

Board Office Use: Legislative File Info.	
File ID Number	12-2462
Committee	Facilities
Introduction Date	10-10-2012
Enactment Number	12-2541
Enactment Date	10/10/12 OA



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Tony Smith, Ph.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date October 10, 2012

Subject Division of Facilities Planning and Management P.O.'s. Increases - Less than \$50,000.00

Action Requested: Ratification by the Board of Education of the attached contracts for the Division of Facilities Planning and Management.

	Name	Amount	Funding Source	P.O.	Project	Date	City
12-2459	Diablo Boiler	\$2,543.00	Measure B	P.O. Increase	Chabot New Classroom & MP Building	3-28-2012 thru 12-31-2012	Antioch, CA
12-2463	Kam Yan and Associates	\$500.00	Developers Fees	P.O. Increase	Oakland Tech Stadium Light Pole	12-1-2010 thru 12-31-2012	Oakland, CA
12-2462	Kam Yan and Associates	\$500.00	Developer Fees	P.O. Increase	Castlemont Stadium Light Pole	12-1-2010 thru 12-21-2012	Oakland, CA
12-2461	Kam Yan and Associates	\$0.00	Developer Fees	P.O. Increase	Skyline Stadium Light Pole	12-1-2010 thru 12-31-2012	Oakland, CA
12-2460	Kam Yan and Associates	\$0.00	Developer Fees	P.O. Increase	Carter Baseball Scoreboard	9-19-2011 thru 12-31-2012	Oakland, CA
12-2464	Neuwirth & Associates	\$10,000.00	Measure B	P.O. Increase	Madison Field	6-20-2012 thru 12-31-2012	San Francisco

Discussion:

Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation



of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Fiscal Impact:

Various

Recommendation:

The Board of Education is requested to approve the Facilities Planning and Management contracts and Purchase Order for the OUSD school sites.

**OAKLAND UNIFIED SCHOOL DISTRICT
Department of Facilities Planning and Management
AGREEMENT REQUEST FORM**

1054194

DATE SUBMITTED: 6/12/2012
SUBMITTED BY: Donald Chew

SECTION I. TYPE OF AGREEMENT (PLEASE CHECK ONE BOX)

1.) A/E (Architect and Engineers) Contract	<input type="checkbox"/>	5.) "Small" (under \$15,000.00) Construction Contract	<input type="checkbox"/>
2.) IOR (Inspector of Record Contract)	<input type="checkbox"/>	6.) Resolution Awarding Bid and Construction Contract	<input type="checkbox"/>
3.) Agreement for Professional Services - Testing Etc.	<input type="checkbox"/>	7.) Change Order	<input type="checkbox"/>
4.) Amendment to Agreement for Professional Services (Amendment #1)	<input checked="" type="checkbox"/>	8.) Purchase Order	<input type="checkbox"/>

Vendor Number: _____
Fiscal Year: 2012-2013
P.O. Under \$50K: ✓
Date Processed: 8-1-2012
To: MB 9/1 To DR: _____

Jody London
President, Board of Education
15/9/12
Edgar Rakestraw, Jr., Secretary
Board of Education
10/10/12

[Signature] Timothy E. White Date _____
Asst Superintendent
[Signature] Tadashi Nakadegawa Date 6/24/12
Facilities Director

SECTION II. LOCAL BUSINESS PARTICIPATION PERCENTAGE:

Local Business	Small Local Business	Small Local Resident Business	Total Percentage
0.00%	100.00%	0.00%	100.00%

SECTION III. AGREEMENT INFORMATION:

Project Name:	Castlemont Stadium Light Pole Structural Upgrade	Project No:	07111
Vendor Name:	Kam Yan and Associates	Vendor Contact:	Kam Yan
Vendor Phone Number:	(510) 562-0581	Vendor Mailing Address:	433 Hegenberger, Suite 204 Oakland, CA 94621
Agreement Start and Stop Dates:	Start: 12/1/2010 Stop: 12/31/2012	Amounts:	Current Contract Amount: \$7,500.00 Not to Exceed Amount: \$500.00 Revised Contract Amount: \$8,000.00
Has Work Started?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes give an explanation:</i> This is an existing and ongoing project	Has Work Been Completed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date: _____

