

Board Office Use: Legislative File Info.	
File ID Number	19- 1065
Introduction Date	6-12-2019
Enactment Number	19-0914
Enactment Date	6/5/19 If




OAKLAND UNIFIED SCHOOL DISTRICT  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education  
Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** ~~June 12, 2019~~ 

**Subject** Equipment, Materials, & Supplies and Construction Work Contract Greater Than (\$92,600) - ER Plumbing & Construction dba Emergency Rooter - Community Day School Emergency Sewage Project

**Action Requested** Approval by the Board of Education of an Equipment, Materials, & Supplies and Construction Work Contract Greater Than (\$92,600) between the District and ER Plumbing & Construction dba Emergency Rooter, Oakland, CA, for the latter to provide and perform emergency repair services over the Spring Break for Sewer System and Clay piping that has collapsed and heavily rooted joints, sewage leaking throughout grounds over a long period and created cavity pit filled with sewage, in conjunction with the Community Day School Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing March 25, 2019 and concluding no later than April 8, 2019 in an amount not-to exceed \$485,800.

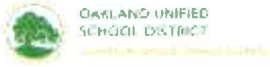
**Discussion** Vendor will provide emergency repairs to sewer system.

**LBP** (Local Business Participation Percentage) 50.00%

**Recommendation** Approval by the Board of Education of an Equipment, Materials, & Supplies and Construction Work Contract Greater Than (\$92,600) between the District and ER Plumbing & Construction dba Emergency Rooter, Oakland, CA, for the latter to provide and perform emergency repair services over the Spring Break for Sewer System and Clay piping that has collapsed and heavily rooted joints, sewage leaking throughout grounds over a long period and created cavity pit filled with sewage, in conjunction with the Community Day School Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing March 25, 2019 and concluding no later than April 8, 2019 in an amount not-to exceed \$485,800.

**Fiscal Impact** RRMA -General Funds

- Attachments**
- Construction Work including scope of work
  - Certificate of Insurance
  - Contractor Proposal
  - Payment and Performance Bonds



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

**Legislative File ID No.** 19-1065

**Department:** Buildings & Ground

**Vendor Name:** ER Plumbing & Construction dba Emergency Rooter

**Project Name:** Community Day School Emergency Sewer **Project No.:** 0

**Contract Term:** Intended Start: March 25, 2019 Intended End: 4-8-2019

**Annual (if annual contract) or total (if multi-year agreement) Cost:** \$485,800.00

**Approved by:** Charles Smith

**Is Vendor a local Oakland Business or have they meet the requirements of the**

**Local Business Policy?**  Yes (No if Unchecked)

**How was this Vendor selected?**

**Vendor was selected through and from the District's CUPCCA Certified Contractors List.**

**Summarize the services this Vendor will be providing.**

**Vendor will perform emergency repairs for a Sewer System and Clay piping that has collapsed a heavily rooted joints, sewage leakage throughout grounds over a long period and created cavity pit filled with sewage.**

**Was this contract competitively bid?**  Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

**Educational Materials**

**Special Services** contracts for financial, economic, accounting, legal or administrative services

**CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)

**Professional Service Agreements** of less than \$90,200 (increases a small amount on January 1 of each year)

**Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)

**Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)

**Emergency** contracts

**Technology** contracts

electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected

contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process

Western States Contracting Alliance Contracts (WSCA)

California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]

**"Piggyback" Contracts** with other governmental entities

**Perishable Food**

**Sole Source**

**Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price

**Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**

**EQUIPMENT, MATERIALS, & SUPPLIES**  
**and Construction Work Contract**

This Equipment, Materials, & Supplies ("Agreement" or "Contract") is effective as of the **25th day of March** in the year **2019**, between the **Oakland Unified School District** ("District") and **ER Emergency & Construction dba Emergency Rooter** ("Contractor"). The District and Contractor may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

**1. Definitions.**

**A)** "Bid" means the Contractor's offer made in response to a solicitation to perform a contract to supply Equipment, Materials & Supplies at a specified price.

**B)** "Bidder" means a supplier who submits a Bid to the District in response to a solicitation.

**C)** "Contract" means Contractor's Bid; drawings or specifications, if any; these bid/purchase order terms and conditions together with the terms appearing on the reverse side hereof; and any other documents identified therein or herein as incorporated by reference and inclusive of any subsequently issued addenda and/or amendments.

