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| Board Office Use: Legislative File Info. |            |
| File ID Number                           | 17- 2443   |
| Introduction Date                        | 12-13-2017 |
| Enactment Number                         | 17-1734    |
| Enactment Date                           | 12/13/17   |



# 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 *JDD*

**Board Meeting Date** December 13, 2017

**Subject** Independent Consultant Agreement less than \$88,300- Byrens Kim Design Works - Ralph Bunche Kitchen Project

**Action Requested** Approval by the Board of Education of an Agreement for Architectural Services between the District and Byrens Kim Design Works, Oakland, CA, for the latter to provide provision and review to existing cafeteria/food service area; potential DSA project impact; potential ACEH project impact; generate project budget and project schedule, in conjunction with the Ralph Bunche Kitchen Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing December 14, 2017 and concluding no later than April 30, 2018, in an amount not-to exceed \$21,100.00.

**Discussion** Design services are required for updating the existing kitchen space into a CTE classroom for culinary program.

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of an Agreement for Architectural Services between the District and Byrens Kim Design Works, Oakland, CA, for the latter to provide provision and review to existing cafeteria/food service area; potential DSA project impact; potential ACEH project impact; generate project budget and project schedule, in conjunction with the Ralph Bunche Kitchen Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing December 14, 2017 and concluding no later than April 30, 2018, in an amount not-to exceed \$21,100.00.

**Fiscal Impact** Fund 25, *Capital facilities Fund*

**Attachments**

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



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

**Legislative File ID No.** \_\_\_\_\_

**Department:** Facilities Planning and Management \_\_\_\_\_

**Vendor Name:** Byrens Kim \_\_\_\_\_

**Project Name:** Ralph Bunche Remove Existing Kitchen **Project No.:** 17114 \_\_\_\_\_

**Contract Term:** Intended Start: 10/30/2017 Intended End: 4/30/2018 \_\_\_\_\_

**Annual (if annual contract) or Total (if multi-year agreement) Cost:** \$21,100.00 \_\_\_\_\_

**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?**

RFQ went out for vendor selection

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

- Consider update of existing serving kitchen to full service CTE Kitchen with cooking equipment.
- Review existing cafeteria/food service area. Consider opportunities for-enlargement including conversion of adjacent classroom(s).
- Review potential DSA project impact.
- Review potential Alameda County Environmental Health project impact.
- Generate project budget
- Generate project schedule.

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

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$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 AGREEMENT FOR PROFESSIONAL SERVICES**  
**Under \$88,300**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **15th day of November 2017**, by and between the **Oakland Unified School District** ("District") and **Byrens Kim Design Works**, ("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 work to review existing cafeteria/food service area; potential DSA project impact; potential ACEH project impact; generate project budget and project schedule.

2. **Term.** Consultant shall commence providing Services under this Agreement on **December 14, 2017**, and will diligently perform as required and complete performance by **April 30, 2018**, 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  | Other: _____  |
| <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 Twenty-one thousand, one hundred and NO/100 Dollars (\$21,100.00), 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](http://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 |
|---|---------------------|
| <b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments |                     |
| Each Occurrence   | \$ 1,000,000        |
| General Aggregate   | \$ 2,000,000        |
| <b>Automobile Liability Insurance - Any Auto</b>  |                     |
| Each Occurrence   | \$ 1,000,000        |
| General Aggregate   | \$ 2,000,000        |
| <b>Professional Liability</b>   | \$ 1,000,000        |
| <b>Workers Compensation</b>   | Statutory Limits    |
| <b>Employer's Liability</b>   | \$ 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

Byrens Kim Design Works  
681 4<sup>th</sup> Street  
Oakland, CA 94607  
Tel: 510-452-3224  
ATTN: Dong Kim

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**

[Signature] 12/14/17  
Date  
James Harter, President, Board of Education

[Signature] 12/14/17  
Date  
Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education

[Signature] \_\_\_\_\_  
Date  
Joe Dominguez, Deputy Chief, Facilities Planning and Management

**APPROVED AS TO FORM:**

[Signature] 11/14/17  
Date  
OUSD Facilities Legal Counsel

**CONSULTANT**

[Signature] 10/16/17  
Date

**Information regarding Consultant:**

Consultant: BYRENS KIM DESIGN WORKS  
License No.: C-30987  
Address: 681 4th Street  
Oakland, CA 94607  
Telephone: 510-452-3224  
Facsimile: 510-452-2744  
E-Mail: dongk@byrenskim.com