Certificate of Insurance Attached Yes No Date provided: _____

RECEIVED
7-13-2012

For Construction Contracts >\$15,000, please provide or attach the following:

- Number of Bids Received, List of Bidders and Amounts (Bid Form) (Attach Bid Documents)
- Date(s) of Bid Advertisement October 10, 2012 *Performance Bonds Attached*
- Date of Bid Opening 12-25-11 *7) Payment Bonds Attached*
- Name of Architect Enactment No. 12-2541 (Sections 6 and 7 to be completed by Contract Administration department)
- Liquidated damages per day Enactment Date 10/10/12

Scope of Work: (Needed to prepare Executive Summary) Please attach separately along with Vendor's proposal.
This is an amendment to the existing Agreement with Kam Yan and Associates. This amendment is for additional services for closing out the files with DSA for the original installation and was not included in their initial proposal. See attach Proposal dated June 12, 2012.

In addition, the Agreement Stop Date is extended from 12/31/2011 through 12/31/2012

Discussion Info: (Needed to prepare Executive Summary) (Provide detailed background-- Why is contract required and what is the benefit to students) - Add additional pages as needed
The existing light poles were subject to a recall by the U.S. Consumer Product Safety Commission. The original scope of work is to provide structural analysis and upgrades for the light poles.

Funding Source: Fund 25

Budget Number: _____

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at www.epls.gov/epls/search.do.

Board Office Use: Legislative File Info.	
File ID Number	12-2462
Committee	Facilities
Introduction Date	October 10, 2012
Enactment Number	12-2541
Enactment Date	10/10/12



Memo

To Board of Education

From Tony Smith, Ph.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date October 10, 2012

Subject Amendment No. 1, Purchase Order Agreement -Kam Yan and Associates - Castlemont Stadium Light Pole Structural Upgrade Project

Action Requested Approval by the Board of Education of Amendment No. 1, Purchase Order with Kam Yan and Associates for Structural Analysis Services on behalf of the District at Castlemont Stadium Light Pole Structural Upgrade Project, in an amount not to exceed \$500.00, increasing previous contract amount from \$7,500.00 to \$8,000.00 and revising the end date from December 1, 2010 through December 31, 2011 to December 31, 2012. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background The existing light poles were subject to a recall by the U.S. Consumer Product Safety Commission. The original scope of work is to provide structural analysis and upgrades for the light poles.

Local Business Participation Percentage 100.00%

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources,



number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of Amendment No. 1, Purchase Order with Kam Yan and Associates for Structural Analysis Services on behalf of the District at Castlemont Stadium Light Pole Structural Upgrade Project, in an amount not to exceed \$500.00, increasing previous contract amount from \$7,500.00 to \$8,000.00 and revising the end date from December 1, 2010 through December 31, 2011 to December 31, 2012. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

Developer Fees

Attachments

- Independent Contractors Agreement including scope of work



KAM YAN & ASSOCIATES

June 12, 2012

Mr. Donald Chew, Project Manager
Oakland Unified School District

Re: Stadium light poles at Castlemont High School
Request for Extra Service #1

Dear Don,

After several tries at DSA for back check of the subject project, we finally obtained building permit last Friday. As you know, you and I have spent quite a lot of extra time dealing with DSA due to non-closure of the previous light pole project.

For that we propose to be compensated for additional fee of \$500.00

I hope this will be acceptable to you.

Please note that our original fee was \$7,500. This will make the total fee at \$8,000.00

Please call if you need further assistance.

Sincerely,

Kam Yan, S.E.
Kam Yan & Associates



File ID Number: 12-2462
 Introduction Date: 10/10/12
 Enactment Number: 12-2541
 Enactment Date: 10/10/12
 By: O.S.

