

Board Office Use: Legislative File Info.	
File ID Number	17-2258
Introduction Date	11-8-2017
Enactment Number	17-1598
Enactment Date	11-8-17



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools. Thriving Students.

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education
By: Vernon Hal, Senior Business Officer *VH*
Joe Dominguez, Deputy Chief, Facilities Planning and Management *JD*

Board Meeting Date November 8, 2017

Subject Independent Consultant Agreement less than \$88,300 - Jensen Hughes - Fremont New Construction Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement less than \$88,300 between the District and Jensen Hughes, Walnut Creek, CA., for the latter to provide provision fire and intrusion alarm systems consulting services for Increments 1, 2 and 3 , in conjunction with the Fremont New Construction Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing November 9, 2017 and concluding no later than December 31, 2020, in an amount not-to exceed \$64,930.00.

Discussion Consulting services needed to ensure code compliance and facilitate the proper installation of fire alarm and intrusion alarm system.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education of an Independent Consultant Agreement less than \$88,300 between the District and Jensen Hughes, Walnut Creek, CA., for the latter to provide provision fire and intrusion alarm systems consulting services for Increments 1, 2 and 3 , in conjunction with the Fremont New Construction Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing November 9, 2017 and concluding no later than December 31, 2020, in an amount not-to exceed \$64,930.00.

Fiscal Impact Fund 21, Measure J

Attachments

- Independent Consultant Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance



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

Legislative File ID No. 17-2258

Department: Facilities Planning and Management

Vendor Name: Jensen Hughes

Project Name: Fremont (Small School) New Construction Project No.: 13158

Contract Term: Intended Start: 11-9-2017 Intended End: 12/31/2020

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$64,930.00

Approved by: Tadashi Nakadegawa

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?

This is a sole source vendor for this service.

Summarize the services this Vendor will be providing.

Vendor to provide fire alarm and intrusion alarm systems consulting services for Increments 1, 2 and 3 of the Fremont project. Services include review of 90% construction documents, attending coordination meetings, construction phase consulting, observation surveys and witnessing final fire alarm and intrusion alarm system tests.

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

If No, please answer the following:

1) How did you determine the price is competitive?

This is a trusted vendor whose proposal is in line with similar scopes of work on other projects.

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 \$86,000 (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**

INDEPENDENT CONSULTANT
Less Than \$88,300

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **14th day of September 2017**, by and between the **Oakland Unified School District** ("District") and **Jensen Hughes, Inc.** ("Consultant"), (together, "Parties").

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, the District is in need of such services and advice and the Consultant warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

WHEREAS, the Consultant agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall furnish to the District the following services, as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services"):

Scope of Services includes to provide fire alarm and intrusion alarm systems consulting services for Increment 1, 2 and 3 of the Fremont project; services include review of 90% construction documents, attending coordination meetings, construction phase consulting, observation surveys and witnessing final fire alarm and intrusion alarm system tests.

2. **Term.** Consultant shall commence providing Services under this Agreement on **November 9, 2017**, and will diligently perform as required and complete performance by **December 31, 2020**, unless this Agreement is terminated and/or otherwise cancelled prior to that time. This Agreement may be extended upon mutual approval of both parties in writing on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Consultant shall not commence the Services under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> W-9 Form
<input checked="" type="checkbox"/> Insurance Certificates & Endorsements	<input checked="" type="checkbox"/> Workers' Compensation Certificate
<input checked="" type="checkbox"/> Debarment Certification	
<input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification	

4. **Compensation.** District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement, a fixed fee of Sixty-four thousand, nine hundred thirty and NO/100 Dollars (\$64,930.00), paid monthly in proportion to Services performed.

- 4.1. District shall pay Consultant for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made (such approval not to be unreasonably withheld or delayed).

- 4.2. Any disputed invoiced amount which cannot be resolved in good faith between the Parties within fifteen (15) business days shall be resolved in accordance with Section 25 below.
5. **Expenses.** Expenses will not be charged for Consultant's performance of these Services.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program:** Consultant 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, under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.
8. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant 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 Consultant's employees. In the performance of the Services herein contemplated, Consultant shall have the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
9. **Performance of Services / Standard of Care.**
- 9.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant'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. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 9.1.1. Consultant 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.
- 9.1.2. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 9.1.3. Consultant 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.
- 9.1.4. Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or

omission that Consultant or its employees may discover. Consultant shall use professional efforts in identifying any errors, inconsistencies, or omissions.