**D)** "Deliverables" means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, and other items to be delivered pursuant to this purchase order including any such items furnished incident to the provision of services

**2. Services.** Contractor shall furnish to the District the following equipment, materials, and/or supplies, as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):

**The scope includes** repair service to Sewer System that is original Orangeburg and Clay piping that has collapsed and heavily rooted joints. Sewage leakage throughout grounds. Total 1,484ft. piping.

1. Bldg. (100) has 255'ft of piping with several lateral connections
2. Bldg. (200-300) has 402'ft of piping with 4" laterals connections
3. PAR Bldg. has 383'ft of piping need replacement two lateral
4. Separate House structure has 421'ft of replacement needed
5. Main sewer Clean out on hillside to city main connection in street on Mountain Blvd. Has been leaking sewage for long period and created cavity pitt filled with sewage. Must replace main sewer connecting all buildings form clean out to city main sewer in street total 203'ft. has to be replaced
6. Provide abatement and cleanup of all sewage spillage and bacteria control substances distribution.

**3. Term.** Contractor shall commence providing Services under this Agreement on **March 25, 2019**, and will diligently perform as required or requested by District as applicable. The term for these Services shall expire on **April 8, 2019**. This Agreement may be extended upon mutual approval of both Parties in writing on an annual basis to the extent permissible under applicable law.

**4. Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u> Signed Agreement	<u>  X  </u> W-9 Form
<u>  X  </u> Insurance Certificates & Endorsements	<u>  X  </u> Workers' Compensation Certificate
<u>  N/A  </u> Bonds (as requested by District)	<u>  X  </u> Debarment Certification
<u>  X  </u> Fingerprinting/Criminal Background	Other: _____

## Investigation Certification

5. **Compensation.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated in the Bid and as more specifically described in **Exhibit "B,"** up to a **maximum amount not-to-exceed FOUR HUNDRED, EIGHTY-FIVE THOUSAND, EIGHT HUNDRED DOLLARS (\$485,800.00)** ("Contract Price"). District shall pay Contractor only for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
6. **Independent Contractor.** Contractor shall perform its obligations under this Contract as an independent contractor of the District. Nothing herein shall be deemed to constitute Contractor and the District as partners, joint venturers, or principal and agent. Contractor has no authority to represent the District. Contractor shall not at any time or manner represent that it or any of its subcontractors or agents are in any manner agents or employees of the District.
7. **Independence of Bid.** Unless Bidder is furnishing a joint bid, by submitting this Bid, Bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of antitrust laws.
8. **Joint Bids.** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted, and each participating bidder must sign the joint bid. If the contractor is comprised of more than one legal entity, each entity shall be jointly and severably liable under this contract. In addition, the joint contractors must designate, in writing, one individual having authority to represent them all in matters relating to the contract. The District assumes no responsibility or obligation for the division of orders or purchases among joint contractors.
9. **Performance Guarantee.** If specified in the Bid, a performance guarantee may be required.
10. **Samples.** Samples of items may be required by the District for inspection and specification testing and must be furnished free of expense to the District. The samples furnished must be identical in all respects to the items bid and/or specified in the Contract. Samples must be plainly marked with the name of Bidder, bid number, and date of bid opening. Samples may be retained for comparison with deliveries and if not destroyed by tests, may, upon request at the time the sample is furnished, be returned at Contractor's expense. Bidder/Contractor assumes all risk of loss of or damage to samples.
11. **Substitutions.** Product substitutions require the prior, express written authorization from an authorized District representative.
12. **District Name May Not Be Used.** The name and/or logo of the District or any school of the District may not be used in any advertisements or communications which may convey the impression that the District authorizes the solicitation and/or that there may be some connection or endorsement between the District and the Contractor.
13. **Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience or for Contractor default. The District shall hold Contractor liable and responsible for all damages which may be sustained because of the Contractor's default. If Contractor fails or neglects to furnish or deliver any of the deliverables listed herein at the prices named and at the time and places stated herein or otherwise fails or neglects to comply with the terms of the Contract, the District may, upon written notice to the Contractor, cancel the Contract in its entirety, or cancel any or all items affected by such default; and may, whether or not the Contract is cancelled in whole or in part, purchase the Deliverables elsewhere without notice to the Contractor. The prices paid by the District at the time such

purchase is made shall be the prevailing market prices. Any extra costs incurred by such default may be collected by the District from the Contractor.