AMENDMENT NO. 1
Professional Services Facilities Contract
PURCHASE ORDER

This Amendment is entered into between the Oakland Unified School District (OUSD) and Kam Yan and Associates. OUSD entered into an Agreement with CONTRACTOR for services on December 1, 2010 and the parties agree to amend that Agreement as follows:

1. Services:	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
If scope of work changed: Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. <u>Attach revised scope of work.</u> The CONTRACTOR agrees to provide the following amended services: The scope of the project is amended to include additional services for closing out the Division of State Architect files for the original installation and was not included in their original proposal.		
2. Terms (duration):	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
If term is changed: The contract term is extended by an additional <u>One year</u> , and the amended expiration date is <u>December 31, 2012</u> .		
3. Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
If the compensation is changed: The contract price is amended by <input checked="" type="checkbox"/> Increase of \$500.00 to original contract amount <input type="checkbox"/> Decrease of \$ _____ to original contract amount and the new contract total is Eight thousand dollars and no cents (\$8,000.00)		

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. **Amendment History:**
 There are no previous amendments to this Agreement. This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

6. **Approval:** This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Board of Education, and the Superintendent as their designee.

OAKLAND UNIFIED SCHOOL DISTRICT

Jody London 10/10/12
 Jody London, President, Board of Education Date

Edgar Rakeshaw, Jr. 10/10/12
 Edgar Rakeshaw, Jr., Secretary Date
 Board of Education Date

Timothy White _____
 Timothy White, Associate Superintendent Date
 Facilities, Planning and Management

CONTRACTOR

Kam Yan 8/3/2012
 Contractor Signature Date

Kam Yan
 Print Name, Title

EXHIBIT "A" Scope of Work

Contractor Name:

Billing Rate: Five hundred dollars and no cents (\$500.00)

1. Description of Services to be Provided

This amendment is to extend the dates from December 31, 2011 to December 31, 2012 and to provide Division of State closeout for the project

2. Specific Outcomes:

To replace the stadium lights at the Castlemont Stadium Light Pole Structural Upgrade site due to a U.S. Consumer Product Safety Commission callback.

3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input checked="" type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

Oakland Unified School District or the District verifies that the Contractor does not appear on the Excluded Parties List at www.epls.gov/epls/search.do.

Susie Butler-Berkley
Contract Analyst

Board Office Use: Legislative File Info.	
File ID Number	10-3024
Committee	Facilities
Introduction Date	1-4-2011
Enactment Number	11-0077
Enactment Date	1-12-11 <i>FS</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Assistant Superintendent, Facilities Planning and Management

Board Meeting Date January 12, 2011 *[Signature]*

Subject Division of Facilities Planning and Management P.O's. Less than \$50,000.00

Action Requested: Ratification by the Board of Education of the attached contracts for the Division of Facilities Planning and Management.

File ID	Vendor Name	\$	Funding Source	Type	Site	Period	City
10-3018	A & E Emaar	\$4,500.00	GO Bond-Measure B	PO	Fremont Mod	12-13-2010 thru 1-31-2011	Albany
10-3019	Bohm Environmental Services	\$14,941.00	Risk Management	P.O.	Claremont Gym Fire Repair	12-15-2010 thru 1-15-2011	Oakland
10-3020	Comfort by Design	\$9,800.00	GO Bond-Measure B	P.O.	Fremont Mod	1-1-2011 thru 9-30-2011	Pinole
10-3021	Diversified Flooring Services, Inc.	\$50,000.00	GO Bond-Measure B	PO	Montera Mod	8-31-2010 thru 9-30-2010	Foster City
10-3023	Hur Flooring Co.	\$49,999.00	Risk Management	PO	Claremont Gym Fire Repair	10-10-2010 thru 1-10-2011	Canoga Park
10-3027	Kam Yan & Associates	\$7,500.00	Developer Fees	PO	Skyline Stadium Light Pole Structural Upgrade	12-1-2010 thru 12-31-2011	Oakland
10-3025	Kam Yan & Associates	\$7,500.00	Developer Fees	PO	McClymonds Stadium Light Pole Structural Upgrade	12-1-2010 thru 1-15-2011	Oakland
10-3024	Kam Yan & Associates	\$7,500.00	Developer Fees	PO	Castlemont Stadium Light Pole Structural Upgrade	12-1-2010 thru 1-15-2011	Oakland
10-3026	Kam Yan & Associates	\$7,500.00	Developer Fees	PO	Oakland Tech Stadium Light Pole Structural	12-1-2010 thru 1-15-2011	Oakland