9.1.5. Any representations, recommendations, opinions or conclusions relating to the Services provided by Consultant must be made in writing by duly authorized representatives of Consultant.

9.2. **Meetings.** Consultant and District agree to participate in regular meetings to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

9.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

10. **Originality of Services.** Except as to standard generic details, Consultant 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 Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

11. **Copyright/Trademark/Patent.** Consultant 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 (specifically excluding any underlying pre-existing intellectual property). District may, with Consultant's prior written consent, use Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

12. Termination.

12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

12.2. **For Convenience by Consultant.** Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Consultant; or

12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 12.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, arising out of, pertaining to or relating to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant. Consultant shall, to the fullest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

14. **Insurance.**

- 14.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 14.1.1. **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 Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

- 14.1.2. **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 Consultant 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.

- 14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

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

14.2. **Proof of Carriage of Insurance.** Consultant 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:

14.2.1. 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."

14.2.2. 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.

14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, 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 Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.

14.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance shall be written on an occurrence form.

14.3. **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.

15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

16. **Compliance with Laws.** Consultant shall observe and comply with all applicable rules and regulations of the governing board of the District and all applicable federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant

knowingly performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this agreement.
18. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant 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.
19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant 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.
20. **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 Consultant 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 District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:
 - 21.1. All site visits shall be arranged through the District;
 - 21.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
 - 21.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
 - 21.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
 - 21.5. Consultant and Consultant's employees shall not use student restroom facilities; and
 - 21.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
22. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.

Consultant 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 Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

23. **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.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.
26. **Disputes:** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
27. **Confidentiality.** The Consultant and all Consultant'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.
28. **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: Cesar Monterrosa

Jensen Hughes
2950 Buskirk Avenue, Suite 225
Walnut Creek, CA 94597
Tel: 925-938-3550
ATTN: David Secoda

And

Jensen Hughes
3610 Commerce Drive, Ste. 817
Baltimore, MD. 21227
Tel: 410-737-8677 Fax: 410-737-8688
ATTN: David Secoda

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.

29. **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.
30. **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 county in which the District's administration offices are located.
31. **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.
32. **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.
33. **Incorporation of Recitals and Exhibit.** The Recitals and exhibit attached hereto are hereby incorporated herein by reference.
34. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
35. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

36. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
37. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
38. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
39. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
40. **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.

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>



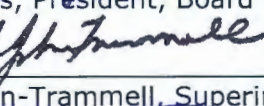
Cesar Monterrosa
Director of Facilities Planning & Management

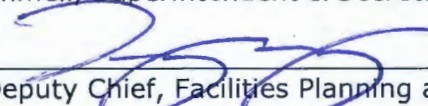
[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT


James Harris, President, Board of Education 11-8-17
Date


Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education 11-8-17
Date


Joe Dominguez, Deputy Chief, Facilities Planning and Management Date

APPROVED AS TO FORM:


QUSD Facilities Legal Counsel 11/17/17
Date

CONSULTANT

Date


Information regarding Consultant:

Consultant: _____
License No.: _____
Address: _____
Telephone: _____
Facsimile: _____
E-Mail: _____

Type of Business Entity:
 Individual
 Sole Proprietorship
 Partnership
 Limited Partnership
 Corporation, State: _____
 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.

File ID Number: 17-2258
Introduction Date: 11-8-17
Enactment Number: 17-1598
Enactment Date: 11-8-17
By: 

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: _____
Proper Name of Consultant: _____
Signature: _____
Print Name: _____
Title: _____

(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**

The undersigned is aware of and hereby certify that neither Jensen Hughes, Inc. ("Consultant") 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. Further, the undersigned agrees to include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant 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 Consultant on the _____ day of _____ 20__ for the purposes of submission of this Agreement.

By: _____
Signature

Typed or Printed Name

Title

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

- Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

- The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District 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. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

- Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- The installation of a physical barrier at the worksite to limit contact with pupils.
- Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- Surveillance of Employees by District personnel.