14. **Title.** Title to and risk of loss of Deliverables shall pass to and vest in the District upon final acceptance by the District.

15. **Warranty.**

**A)** Contractor warrants that all Deliverables furnished hereunder will be free from defects in design, material, and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions. All warranties shall be in addition to any warranties available under law and any standard Contractor warranty.

**B)** At the time of delivery, no software shall contain any virus, "Trojan horse," timer, counter or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed and created.

**C)** No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind. There is no action, suit, proceeding, or material claim or investigation pending or threatened against Contractor, that, if adversely determined, might affect any Deliverable or restrict the District's right to use any Deliverable. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding.

**D)** Contractor warrants it has full title to the Deliverables and has the right to grant the District the rights and licenses contemplated herein without the requirement for consent of any third party.

16. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE)**

**Program:** Contractor shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.

17. **Standard of Care.**

17.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. 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. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

17.2. Contractor hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.

17.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the Services.

17.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

18. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

19. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, 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 the District. 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.

20. **Indemnification.** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, Contractors, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, Contractors, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

21. **Insurance.**

21.1. The Contractor shall procure and maintain, and require its subcontractors to maintain, at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

21.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Contractor's performance of any portion of the Services. (Form CG 0001 and CA 0001)

21.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

21.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	\$ 1,000,000 \$ 2,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

21.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

21.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

21.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

21.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

21.3. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District. . 2. **Assignment; Subcontracting.** The Contractor may not assign this Contract in whole or in part, and/or monies due Contractor, without the prior written consent of the District and surety, if any. Subject to the foregoing, this Contract shall be binding upon the parties and their respective successors and assigns. All subcontractors must be approved in advance by the District. Upon the District's written request, Contractor shall terminate any subcontractor.

22. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

23. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and



maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

24. **Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
25. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
26. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status 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. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
27. **Fingerprinting of Employees.** The Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
28. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
29. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 29.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
  - 29.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

30. **Limitation of District Liability.** Other than as provided in this Agreement, District'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 District 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.
31. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
32. **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. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
33. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**Oakland Unified School District**

955 High Street  
Oakland, CA 94601  
Tel: 510-535-7038; Fax: 510-535-7082  
ATTN: Tadashi Nakadegawa

**Contractor**

ER Plumbing & Construction dba  
Emergency Rooter  
7 Embarcadero #204  
Oakland, CA 94607  
Tel: 510-388-0567; Fax/  
email: emergencyrooter@aol.com  
ATTN: David Ball

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

34. **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.
35. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
36. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
37. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will

ATTN: Tadashi Nakadegawa

Oakland, CA 94607

Tel: 510-388-0567; Fax/

email: emergencyrooter@aol.com

ATTN: David Ball

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

37. **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.
38. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
39. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
40. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
41. **Order of Precedence.** This Contract constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement and any contrary provisions on packing slips, invoices, or other documents submitted by the Contractor. Any conflict or inconsistency among the components of this Contract shall be resolved by giving precedence in the following order: (1) Contractor's Bid; (2) these Contract Terms and Conditions; (3) all other attachments incorporated into the Contract by reference. No term or condition of this Contract may be terminated, modified, rescinded, or waived except by a writing signed by both parties. No modification or waiver of this Contract shall be deemed effected by Contractor's acknowledgment, confirmation or other documentation containing other or different terms. Should any such document from Contractor contain additional or different terms than this Contract, those terms shall be considered proposals by Contractor which are hereby rejected.
42. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: 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/portal/public/SAM>

  
~~Tadashi Nakadegawa~~ Charles Smith  
Director, Facilities Planning & Management

ACCEPTED AND AGREED on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

Aimee Eng 6/6/19

Aimee Eng, President, Board of Education Date

[Signature] 6/6/19

Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education Date

[Signature]

Timothy White, Deputy Chief, Facilities Planning and Management Date

Charles Smith

**APPROVED AS TO FORM:**

[Signature] 5/14/19  
OUSD Facilities Legal Counsel Date

**CONTRACTOR**

E-R Plumbing & Const. dba Emergency Rooter 4/15/19  
Date

**Information regarding Contractor:**

Contractor: E-R Plumbing & Const.