OAKLAND UNIFIED
SCHOOL DISTRICT

					Upgrade		
10-3029	Lee Signs	\$3,089.04	Developer Fees	PO Increase	Downtown Educational Complex	12-2-2010 thru 1-31-2011	Oakland
103030	Macy Movers, Inc.	\$5,260.00	GO Bond-Measure B	PO	Lowell Mod	12-8-2010 thru 12-31-2011	Oakland
10-3031	Masterpiece Painting	\$48,637.00	Risk Management	PO	Claremont Gym Fire Repair	12-15-2010 thru 1-15-2011	Oakland
10-3032	Playground Unlimited	\$37,473.25	GO Bond-Measure B	PO	Various Play Structures	12-1-2010 thru 1-15-2011	Sunnyvale
10-3033	Professional Cleaning Service	\$4,440.00	GO Bond-Measure B	PO	Montera Mod	1-12-2011 thru 12-31-2011	San Francisco
10-3034	SCA Environmental, Inc.	\$2,895.00	County School Facilities Fund	PO	Chabot Caldecott Tunnel Grant	1-13-2011 thru 12-31-2011	Oakland

Discussion:

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Fiscal Impact:

Various

Recommendation:

The Board of Education is requested to approve the Facilities Planning and Management contracts and Purchase Order for the OUSD school sites.



OAKLAND UNIFIED
SCHOOL DISTRICT

Contract No. 10-3024
 Construction Start 1-4-2011
 Contract # 11-6077
 Date of Issue 1/12/11 ew

PROFESSIONAL SERVICES FACILITIES CONTRACT

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

1. **Services:** The CONTRACTOR shall provide the services as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Terms:** CONTRACTOR shall commence work on 12-1-2010. The work shall be completed no later than 12-31-2011.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Seven thousand, five hundred dollars and no cents (\$7,500.00). This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: NA

Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD.

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

4. **Submittal of Documents:** CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
 - Signed Agreement
 - Workers' Compensation Certification
 - Insurance Certificates and Endorsements
5. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of the Agreement except: NA
6. **CONTRACTOR Qualifications / Performance of Services.**
 - a. **CONTRACTOR Qualifications.** CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.
 - b. **Standard of Care.** CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. 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
7. **Notices/Invoicing:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

OUSD Representative:
 Name: Timothy White
 Site /Dept.: Facilities Planning and Management
 Address: 955 High Street
Oakland, CA 947601
 Phone: (510)879-3664

CONTRACTOR:
 Name: Kam Yan, Kam Yan & Associates
 Title: Project Manager
 Address: 433 Hegenberger, Suite 204
Oakland, CA 94621
 Phone: 510-562-0581

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

Professional Services Contract

8. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
9. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all professional service contracts over the informal bidding threshold (Public Contract Code Section 20111). Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. A copy of the District's S/SL/SLRBE Policy can be obtained for the OUSD website: www.ousd.k12.ca.us
- a. For purposes of establishing a threshold for determining the application of the L/SL/SLRBE Program only, informal professional service contracts are valued at or under the current year's threshold pursuant to Public Contract Code Section 20111. (For 2009 the threshold is \$76,700, subject to change in 2010). All professional services contracts below the current threshold must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.
 - b. In light of the twenty percent L/SL/SLRBE participation requirement for formally bid professional service contracts, good faith effort documentation is not necessary.
 - c. Upon satisfying the twenty percent requirement, a Contractor will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
 - d. *Joint Venture and Mentor Protégé Agreements.* If a professional services contractor is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified SLBE or SLRBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval by proposal due date for professional services contracts. Joint Venture Applications and elements of a District approved Mentor Protégé relation are available upon request.
10. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.

Contractor initial: KY

In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONSULTANT related persons, employee, representative or agent from an OUSD school site and, or property, CONSULTANT shall immediately upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

11. **Insurance:**

11.1 Without in any way limiting CONTRACTOR's liability under any other section of this Agreement, CONTRACTOR will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

11.1.1 Workers' Compensation Employers' Liability limits not less than each \$1,000,000 each accident, per disease, and aggregate. CONTRACTOR's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event CONTRACTOR is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

11.1.2 CONTRACTOR's right to self-insure is subject to approval by the District. As a condition to such approval, CONTRACTOR shall submit to the District evidence that CONTRACTOR maintains sufficient financial resources for said self-insurance.