Date: _____

District Representative's Name and Title: _____

District Representative's Signature: _____

I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

BASIC SCOPE OF SERVICES

JENSEN HUGHES proposes to provide the following scope of services. The services are described in detail as follows:

Increment 1 – Minor Renovations to existing Building "C"

- Review 90% Construction Documents, including fire and intrusion alarm construction drawings, datasheets, and specifications, for compliance with the California Building and Fire Codes, DSA Guidelines, NFPA 72, *National Fire Alarm and Signaling Code* requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. JENSEN HUGHES will provide a letter report of plan review comments. JENSEN HUGHES anticipates printing PDF files for review and as such the printing expense is included. (One initial plan review and one back check plan review are budgeted.)
- Attend one pre-construction, one "pre-pull", and one device connection meeting with the selected contractor and the Client (three meetings are budgeted). Meetings shall be arranged by the Client.
- Provide fire alarm and intrusion alarm consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), review of applicable Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions. (16 hours are budgeted.)
- Perform one construction observation survey during construction. Survey will be conducted during conduit rough-in. Results of the survey will be recorded and submitted to the Client.
- Witness the final acceptance/reacceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD, and the inspector of record (IOR). Results of the tests will be recorded and submitted to the Client. (Project budget includes four site visits: one initial fire alarm test, one follow-up fire alarm test, one initial intrusion alarm test, and one follow-up intrusion alarm test.)

Increment 2 – New Two-Story Classroom Building

- Review 90% Construction Documents, including fire and intrusion alarm construction drawings, datasheets, and specifications, for compliance with the California Building and Fire Codes, DSA Guidelines, NFPA 72 requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. JENSEN HUGHES will provide a letter report of plan review comments. JENSEN HUGHES anticipates printing PDF files for review and as such the printing expense is included. (One initial plan review and one back check plan review are budgeted.)
- Attend one pre-construction, one "pre-pull", and one device connection meeting with the selected contractor and the Client (three meetings are budgeted). Meetings shall be arranged by the Client.
- Provide fire alarm and intrusion alarm consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), Architect's Supplemental Instructions (ASIs), or for providing recommendations/solutions. (16 hours are budgeted.)
- Perform two construction observation surveys during construction. Surveys will be conducted during conduit rough-in and during fire and intrusion alarm device installation. Results of the surveys will be recorded and submitted to the Client.
- Witness the final acceptance/reacceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD, and the inspector of record (IOR). Results of the tests will be recorded and submitted to the Client. (Project budget includes four site visits: one new building initial fire alarm

test, one new building follow-up fire alarm test, one new building initial intrusion alarm test, and one new building follow-up intrusion alarm test.)

Increment 3 – Existing Building “B” Modernization and New Gymnasium and Wellness Building

- Review 90% Construction Documents, including fire and intrusion alarm construction drawings, datasheets, and specifications, for compliance with the California Building and Fire Codes, DSA Guidelines, NFPA 72 requirements, and OUSD Fire and Intrusion Alarm Standards. Plan reviews will be limited to fire and intrusion alarm systems only. JENSEN HUGHES will provide a letter report of plan review comments. JENSEN HUGHES anticipates printing PDF files for review and as such the printing expense is included. (One initial plan review and one back check plan review are budgeted.)
- Attend one pre-construction, one “pre-pull”, and one device connection meeting with the selected contractor and the Client (three meetings are budgeted). Meetings shall be arranged by the Client.
- Provide fire alarm and intrusion alarm consulting regarding issues that may arise during construction. Consulting time may be used for participation in meetings, review of Construction Change Documents (CCDs), Architect’s Supplemental Instructions (ASIs), or for providing recommendations/solutions. (8 hours are budgeted.)
- Perform four construction observation surveys during construction. Surveys will be conducted during conduit rough-in and during fire and intrusion alarm device installation. Results of the surveys will be recorded and submitted to the Client.
- Witness the final acceptance/reacceptance test of the fire alarm and intrusion alarm systems with the Client, Contractor, OUSD, and the inspector of record (IOR). Results of the tests will be recorded and submitted to the Client. (Project budget includes eight site visits: one Building B initial fire alarm test, one Building B follow-up fire alarm test, one New Gym initial fire alarm test, one New Gym follow-up fire alarm test, one Building B initial intrusion alarm test, one Building B follow-up intrusion alarm test, one New Gym initial intrusion alarm test, and one New Gym follow-up intrusion alarm test.)