License No.: 1000394

Address: 2946 E. 20th St.  
OAKLAND, CA 94601

Telephone: 510-388-0567

Facsimile: 510-217-8566

E-Mail: DBALL@ERConstruction.ORG

- Type of Business Entity:
- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: CA
- Limited Liability Company
- Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

**NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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 Contract.

Date: 4/15/19  
Proper Name of Contractor: ER Plumbing & Consl. DBA Emergency Rooter  
Signature: [Handwritten Signature]  
Print Name: David Ball  
Title: owner


(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither **ER Plumbing & Construction dba Emergency Rooter** nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Contractor or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Contractor on the 15 day of April 2019 for the purposes of submission of this Agreement.

By:   
Signature  
David Ball  
Typed or Printed Name  
owner  
Title

**CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor. Contractor has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, 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. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is

Name: David Ball ER Plumbing & Constr.

Title: owner

The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

Contractor's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: 4/15/19  
Proper Name of Contractor: ER Plumbing & Constr.  
Signature: [Handwritten Signature]  
Print Name: David Ball  
Title: owner

**EXHIBIT "A"**  
**Scope of Services**

Contractor shall perform the following Services:

**[INCLUDE/ATTACH A DETAILED SCOPE OF WORK (DO NOT INCLUDE ANY TERMS FROM CONTRACTOR'S PROPOSAL)]**

Demo: Concrete / Asphalt Parking Lot, Play Grounds,  
And City streets.

Excavation: By Backhoe / Excavator / Hand Digging

Construct: Replace Approx. 1,684 ft of damaged  
Orangeburg / clay Piping Throughout  
School Grounds, AND City street.



**EXHIBIT "B"**  
**Hourly Personnel Rates**  
**and**  
**Schedule of Fees and Charges**

**[INCLUDE/ATTACH CONTRACTOR'S RATE SCHEDULE (DO NOT INCLUDE ANY TERMS FROM CONTRACTOR'S PROPOSAL)]**

Pipe Replacement: 238.47 per Linear Ft.



# Lozano Smith

ATTORNEYS AT LAW

2001 North Main Street, Suite 500 Walnut Creek, California 94596  
Telephone: (925) 953-1620 Fax: (925) 953-1625

## MEMORANDUM

### PRIVILEGED & CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

**DATE:** May 14, 2019 **CLIENT/MATTER:** 738-602

**TO:** Tadashi Nakadegawa  
Director of Facilities, Planning & Management  
Oakland Unified School District

**CC:** Michael Smith, Interim General Counsel  
Timothy White, Deputy Chief of Facilities, Planning & Management  
Juanita Hunter, Specialist, Facilities Contracts & Bids

**FROM:** Harold M. Freiman  
Arne B. Sandberg

**RE:** Emergency Contract with ER Emergency and Construction (dba Emergency Rooter) for Sewer Repair at Community Day School

Per your request, this memorandum addresses a contract with ER Emergency and Construction, dba Emergency Rooter ("Emergency Rooter") for sewer system repair services between March 25 and April 8, 2019. Our conclusion is that it is in the best interest of the District to approve the contract, despite the lack of a payment bond.

We understand that the work at issue was performed on an emergency basis at the Community Day School, and that the work has already been completed. This work constitutes a public works project. Contracts for such projects typically require that the contractor submit a payment bond, which ensures that subcontractors and suppliers are paid, and a performance bond, which protects the District from deficient or incomplete work. While a performance bond is not required by law, a payment bond is required to be submitted to the District before the work commences. (Civil Code §9550(a).) A contractor is not ordinarily exempted from this requirement simply because the work was performed on an emergency basis. (Public Contract Code §20113(b).)

It is our understanding that due to the exigent circumstances faced by the District, staff gave direction to Emergency Rooter to perform the work prior to awarding a contract or the contractor submitting bonds. We further understand that full payment has been made to this contractor.

In light of the fact that a performance bond is not legally required, District facilities staff has focused on the required payment bond. After completion of the work, the District has worked with Emergency Rooter to see if it would be possible for Emergency Rooter to purchase a payment bond, even if at a higher premium. However, Emergency Rooter has indicated that its surety will not issue a payment bond after completion of the work.

Based on these facts and law, the District has two options:

- Award the contract without a payment bond; or
- Do not award the contract despite the fact that the work has been completed.