11.1.3 Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. This liability insurance shall include but shall not be limited to protection against claims arising from

Professional Services Contract

bodily and personal injury (including death resulting therefrom) and damage to property resulting from CONTRACTOR's or subcontractor's or sub-CONTRACTOR's operations.

11.1.4 Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

11.2 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

11.2.1 Name as Additional Insured District, its Directors, Officers, Employees, Agents, and Representatives.

11.2.2 That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

11.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to District of cancellation, non-renewal or reduction in coverage, and certificates of all policies and endorsements shall be mailed to the following address:

Timothy E. White, Assistant Superintendent
Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, California 94601

11.4 Insurance shall be provided by an admitted California insurance company with a current Best's Key Rating of A minus (A-) or better. Should any of the required insurance be provided under a claims-made form, CONTRACTOR shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

11.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.6 Certificates of insurance evidencing all coverage's above shall be furnished to District before commencing any operations under this Agreement, with complete copies of policies promptly upon District request. Approval of the insurance by District shall not relieve or decrease the liability of CONTRACTOR hereunder.

11.7 District may, at its sole option, terminate this Agreement immediately, without notice to CONTRACTOR and without opportunity to cure the default, in the event of any lapse of required insurance coverage. District may, at its sole option, secure sufficient insurance coverage to replace any required insurance coverage, which has lapsed, and CONTRACTOR hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage. CONTRACTOR shall be responsible for any and all uninsured losses.

11.8 If CONTRACTOR is an association, joint venture or partnership, the association, joint venture or partnership shall be insured by any one of the following methods:

10.8.1 Separate insurance policies issued with the association, joint venture or partnership as named insured; All insurance policies required by this Agreement of one of the participants to include the association, joint venture or partnership as named insured; The association, joint venture or partnership must be a named insured on all of the policies required by this Agreement.

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

13. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.

14. **Anti-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s).

15. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.

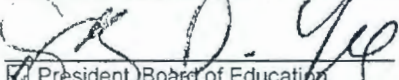
16. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from:
- any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement ;
 - CONTRACTOR shall indemnify, defend, and hold District, its directors, officers, agents, employees and representatives harmless from and against all claims, demands and judgments of any description arising out of or alleged to have arisen out of performance or nonperformance of the services under this Agreement to the extent that such claims, demands and judgments are the result of any error, omission or negligent act of CONTRACTOR or any person employed or agent engaged by CONTRACTOR.
 - CONTRACTOR shall place in its sub contracting / sub-consulting agreements and cause its sub-contractors / sub-CONTRACTORS to agree to indemnities, defense and insurance obligations in the exact form and substance of those contained herein, each naming the District as an additional beneficiary or insured.
17. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD 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 OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
18. **Suspension of Work:** District may, without cause, order CONTRACTOR, in writing, to suspend, delay or interrupt the Work, for such periods of time as District may determine, in its sole discretion. Suspension shall be effected by delivery to CONTRACTOR of notice of suspension specifying the extent to which performance of the Work under the Agreement is suspended, and the date upon which suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered.
19. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
20. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
21. **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.
22. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate the CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:
- Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
23. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD'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 OUSD 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.
24. **Confidentiality.** The CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
25. **Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement.
- CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

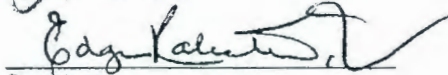
Professional Services Contract

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD of this information.

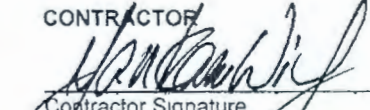
- 26. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 27. **Litigation:** If any litigation is initiated to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. This Agreement shall be performed in Oakland, CA and is governed by the laws of the State of California.
- 28. **Approval:** This Agreement is not effective and no payment shall be made to CONTRACTOR until it is approved. Approval requires signature by the State Administrator, the Board of Education, and/or the Interim Superintendent as their designee.
- 29. **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 given the proper authority and empowered to enter into this Agreement.
- 30. **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.
- 31. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

OAKLAND UNIFIED SCHOOL DISTRICT


 President, Board of Education
 Superintendent
Date: 1/13/11


Secretary,
Board of Education
Date: 1/13/11

CONTRACTOR


Contractor Signature
Date: 12/9/2010

KAM TEN, PRINCIPAL
Print Name, Title


Assistant Superintendent, Date
Department of Facilities Planning and Management

10-3024
Introduction Date: 1-4-2011
Exemption No. 11-0077
Exemption Date: 1-12-11
Be

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR's entire Proposal is made part of this Agreement.