- Ensure systems are ready to commence testing immediately upon arrival of inspectors.
- All prior approvals from regulatory agencies must be onsite including, but not limited to, approved permit drawings and shop drawings documentation. In addition, copies of all permits, variances, waivers, or other types of agreements concerning the project must be available for review prior to testing.
- Provide portable radios.
- Provide personnel familiar with the location and operation of the fire alarm and intrusion alarm systems.
- Provide personnel properly equipped for testing the fire and intrusion alarm systems and devices.
- Provide UL-listed canned smoke, magnets, flow gauges, magnahelic pressure gauges, and all other equipment and materials required to test systems and devices.
- Provide personnel with keys for access to all building spaces, elevator reset/bypass, fire alarm control panels, central station communicators, fire alarm wiring terminal cabinets, and annunciator panels.
- Provide personnel capable of bypassing notification appliances and all auxiliary system control functions for portions of the test.
- Provide personnel authorized to contact the OUSD Alarm Center and remote station to take fire alarm monitoring out of service for portions of the test.
- Provide personnel familiar with the operation and location of air handling units, elevators, and other system interfaces, where applicable.
- Provide at least two individuals for fire and intrusion alarm system testing. One person will remain at the panel for signal identification and system resets. The second person will activate devices. Due to the need for disconnecting wires and devices for supervision testing, at least one of these individuals shall be a technician familiar with the installation.

TERMS AND CONDITIONS

Please refer to Exhibit A for all terms and conditions. We reserve the right to assign personnel on an "as available" basis.

To initiate our services, please sign and return this proposal along with the Billing Contact Information page (last page), at your earliest convenience.

JENSEN HUGHES appreciates the opportunity to assist the Oakland Unified School District. If you have any questions, please contact me at **925-938-3550** or at **dsecoda@jensenhughes.com**.

Sincerely,

JENSEN HUGHES



David M. Secoda
Senior Consultant

Client Email: kenya.chatman@ousd.k12.ca.us
Client Phone: 510-535-7050

DMS/MED:rs

EXHIBIT A
STANDARD TERMS AND CONDITIONS
FOR THE PROPOSAL AND AGREEMENT FOR SERVICES FOR:
CLIENT: OAKLAND UNIFIED SCHOOL DISTRICT
FOR
PROJECT: FREMONT HIGH SCHOOL

1. Agreement. Jensen Hughes, Inc. (hereinafter "Consultant") shall provide for the Client the scope of services described in Consultant's Proposal attached hereto. These Standard Terms and Conditions are incorporated into Consultant's Proposal, and the attached Proposal and these Standard Terms and Conditions together shall be referred to as the "Agreement." Authorization to proceed with the Consultant's services as outlined under the attached Proposal, shall constitute the Client's acceptance of the Agreement. All services not specifically described in the attached Proposal are excluded from Consultant's scope of services.

2. Performance. Consultant shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same locality under similar conditions and with reasonable diligence and expediency consistent with sound professional practices ("Standard of Care"). Client and Consultant are aware that many factors outside the Consultant's control may affect the Consultant's ability to complete the services to be provided under this Agreement. Client agrees that Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond Consultant's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by Client or Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

3. Independent Contractor. Client is engaging Consultant as an independent contractor, and not as an agent, employee, director or partner of Client. The parties agree that this Agreement does not establish a joint venture, employment or agency relationship. Nothing contained in this Agreement or any action by Consultant shall be construed to impose a fiduciary duty on Consultant or create a fiduciary relationship between Consultant and Client or between Consultant and any third party.

4. Limitations on Responsibility. Consultant shall not be responsible for the acts or omissions of Client, Client's other consultants, contractors, subcontractors, their agents or employees, or other persons performing work or services on the Project. Consultant shall neither have control over nor be in charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work by any other person on any project site. Consultant shall not be responsible for Client's or other employers' implementation of or compliance with its, theirs or others' safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above, nor shall Consultant be responsible for the adequacy or completeness of any of the above safety programs, procedures or precautions.

5. Applicable Laws. Consistent with Consultant's Standard of Care, Consultant's services shall endeavor to comply with all applicable laws, rules, codes, regulations and orders of applicable governmental or public authority having jurisdiction over the Project in force at time of Consultant's performance of services.