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

27-1659543 :  
Employer Identification and/or  
Social Security Number  
**NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 In relevant part provides:

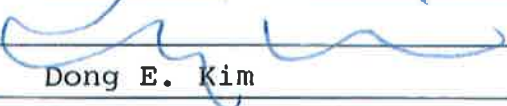
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: November 16, 2017

Proper Name of Consultant: BYRENS KIM DESIGN WORKS

Signature: 

Print Name: Dong E. Kim

Title: President

(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 16<sup>th</sup> day of November 2017 for the purposes of submission of this Agreement.

By:

  
\_\_\_\_\_  
Signature

Dong E. Kim

\_\_\_\_\_  
Typed or Printed Name

President

\_\_\_\_\_  
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: November 16, 2017

Name of Consultant: BYRENS KIM DESIGN WORKS

Signature: 

Print Name and Title: Dong E. Kim, President



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

- SCOPE OF SERVICES
- See attachment

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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

| <b>PRODUCER</b><br>Dealey, Renton & Associates<br>P. O. Box 12675<br>Oakland, CA 94604-2675<br>510 465-3090 | <b>CONTACT NAME:</b> Nancy Ferrick<br><b>PHONE (A/C, No, Ext):</b> 510 465-3090<br><b>E-MAIL ADDRESS:</b> nferrick@dealeyrenton.com   | <b>FAX (A/C, No):</b> 510 452-2193 |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
|---|---|------------------------------------|-------------------------------|--------|--|-------|---|-------|---------------------------------|-------|-------------|--|-------------|--|-------------|
|   | <table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Sentinel Insurance Co. LTD</td> <td>11000</td> </tr> <tr> <td>INSURER B : Hartford Ins. Co of Midwest</td> <td>37478</td> </tr> <tr> <td>INSURER C : Wesco Insurance Co.</td> <td>25011</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table> |                                    | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A : Sentinel Insurance Co. LTD | 11000 | INSURER B : Hartford Ins. Co of Midwest | 37478 | INSURER C : Wesco Insurance Co. | 25011 | INSURER D : |  | INSURER E : |  | INSURER F : |
| INSURER(S) AFFORDING COVERAGE   | NAIC #  |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER A : Sentinel Insurance Co. LTD  | 11000   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER B : Hartford Ins. Co of Midwest   | 37478   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER C : Wesco Insurance Co.   | 25011   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER D :   |   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER E :   |   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |
| INSURER F :   |   |                                    |                               |        |  |       |   |       |                                 |       |             |  |             |  |             |


**INSURED** **Byrens Kim Design Works**  
681 - 4th Street  
Oakland, CA 94607

**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 INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|---|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: | X         | X        | 57SBWBG9346   | 09/01/2017              | 09/01/2018              | EACH OCCURRENCE \$2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$2,000,000<br>GENERAL AGGREGATE \$4,000,000<br>PRODUCTS - COMP/OP AGG \$4,000,000<br>\$ |
| A        | AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS   | X         | X        | 57SBWBG9346   | 09/01/2017              | 09/01/2018              | COMBINED SINGLE LIMIT (Ea accident) \$2,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$  |
|          | UMBRELLA LIAB <input type="checkbox"/> OCCUR<br>EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$   |           |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$  |
| B        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  |           | X        | 57WEGGG7714   | 09/01/2017              | 09/01/2018              | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$1,000,000<br>E.L. DISEASE - POLICY LIMIT \$1,000,000                                      |
| C        | Professional Liability  |           |          | ARA112011403  | 06/06/2017              | 06/06/2018              | \$2,000,000 per Claim<br>\$2,000,000 Annl Aggr.   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**Ref: Ralph Bunch CTE Kitchen Feasibility Study. Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives are named as Additional Insureds to General and Auto Liability. Insurance is Primary and Non-Contributory per policy form. A Waiver of Subrogation applies to Workers' Compensation.**

|  |   |
|--|---|
| <b>CERTIFICATE HOLDER</b><br><br>Oakland Unified School District<br>955 High Street<br>Oakland, CA 94601 | <b>CANCELLATION</b><br><br>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<br><br>   |

Insured: Byrens Kim Design Works  
Insurer: Sentinel Insurance Co. LTD  
Policy Date: 09/01/2017  
Policy Number: 57SBWBG9346

Additional Insured: Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives

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.