SCOPE OF WORK

Contractor Name: Kam Yan & Associates

Billing Rate: Seven thousand, five hundred dollars and no cents (\$7,500.00)

Description of Services to be Provided

Kam Yan and Associates is to provide engineering service with the scope of work including a study/investigation report and construction documents for four (4) existing stadium light poles at Castlemont High School per the attached proposal.

Notice: This page includes two separate forms.

Directions:

CONTRACTOR Type	Directions
Contractors with employees	<ul style="list-style-type: none"> ✓ Complete Workers' Compensation Certification below ✓ Attach proof of general liability and workers' compensation insurance
Contractors with no employees	<ul style="list-style-type: none"> ✓ Complete Workers' Compensation Certification below ✓ Either attach proof of general liability insurance or, if eligible, complete request for waiver below.

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:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- 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 its employees.

Check only one of the boxes below.

<input checked="" type="checkbox"/> 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.	<input type="checkbox"/> I do not employ anyone in the manner subject to the workers' compensation laws of California.
---	--

CONTRACTOR Name: KAM YAN & Associates

Contractor Signature: *[Signature]* Date: 12/9/2010

Print Name and Title: KAM YAN, PRINCIPAL

(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 OUSD prior to performing any Work under this Contract.)

GENERAL LIABILITY INSURANCE WAIVER REQUEST FORM

The following conditions must be satisfied in order to qualify for a waiver of Oakland Unified School District's requirement of general liability insurance requirement: <ol style="list-style-type: none"> 1. Contract is for less than \$15,000 2. Good history with the District. If the contractor has worked with OUSD in the past they received a good evaluation and there were no prior complaints, problems or injuries from prior contracts.
--

I request a waiver of the general liability insurance requirement. I certify that I meet the above criteria.

CONTRACTOR Name: KAM YAN & Associates

Contractor Signature: *[Signature]* Date: 12/9/2010

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 certifies that it 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):

The 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

NA 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: KAM YAN

Title: principal

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: 12/9/2010

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
12/13/2010

PRODUCER
Dealey, Renton & Associates
P. O. Box 12675 Attn: KXC
Oakland, CA 94604-2675
510 465-3090

INSURED
Kam Yan & Associates
433 Hegenberger Road, Suite 204
Oakland, CA 94621

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: Hartford Casualty Insurance Co.
INSURER B: Beazley Insurance Company, Inc.
INSURER C:
INSURER D:
INSURER E:

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	57SBAAU9584	08/13/10	08/13/11	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$2,000,000
					PRODUCTS -COMP/OP AGG	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC AGG	\$
						\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	
					OTH-ER	
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
B	OTHER Professional Liability	V107C1100101	04/01/10	04/01/11	\$1,000,000 per claim \$1,000,000 anni aggr.	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
General Liability policy excludes claims arising out of the performance of professional services.
RE: Castlemont High School
(See Attached Descriptions)

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
Oakland Unified School Dist. Attn: Susie Berkeley 955 High Street Oakland, CA 94601		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Naomi M. Bassett</i>

DESCRIPTIONS (Continued from Page 1)

GENERAL LIABILITY ADDITIONAL INSUREDS: Oakland Unified School District and its directors, officers, employees, agents and representatives

BUSINESS LIABILITY ADDITIONAL INSURED: The Certificate Holder and any other person named in the written contract between the Named Insured and the Certificate Holder. The coverage afforded is pursuant to Section C., Who Is An Insured, Sub-Section 6., Additional Insureds When Required By Written Contract, Written Agreement Or Permit, Subsection f. Any Other Party of the Business Liability Coverage Form, Form No. SS 00 08.

EXCERPTS FROM: Hartford Form SS 00 08 04 05

BUSINESS LIABILITY COVERAGE FORM

C. WHO IS AN INSURED

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit. A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury, "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products- completed operations hazard, but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to: "Bodily injury, "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including: inspection, or engineering

E.5. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

E.7.b.(7).(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

E.8.b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.