6. Termination. This Agreement may be terminated by either party upon not less than fourteen (14) days' written notice for such party's convenience and without cause. Upon such termination, Client shall pay and reimburse Consultant for services rendered and costs incurred prior to the effective date of termination. This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In addition, if Client fails to make payments when due or otherwise is in breach of this Agreement, Consultant may, at its option, suspend performance of services upon five (5) calendar days' notice to Client. Consultant shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. Upon payment in full by Client after a suspension, Consultant shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension. If Client still fails to make payment or otherwise cure the breach following a suspension of services, Consultant may terminate this Agreement upon an additional seven (7) days' notice.

7. Payment.

a. Payments on account of services rendered and for Reimbursable Expenses shall be made monthly upon presentation of Consultant's invoice. Payments are due within thirty (30) days of receipt of Consultant's invoice. Invoices remaining unpaid after thirty (30) days from receipt shall be subject to a service fee of 1.5% per month, and Consultant reserves the right to pursue all appropriate remedies. Client shall be responsible for all costs, including, without limitation, court costs, collection costs, reasonable attorneys' fees, expert fees, and all other costs allowed by law, which may be incurred by Consultant in pursuit of unpaid invoices.

b. No deductions shall be made from Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which Consultant has been adjudged to be liable. Inquiries and questions regarding any invoice shall be made within fifteen (15) working days of receipt of the invoice. Failure to notify Consultant within the specified period will constitute a waiver to any claim with respect to the content or accuracy of the invoice, as well as acceptance of the services provided. If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within fifteen (15) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute with supporting documentation, and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within twenty-five (25) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved thereafter in accordance with the Dispute Resolution provision of this Agreement.

c. Reimbursable Expenses include the actual expenses incurred directly or indirectly in connection with the services provided hereunder, such as those for: travel, including transportation and associated expenses; reproduction of project related documents including reports, specifications, drawings, project administration documents and correspondence; filing and permit fees; all state and local taxes (except U.S., state, local income taxes or payroll taxes); delivery and courier services; and project materials including photographic film and processing. Except as otherwise specified, reimbursable expenses will be billed at cost plus 15%. If requested as part of the billing information, detail of charges showing the date, amount and type of each charge will be included as a part of the invoice. Copies of time sheets and expense reports will not be provided since they may also contain confidential information related to other clients.

8. Additional Services. Additional Services of Consultant, not specifically included as part of the Scope of Services defined in the attached Proposal, and compensation for requested Additional Services, shall be mutually agreed upon in writing by Client and Consultant prior to commencement of such Additional Services.

9. Information Provided by Client. On Consultant's request, Client shall furnish services of other consultants, information, and reports as reasonably necessary for the performance of Consultant's services. The services, information, and reports requested shall be furnished at no expense to Consultant and Consultant shall be entitled to rely upon the accuracy and completeness thereof.

10. Indemnification.

a. Consultant agrees to indemnify and hold Client harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense) ("Claims"), to the extent such Claims are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligent acts, errors or omissions or willful misconduct of Consultant. This obligation shall not apply to the extent said Claims arise out of, pertain to, or relate to the negligence of Client or Client's other agents, other servants, or other independent contractors, including the contractor, subcontractors of contractor or other consultants, or others who are directly responsible to Client, or for defects in design or construction furnished by those persons.

b. Client agrees to indemnify and hold Consultant harmless from and against all claims, liabilities, suits, demands, losses, costs and expenses (including reasonable attorneys' fees and costs of defense), to the extent they are determined by a court of competent jurisdiction or arbitrator to have been caused by the negligent acts, errors or omissions or willful misconduct of Client.

c. Neither party shall have an upfront duty to defend the other but shall reimburse reasonably incurred defense fees and costs to the extent of its indemnity obligation herein or as the parties otherwise agree in settlement.

11. Insurance.

a. Consultant shall purchase and maintain the following types of insurance: (a) Professional Liability; (b) Commercial General Liability; (c) Workers' Compensation ; (d) Employers' Liability; (e) Hired and non-owned automobiles. Upon request, Consultant shall provide Client with copies of Certificate(s) of Insurance documenting Consultant's insurance coverage.

b. Client shall be responsible for purchasing and maintaining its own liability and property insurance.

c. Client and Consultant waive all rights against each other for loss, damage and/or liability to the extent covered by the insurance policies required to be maintained hereunder.

