTICLE V. -- LEASE DOCUMENTS

Provided that an acceptable GMP is agreed to by the DISTRICT, DISTRICT and DEVELOPER shall enter into formal Lease Agreements which will govern the lease, construction and delivery of the Project subsequent to approval of the Plans and Specifications and DEVELOPER obtaining bids for delivery of a GMP for the Project which is acceptable to the DISTRICT. Parties anticipate entering into said documents on or about June 2016.

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ARTICLE VI. -- MISCELLANEOUS

- A. Indemnity.** DEVELOPER shall indemnify, defend and hold harmless DISTRICT, its administrators, Board and employees, architect from all claims, liabilities, lawsuits, costs, losses, expenses, damages or judgments arising from any negligent or intentional acts or omissions of DEVELOPER, its agents, employees and consultants relating to DEVELOPER performance of its obligations under this Agreement. DEVELOPER shall also defend, indemnify and hold harmless the DISTRICT from any claim for employment benefits, worker's compensation or other benefits, by any agent or employee of DEVELOPER. In addition to the foregoing, each party shall indemnify, defend and hold harmless the other from all claims, demands, liabilities and actions arising out of claims for payment of fees, costs or expenses incurred by the indemnifying party with third parties in connection with their respective activities under this Agreement.
- B. Insurance.** DEVELOPER shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Agreement and the Project the policies of insurance specified in this Section. Such insurance must have the approval of the DISTRICT as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A: VII.
1. Prior to execution of this Agreement and prior to commencement of any work, DEVELOPER shall furnish the DISTRICT with original endorsements effecting coverage for all policies required by the Agreement. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Subject to acceptance by the DISTRICT, DEVELOPER's insurer will provide complete certificates of insurance and upon request certified copies of all required insurance policies, including endorsements effecting the coverage required by this Section. DEVELOPER agrees to furnish one copy of each required policy to the DISTRICT, and additional copies as requested in writing, certified by an authorized representative of the insurer. Approval of the insurance by the DISTRICT shall not relieve or decrease any liability of DEVELOPER.
 2. In addition to any other remedy the DISTRICT may have, if DEVELOPER fails to maintain the insurance coverage as required in this Section, the DISTRICT may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the DISTRICT may deduct the cost of such insurance from any amounts due or which may become due under this Agreement.
 3. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the DISTRICT.
 4. Any deductibles must be declared to, and approved by, the DISTRICT.
 5. The requirement as to types, limits, and the DISTRICT's approval of insurance coverage to be maintained by DEVELOPER are not intended to, and shall not

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in any manner, limit or qualify the liabilities and obligations assumed by DEVELOPER under the Agreement.

6. DEVELOPER and its subconsultants and subcontractors shall, at their expense, maintain in effect at all times during the performance or work on the Project not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the DISTRICT. The maintenance by DEVELOPER and its subconsultants and subcontractors of the following coverage and limits of insurance is a material element of this Agreement. The failure of DEVELOPER or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the DISTRICT as a material breach of this Agreement.
7. Worker's Compensation and Employer's Liability Insurance.
 - a. Worker's Compensation - Insurance to protect DEVELOPER, its contractors, subconsultants and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and federal statutes and regulations. DEVELOPER shall execute a certificate in compliance with Labor Code Section 3700, on the form attached to this Agreement.
 - b. Claims Against DISTRICT - If an injury occurs to any employee of DEVELOPER for which the employee or his/her dependents, in the event of his death, may be entitled to compensation from the DISTRICT under the provisions of said Act, for which compensation is claimed from the DISTRICT, and if such injury is a compensable injury under said Acts, there will be retained out of the sums due DEVELOPER under this Agreement, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the DISTRICT is required to pay such compensation, the amount so paid will be deducted and retained from any sums due, or to become due to DEVELOPER.
8. Commercial General and any Auto Automobile Liability Insurance.
 - a. The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000 per occurrence.
 - b. The Commercial general and any auto automobile liability insurance coverage shall also include, or be endorsed to include, the following:
 - (i) Provision or endorsement naming the DISTRICT and each of its officers, officials, employees, agents, and volunteers as

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additional insureds in regards to: liability arising out of the performance of or failure to perform any work under the Agreement or on the Project; liability arising out of activities performed by or on behalf of DEVELOPER; premises owned, occupied or used by DEVELOPER; or automobiles owned, leased, hired or borrowed by DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the DISTRICT, its officers, officials, employees, agents or volunteers.