We recommend that the District award the contract at this time despite the absence of a payment bond. The District would be in a much better position if a contract were awarded without a payment bond than if no contract were awarded at all. Without awarding a contract to Emergency Rooter, the District would have a difficult time enforcing any rights against Emergency Rooter (such as express warranties and indemnity clauses) because no valid and enforceable contract would exist related to the work that was performed. While awarding a contract after the work has been completed is not typical, in at least one case a court has approved a school district's doing so. (*G. Voskian Construction, Inc. v. Alhambra Unified School District* (2012) 204 Cal.App.4th 981, 990-991.)

It could be argued that no contract should be awarded without a payment bond since the bond is required by law. In this unusual situation, no payment bond is now available for purchase. As a result, we recommend that the District proceed as best as possible to protect its interests, which means awarding the contract even without a payment bond in place. The District can also help limit its risk of payment disputes on this project if the District works with the contractor to receive releases from all subcontractors and suppliers, confirming that all such subcontractors and suppliers have been paid in full.

For future handling of emergencies, we recommend that any contract should be awarded with a requirement that payment and performance bonds be provided before the work commences.

If you have any further questions regarding these issues, please let us know.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/15/2019

**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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER:</b> <b>SKYLES INSURANCE</b> 9840 Business Park Dr. Sacramento, CA 95827  Emergency Rooter & Plumbing 2346 E 20th St. Oakland, Ca. 94601	<b>CONTACT NAME:</b> Cindy Wingard <b>PHONE (A/C No., Ext.):</b> (888-900-9989   <b>FAX (A/C):</b> 916-361-9821 <b>E-MAIL ADDRESS:</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>
	<b>INSURER A:</b> Markel Insurance Company
	<b>INSURER B:</b>
	<b>INSURER C:</b>
	<b>INSURER D:</b>

**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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL SUBR E/SR WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> <b>OCCUR</b>  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	x	GL5272925003	09/15/2019	09/15/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	x	AL652652-01	07/23/2019	07/23/2019	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$					<input type="checkbox"/> <b>OCCUR</b> <input type="checkbox"/> <b>CLAIMS-MADE</b> EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	WC8676800183	06/20/2019	06/20/2019	<input checked="" type="checkbox"/> <b>WC STATUTORY LIMITS</b> <input type="checkbox"/> <b>OTHER</b> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule.)**  
  
CONTRACT NUMBER: 16136 B&G Routine Repairs and Maintenance Services - OUSD - EMERGENCY ROOTER PLUMBING - District - Wide - Plumbing Maintenance Services.

<b>CERTIFICATE HOLDER</b>  OAKLAND UNIFIED SCHOOL DISTRICT 1000 Broadway Suite 680 Oakland, CA 94607	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED WITHIN 30 DAYS ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b>  Cindy Wingard
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## DEPARTMENT OF FACILITIES PLANNING & MANAGEMENT

### ROUTING FORM

#### Project Information

<b>Project Name</b>	ER Plumbing Construction dba Emergency Rooter	<b>Site</b>	
<b>Basic Directions</b>			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

#### Contractor Information

<b>Contractor Name</b>	ER Plumbing Construction	<b>Agency's Contact</b>	David Ball		
<b>OUSD Vendor ID #</b>	001567	<b>Title Owner</b>			
<b>Street Address</b>	2346 E 20th Street	<b>City</b>	Oakland	<b>State</b>	CA
<b>Telephone</b>	510-388-0567	<b>Policy Expires</b>			
<b>Contractor History</b>	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>OUSD Project #</b>					

#### Term

<b>Date Work Will Begin</b>	3-25-2019	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	4-8-2019
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#### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$ 485,800.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

#### 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
8150	RRMA Gen	010-8150-0-0000-8110-5670-988-9880-9000-0503-99999	5670	485,800.00

#### Approval and Routing (in order of approval steps)

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>	<b>Signature</b>			
		<b>Date Approved</b>	3/11/19		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>	<b>Signature</b>	(as to form only)		
		<b>Date Approved</b>	5/14/19		
3.	<b>Deputy Chief, Facilities Planning and Management</b>	<b>Signature</b>			
		<b>Date Approved</b>			
4.	<b>Senior Business Officer, Board of Education</b>	<b>Signature</b>			
		<b>Date Approved</b>			
5.	<b>President, Board of Education</b>	<b>Signature</b>			
		<b>Date Approved</b>			