12. Waiver of Consequential Damages. Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither Consultant nor Client, their respective officers, directors, partners, employees, contractors or sub consultants shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, damage to reputation or any other consequential damages either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

13. **Sole Remedy.** It is intended by the parties to this Agreement that Client's obligations and Consultant's services in connection with the Project shall not subject Client's or Consultant's individual shareholders, employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client and Consultant agree that as the sole and exclusive remedy against the other, any claim, demand or suit shall be directed and/or asserted only against the business entities that are the parties to this Agreement and not against any of Client's or Consultant's individual shareholders, employees, officers or directors except for acts of willful misconduct or as otherwise prohibited by law.

14. **Limitation of Liability.** The Client and Consultant have discussed the risk and rewards of the project in relation of the Consultant's total fee for services. In recognition of the relative risks and benefits of the Project to both Client and Consultant relating to Consultant's provision of services in accordance with this Agreement, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant to Client for any and all claims, losses, costs, damage of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Consultant to Client shall not exceed the total amount paid to Consultant under this Agreement regardless of theories of liability or causes of action asserted against Consultant, unless otherwise prohibited by law.

15. **No Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant.

16. **Assignment.** This Agreement shall be binding upon Client and Consultant and their respective successors, assigns, and legal representatives. Neither party shall transfer or assign any rights or obligations under or interest in this Agreement without the prior written consent of the other party.

17. **Confidentiality.** If Consultant or Client receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services solely and exclusively for the Project, or (3) its consultants whose contracts include similar restrictions on the use of confidential information. These provisions shall not apply to information in whatever form that is in the public domain, was previously known to and/or generated by Consultant, nor shall it restrict Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for Consultant to defend itself from any legal action or claim.

18. **Instruments of Service**

a. Drawings, specifications, and other documents, including those in electronic form, prepared by Consultant are Instruments of Service for use solely with respect to this Project. Consultant shall be deemed the author and owner of Consultant's Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

b. Upon execution of this Agreement, Consultant grants to Client a nonexclusive license to reproduce Consultant's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. If applicable, such license shall permit Client to include Consultant's Instruments of Service in a similar nonexclusive license to an Owner in a Prime Agreement, authorizing an Owner or an Owner's contractors or consultants to reproduce applicable portions of Consultant's Instruments of Service solely for the purposes of constructing, using and maintaining this Project. Any termination of this Agreement prior to completion of the Project shall terminate this license.

c. Except for the license granted above, no other license or right shall be deemed granted or implied. Client shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of Consultant.

d. Client shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless Client obtains the prior written agreement of Consultant. Any unauthorized use, reuse or modifications of the Instruments of Service shall be at Client's sole risk and without liability to Consultant, and Client agrees to defend, indemnify and hold harmless Consultant from all claims and damages arising out of or purported to arise out of the use, reuse, or modification of the Instruments of Service.

19. **Dispute Resolution.** The parties agree to first try in good faith to settle any dispute arising out of or related to this Agreement by mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. If the claim or controversy is not settled by mediation, the claim or controversy may be resolved by final and binding arbitration, if the parties so agree, or by civil litigation. In the event that any dispute proceeds to binding arbitration or civil litigation, the parties mutually agree to waive pre-judgment interest with respect to any award or judgment.

20. **Certificate of Merit Requirement.** The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the Consultant unless the Client has first provided the Consultant with a written certification executed by an independent consultant currently practicing in the same discipline as the Consultant and licensed in the state where the project at issue is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the Standard of Care for a consultant performing

professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the Standard of Care. This certificate shall be provided to the Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.

21. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Maryland, and all dispute resolution proceedings shall be venued in the State of Maryland unless other parties mutually agree otherwise.

22. Opinions of Cost. When included in Consultant's scope of services, opinions or estimates of probable construction cost are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, over contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Client's budget or from Consultant's opinions or estimates of probable construction cost.