EXCERPT FROM Hartford Form SS 04 38 09 09

## HIRED AUTO AND NON-OWNED AUTO

B. With respect to the operation of a "non-owned auto", WHO IS AN INSURED is replaced by the following: The following are "insureds":

d. Anyone liable for the conduct of an "insured", but only to the extent of that liability.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WORKERS' COMPENSATION BROAD FORM ENDORSEMENT EXTENDED OPTIONS**

**Policy Number:** 57WEGGG7714

**Effective Date:** 9/1/17

Effective hour is the same as stated on the Information Page of the policy.

**Named Insured and Address:**

Byrens Kim Design Works  
681 - 4th Street  
Oakland, CA 94607

Section I of this endorsement expands coverage provided under WC 00 00 00.

Section II of this endorsement provides additional coverage usually only provided by endorsement.

Section III of this endorsement is a Schedule of Covered States.

You may use the index to locate these coverage features quickly:

### INDEX

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| A. Stop Gap Coverage Limited to<br>Montana, North Dakota, Ohio,<br>Washington, West Virginia and<br>Wyoming | 3           |  |             |

## SECTION I

### PARTS ONE and TWO

#### 1. WE WILL ALSO PAY

**D. We Will Also Pay of Part One (WORKERS' COMPENSATION INSURANCE); and**

**E. We Will Also Pay of Part Two (EMPLOYERS' LIABILITY INSURANCE) is replaced by the following:**

#### **We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, **INCLUDING** loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this law; and
5. expenses we incur.

### PART THREE

#### 2. How This Insurance Applies

Paragraph 4. of **A. How This Insurance Applies of Part 3** (Other States Insurance) is replaced by the following:

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within **sixty** days.

### PART SIX

#### 3. Transfer Of Your Rights and Duties

**C. Transfer Of Your Rights and Duties of Part 6** (Conditions) is replaced by the following:

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within **sixty** days after your death, we will cover your legal representative as insured.

#### 4. Liberalization

If we adopt a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this policy. It will apply when the change becomes effective in your state.

## SECTION II

### VOLUNTARY COMPENSATION AND EMPLOYERS' LIABILITY COVERAGE

#### 5. Voluntary Compensation Insurance

##### **A. How This Insurance Applies**

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by any officer or employee not subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page.
2. The bodily injury must arise out of and in the course of employment or incidental to work in a state shown in Item 3.A. of the Information Page.

3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen, or otherwise legal resident, and legally employed, in the United States or Canada and temporarily away from those places.

4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of the

officer's or employee's employment. The officer's or employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

#### **B. We Will Pay**

We will pay an amount equal to the benefits that would be required of you as if you and your employees were subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page. We will pay those amounts to the persons who would be entitled to them under the law.

#### **C. Exclusion**

This insurance does not cover:

1. any obligation imposed by workers' compensation or occupational disease law or any similar law.
2. bodily injury intentionally caused or aggravated by you.
3. officers or employees who have elected not to be subject to the state workers' compensation law.
4. partners or sole proprietors not covered under the Standard Sole Proprietors, Partners, Officers and Others Coverage Endorsement.

#### **D. Before We Pay**

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

#### **E. Recovery From Others**

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it.

If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

#### **F. Employers' Liability Insurance**

Part Two (Employers' Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment was shown in Item 3.A. of the Information Page.

This provision 5. does not apply in New Jersey or Wisconsin.

### **EMPLOYERS' LIABILITY STOP GAP COVERAGE**

#### **6. Employers' Liability Stop Gap Coverage**

- A. This coverage only applies in Montana, North Dakota, Ohio, Washington, West Virginia and Wyoming.
- B. Part One (Workers' Compensation Insurance) does not apply to work in states shown in Paragraph A above.
- C. Part Two (Employers' Liability Insurance) applies in the states, shown in Paragraph A., as though they were shown in Item 3.A. of the Information Page.

- D. Part Two, Section C. **Exclusions** is changed by adding these exclusions.

This insurance does not cover;

5. bodily injury intentionally caused or aggravated by you or in Ohio bodily injury resulting from an act which is determined by an Ohio court of law to have been committed by you with the belief than an injury is substantially certain to occur. However, the cost of defending such claims or suits in Ohio is covered.