- (ii) Provision or endorsement stating that for any claims related to this Project, DEVELOPER's insurance coverage shall be primary insurance as respects the DISTRICT, its officers, officials, employees, agents, and volunteers to the extent the DISTRICT is an additional insured. Any insurance or self insurance maintained by the DISTRICT, its officers, officials, employees, agents or volunteers shall be in excess of DEVELOPER's insurance and shall not contribute with it.
- (iii) Provision or endorsement stating that DEVELOPER's failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the DISTRICT, its officers, officials, employees, agents, or volunteers.
- (iv) Provision or endorsement stating that DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by DEVELOPER under the Agreement, including, without limitation, that set forth in Article VI, Section A, Indemnity.

- C. **No Design Responsibility.** DISTRICT acknowledges that DEVELOPER, in performing those services set forth in this Agreement, will be acting as a knowledgeable and experienced contractor in carrying out its duties under this Agreement and is not acting, and does not purport to act, as a design professional and is assuming no design responsibility under this Agreement.
- D. **Limitation of Liability.** DEVELOPER's liability arising out of the performance of the work hereunder shall be limited to the aggregate of (1) the insurance coverage limits required under this Agreement; (2) any additional insurance coverage provided by DEVELOPER's policies for any such loss or damage; and (3) the amount of fees and expenses paid by DISTRICT to DEVELOPER in connection with this Agreement.
- E. **Independent Contractor.** DEVELOPER, in the performance of this Agreement, is and shall be and an independent Contractor. DEVELOPER understands and agrees that DEVELOPER and all of DEVELOPER's employees, agents, contractors,

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subcontractors, consultants, and subconsultants shall not be considered officers, officials, employees or agents of the DISTRICT.

- F. No Third Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party that is not a party to this agreement against either the DISTRICT or DEVELOPER.
- G. Binding on Successors.** The DISTRICT and DEVELOPER, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. DEVELOPER shall not assign this Agreement.
- H. Governing Law.** This Agreement shall be governed by the laws of the State of California, and venue for any action to enforce shall be in the County in which the Project is located.
- I. Modifications.** This Agreement may be amended or modified only by an agreement in writing signed by both the DISTRICT and DEVELOPER.

This Agreement has been entered into as of the day and year first written above.

"DISTRICT"

"DEVELOPER"

**ALAMEDA UNIFIED
SCHOOL DISTRICT**

**LATHROP CONSTRUCTION
ASSOCIATES, INC.**

By: 

Name: Sean McPhetridge
Title: Superintendent

By: 

Name: Rick Martellaro
Title: President

By: 
Name: Solana Henneberry
Title: Board President

21-9501-0-0000-8500-6271-011-77-3036

Exhibit A

Workers' Compensation Certificate

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.


By: 
Title: President

Exhibit B

Scope of Services

DEVELOPER shall provide all usual and all reasonable services as needed in the circumstances and such services shall include without limitation:

A. Site Evaluation and Coordination

1. Evaluate existing site to determine access requirements, undocumented utility appurtenances, condition of salvage items and impacts from observable soil conditions.
2. Provide recommendations relating to soil investigations and utility locations and capacities.
3. Perform selective demolition and exploratory work in planning for the comprehensive window replacement with new exterior stucco façade, relocation and modernization of two classroom and the administrative office, new toilet room and ADA improvements.

B. Plan Review

1. Review initial conceptual design and make recommendations to assist in achieving conformance with DISTRICT's construction budget.
2. Review plans and specifications for each design increment at 100% DD phase and CD Phase (prior to DSA submittal) and evaluate design concepts, systems and details for construction and sequence feasibility.
3. Develop written report capturing observations and subsequent recommendations and submit to DISTRICT.
4. Meet and work with DISTRICT's design team to insure that project design is consistent with DISTRICT's current design standards and incorporates relevant recommendations.

C. Meetings

1. Attend weekly Design Team meetings, DISTRICT and site staff meetings, and other community and stakeholder meetings as required.

D. Accounting and Budget Management System

1. In concert with DISTRICT staff and consultants, develop the Project accounting and budget management systems. A process of providing up to date costs is required. During construction, monthly reporting will be required.