23. Environmental Conditions, Fires & Acts of Terrorism.

a. For purposes of this section, "Environmental Conditions" means the presence at the Project site of hazardous wastes, hazardous substances, asbestos, asbestos-containing materials ("ACM"), suspected asbestos-containing materials ("SACM"), polychlorinated biphenyls, lead, lead-based paint, urea formaldehyde-containing materials, mold, biohazards, biological agents, radioactive materials, or any other hazardous or toxic substances as defined by any federal, state, or local statute, regulation, code, or ordinance. Client acknowledges that Consultant shall have no responsibilities or duties relating to the identification, discovery, presence, handling, removal, abatement or disposal of, or exposure (including exposure assessment or control) of persons to, Environmental Conditions in any format the Project site, including any ACM or SACM located at or transported from the Project. Client acknowledges that it accepts responsibility for notifying the appropriate state and local Environmental Protection Agency and the United States Environmental Protection Agency for any ACM or SACM delineation, demolition, construction or repair work. Client further acknowledges that it accepts responsibility for any inspection required by the National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), or any related state-delegated authority.

b. In no event shall Consultant be held liable or otherwise responsible for preventing any financial or physical damage, Fires or Acts of Terrorism, including, but not limited to, chronic or acute injuries relating thereto (or arising out of), subsequent remedial activities undertaken relating thereto, or any other event or consequence thereof, associated countermeasures pursued or implemented by any federal, state, or local government representatives, or any of their contractors, or subcontractors, or any other public or private party in any way connected with addressing or dealing with anything covered by the Scope of Services, including, without limitation, Fires and/or Acts of Terrorism.

24. Americans with Disabilities Act. The Client acknowledges that the requirements of Americans with Disabilities Act ("ADA") (as well as all state and local laws, codes, or ordinances, that apply to the same subject matter) will be subject to various and possibly contradictory interpretations. Consultant will endeavor to use reasonable professional efforts to interpret applicable ADA requirements as they may apply to Consultant's services. Consultant cannot and does not promise, warrant, or guarantee that its services will comply with interpretations of ADA requirements as they apply currently or in the future. In addition, the Consultant shall be entitled to rely reasonably on written interpretations and specific approvals regarding the disability requirements given by government officials with responsibility for enforcing such ADA Requirements.

25. Ethics and Conflicts of Interest. Both parties shall perform their obligations with integrity, including but not limited to:

a. Conflicts of interest shall be avoided or disclosed promptly to the other party.

b. Neither party has conducted or shall engage in any transaction or dealing with any prohibited person in violation of the U.S. Patriot Act or any OFAC rule or regulation.

c. Both parties shall comply with all regulations of the Foreign Corrupt Practices Act ("FCPA"), other applicable United States laws, and other applicable foreign laws (including, but not limited to the OECD Convention On Combating Bribery of Foreign Public Officials) relating to the soliciting and performing work in foreign countries.

d. Neither party shall receive any contingent fees or gratuities to and from the other party, including their agents, officers, employees and sub consultants or others to secure preferential treatment.

26. Anti-Raiding Provision. During the duration of the services for the project provided for under this proposal agreement, and for a period of one (1) year after the completion of or termination of such services, the Client shall not solicit, offer employment to, otherwise attempt to hire, or assist in the hiring of any employee or officer of the Consultant or any of its Affiliates who worked on the project; (ii) encourage, induce, assist or assist others in inducing any such person to terminate his or her employment with the Consultant or any of its Affiliates; or (iii) in any way interfere with the relationship between the Consultant or any of its Affiliates and their employees. Should the Client extend an offer of employment to or otherwise retain (independent contractor, etc.) an employee that worked on the project and the offer is accepted, Consultant shall be entitled to a fee from the Client that is computed by multiplying the employee's hourly rate at the time of the offer by 4,000 hours for a Managing Director, 3,000 hours for a Senior Director and 2,000 hours of any other employee. The fee shall be payable at the time of the employee's acceptance of employment or the retaining of their services.

27. Equal Employment. Consultant believes in the principles of equal employment opportunities and encourages a diverse workplace. Consultant does not discriminate in employment against any individual on the basis of race, sex, age, religion, disability, sexual orientation, national origin, ancestry, citizenship status, veteran status, Vietnam-era status, or any other protected status. Both parties shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Both parties shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

28. Miscellaneous. The waiver by either party of a breach of any provisions of this Agreement shall not operate as or be construed as a waiver of any subsequent breach thereof. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. The headings contained in this Agreement are for descriptive purposes only and shall have no independent significance.

29. Entire Agreement. This Agreement represents the entire and integrated agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be replaced, amended or modified only in writing signed/initialed by both Client and Consultant. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on Client and Consultant.

JENSEN HUGHES:

CLIENT:

By: 
Signature

By: _____
Signature

David M. Secoda
Printed name

Printed name

Senior Consultant
Title

Title

August 1, 2017
Date

Date

BILLING CONTACT INFORMATION

Please provide the following information regarding project billings with your signed proposal.

Invoice Mailings:

Name:

Address:

City, State, Postal Code:

Job Site Address: Yes No

Phone:

Fax:

Email:

Billing Contact for Future Inquiries:

Name:

Address:

City, State, Postal Code:

Phone:

Fax:

Email:

Please indicate any reference numbers (P.O. Numbers, Job Numbers, etc.) that you would like us to indicate on our invoices:

Signature: _____

Print Name: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/25/2017

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

PRODUCER License # 0D21146 San Francisco, CA - Equity Risk Partners - HUB International California 456 Montgomery Street Suite 1200 San Francisco, CA 94104	CONTACT NAME: Partners Service Group	
	PHONE (A/C, No, Ext): (415) 874-7168	FAX (A/C, No): (415) 874-7170
E-MAIL ADDRESS: psg@equityrisk.com		
INSURED Jensen Hughes, Inc. 3610 Commerce Drive, #817 Baltimore, MD 21227	INSURER(S) AFFORDING COVERAGE	
	INSURER A: The Continental Insurance Company	NAIC # 35289
	INSURER B: Ironshore Specialty Company	NAIC # 25445
	INSURER C:	
	INSURER D:	
	INSURER E:	

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			6045826132	01/11/2017	01/11/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Comp/Coll Ded-\$1,000			6045826129	01/11/2017	01/11/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	6045826163	01/11/2017	01/11/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional / Poll.			000811106	01/11/2017	01/11/2018	Ret: \$250,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Project #1DMS17011.000 - Fremont High School / OUSD Project No. 13158

Oakland Unified School District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are included as Additional Insureds on primary and noncontributory basis as required by written contract per the General Liability and Auto Liability policies. Waiver of subrogation applies in favor of the Additional Insureds with respect the General Liability, Auto, and Workers Compensation policies as required by written contract. The Umbrella follows form.

CERTIFICATE HOLDER

CANCELLATION

Oakland Unified School District
Attn: Juanita Hunter
955 High Street
Oakland, CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**ADDITIONAL REMARKS SCHEDULE**

AGENCY San Francisco, CA - Equity Risk Partners - HUB International California		License # 0D21146	NAMED INSURED Jensen Hughes, Inc. 3610 Commerce Drive, #817 Baltimore, MD 21227
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

17-18 WC (CA)

Workers' Compensation (CA) Coverage:

Policy #WC645826146

Effective: 1/11/2017 - 1/11/2018

Writing Company: American Casualty Company of Reading, Pennsylvania

Limits:

Bodily Injury by Accident (Each Accident) - \$1,000,000

Bodily Injury by Disease (Policy Limit) - \$1,000,000

Bodily Injury by Disease (Each Employee) - \$1,000,000



Lnb p914

DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Fremont New Construction	Site	302
---------------------	--------------------------	-------------	-----

Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

Attachment Checklist	<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

Contractor Name	Jensen Hughes	Agency's Contact	David Secoda				
OUSD Vendor ID #	V053604	Title	Project Manager				
Street Address	2950 Buskirk Avenue Ste. 225	City	Walnut Creek	State	CA	Zip	94597
Telephone	925-938-3550	Policy Expires	1-11-2018				
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
OUSD Project #	13158						

Term

Date Work Will Begin	11-9-2017	Date Work Will End By (not more than 5 years from start date)	12-31-2020
-----------------------------	-----------	---	------------

Compensation

Total Contract Amount	\$	Total Contract Not To Exceed	\$64,930.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9350	Fund 21, Measure J	3029905810	6215	\$64,930.00

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.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities Planning and Management				
	Signature		Date Approved	9/22/2017	
2.	General Counsel, Department of Facilities Planning and Management				
	Signature		Date Approved	9/29/17	
3.	Deputy Chief, Facilities Planning and Management				
	Signature		Date Approved		
4.	Senior Business Officer, Board of Education				
	Signature		Date Approved		
5.	President, Board of Education				
	Signature		Date Approved		