E. Value Engineering

1. Review plans and specifications and make recommendations for each design increment and evaluate design concepts, systems and details for cost effectiveness, space usage, and schedule efficiencies.
2. Provide DISTRICT with two (1) written evaluations of plan review at 90% Construction Document Phase and provide subsequent recommendations, including written analysis of long lead purchases with associated recommendations.

F. CPM Scheduling/Methodology and Strategic Plan

1. Develop one conceptual schedule (at design stage to be determined) for each design increment detailing projected sequence of work and duration.
2. Develop a master conceptual schedule for incorporating sequence and durations for scope of each design increment. Overall sequence of construction will be based on the information received from the DISTRICT, the Project architect and site staffs reflecting the school's schedule and potential construction conflicts from work of other contracts.
3. Prepare written narrative reflecting construction methodology and outlining strategic plan to be submitted with master schedule.
4. Develop cash flow projections in association with master conceptual schedules.

G. Preliminary and Detailed Estimating

1. Develop detailed estimates of probable construction costs for each design increment at the following stages of design:
 - a. 100% Completion -- Conceptual Design Phase
 - b. 100% Completion – Design Development Phase
 - c. 50% Completion – Construction Document Phase
2. Develop one detailed master estimate for complete site scope of work at minimum Design Development Phase.
3. Cost estimates will follow a unit price format broken down by Construction Specification Institute sections of work.

H. Construction Planning

1. Develop Construction Staging and Phasing plan consistent with design documents, Increment Submittals and DISTRICT's bond program execution schedule.
2. Indicate contractor lay-down areas, access points, temporary construction facilities (trailers, site fencing, etc).
3. Indicate campus traffic sequencing and special controls impacting campus operations.
4. Prepare a Construction Staging and Phasing plan and submit to DISTRICT.

I. Procurement/GMP Development

In the event the District elects to move forward with the construction, the following items will be included as part of the Facilities Lease.

1. Prior to and in preparation of final GMP development, develop detailed scopes of work for each trade in each design increment.
2. Develop and initiate subcontractor pre-qualification process as required and evaluate responses.
3. Advertise and solicit subcontractor and vendor proposals for each applicable trade for each design increment proposal stage utilizing vendor databases and local resources for solicitation.
4. Evaluate subcontractor and vendor proposals for price, completeness, responsiveness and qualifications giving significant consideration to local subcontractors and vendors and negotiate with successful bidders as required.
5. In coordination with DISTRICT and Design Team, review subcontractor and vendor proposals to finalize selection of subcontractors and material vendors.
6. Develop final GMP proposals for each design increment utilizing selected subcontractors and material vendors and submit to DISTRICT in final cost proposal formats.

Exhibit C

Project Name: Maya Lin Modernization

Fee OH&P Schedule



Attachment I

GENERAL CONDITIONS COST BREAKDOWN FORM

Maya Lin Elementary School Modernization

Description	Total
Division 1 - General Requirements	
Project Manager	\$ No Charge
Project Superintendent (9 weeks)	\$ 38,250
Foreman	\$ -
Clerical	\$ 9,945
Safety Officer/Coordinator	\$ 2,944
Vehicles Trailer (LCA office in existing bldg.)	\$ 3,000
Communications	\$ 1,000
Office equipment/Supplies	\$ 2,000
Security (FBI) with District	\$ 5,000
Temporary Utilities (District to provide point of connection on-site)	\$ 500
Site Cleaning	\$ -
Toilets	\$ 1,500
Mobilization/Layout	\$ 3,400
Layout	\$ 1,700
Fencing/Barricades	\$ 6,000
Dust Control	\$ 2,550
Waste Disposal	\$ 3,000
County/City/Etc. Fees	\$ By Owner
Photography	\$ -
Submittals, Shop Drawings	\$ In Bid Package
Close-out Documentation	\$ In Bid Package
Testing	\$ By Owner
Punch list	\$ In Bid Package
Cleanup	\$ 3,825
Miscellaneous (Preconstruction, Site Surveys)	\$ 13,500
(Attach additional pages, if necessary)	\$
Total	\$ 98,114
Additional Info (list %)	
Bonds	1%
Insurance	1%
Overhead	0%
Profit	4.25%