13. bodily injury sustained by any member of the flying crew of any aircraft.

14. any claim for bodily injury with respect to which you are deprived of any defense or defenses or are otherwise subject to penalty because of default in premium under the provisions of the workers' compensation law or laws of a state shown in Paragraph A.

- E. This insurance applies to damages for which you are liable under West Virginia Code Annot. S 23-4-2.

## EXTENDED OPTIONS

### 1. Employers' Liability Insurance

Item 3.B. of the Information Page is replaced by the following:

#### B. Employers' Liability Insurance:

1. Part Two of the policy applies to work in each state listed in Item 3.A.

The Limits of Liability under Part Two are the higher of:

|                                      |                  |                      |
|--------------------------------------|------------------|----------------------|
| <b>Bodily Injury<br/>by Accident</b> | <b>\$500,000</b> | <b>Each Accident</b> |
| <b>Bodily Injury<br/>by Disease</b>  | <b>\$500,000</b> | <b>Policy Limit</b>  |
| <b>Bodily Injury<br/>by Disease</b>  | <b>\$500,000</b> | <b>Each Employee</b> |

OR

2. The amount shown in the Information Page.

This provision 1 of **EXTENDED OPTIONS** does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from **\$500,000** to **\$1,000,000** in California.

### 2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

### 3. Waiver of Our Right To Recover From Others

A. We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

B. This provision 3. does not apply in the states of Pennsylvania and Utah.

### 4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

#### A. How This Reimbursement Applies

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

#### B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

#### C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.

4. liability for any consequence, whether direct or indirect, of war, invasion, act of Foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No endorsement now or subsequently attached to this policy shall be construed as overriding or waiving this limitation unless specific reference is made thereto.

#### **D. Before We Pay**

Before we reimburse you for the benefits to the persons entitled to them, you must have them:

1. release you and us, in writing, of all responsibility for the injury or death,
2. transfer to us their right to recover from others who may be responsible for their injury or death,
3. cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits paid fail to do these things, our duty to reimburse ends at once. If they claim damages from us for the injury or death, our duty to reimburse ends at once.

#### **E. Recovery From Others**

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we reimbursed. We will pay the balance to the persons entitled to it. If persons entitled to the benefits make a recovery from others, they must repay us for the amounts that we have reimbursed you.

#### **F. Reimbursement for Actual Loss Sustained**

This endorsement provides only for reimbursement for the loss you actually sustain. In order for you to recover loss or expenses under this reimbursement you must:

1. actually sustain and pay the loss or expense in money after trial, or
2. secure our consent for the payment of the loss or expense.

#### **G. Repatriation**

Our reimbursement includes the additional expenses of repatriation to the United States

of America necessarily incurred as a direct result of bodily injury.

Our reimbursement shall be limited as follows:

1. to the amount by which such expenses exceed the normal cost of returning the officer or employee if in good health, or
2. in the event of death, to the amount by which such expenses exceed the normal cost of returning the officer or employee if alive and in good health.

In no event shall our reimbursement exceed the bodily injury by accident limit shown in Item 3.B. of the Information Page as respects any one such officer or employee whether dead or alive.

#### **H. Endemic Disease**

The word "disease" includes any endemic diseases.

The coverage applies as if endemic diseases were included in the provisions of the workers' compensation law.

#### **5. Longshore and Harbor Workers' Compensation Act Coverage**

**General Section C. Workers' Compensation Law** is replaced by the following:

##### **C. Workers' Compensation Law**

Workers' Compensation Law means the workers or workers' compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workers' compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers' Liability Insurance), C. Exclusions, exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.

This coverage does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.



**SECTION III**

**1. SCHEDULE OF COVERED STATES**

A. This endorsement only applies in the states listed in this Schedule of Covered States.

B. If a state, shown in Item 3.A. of the Information Page, approves this endorsement after the effective date of this policy, this endorsement will apply to this policy. The coverage will apply in the new state on the effective date of the state approval.

C. Schedule of Covered States:

Countersigned by \_\_\_\_\_ Authorized Representative



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

|                     |                      |             |     |
|---------------------|----------------------|-------------|-----|
| <b>Project Name</b> | Ralph Bunche Kitchen | <b>Site</b> | 309 |
|---------------------|----------------------|-------------|-----|

### Basic Directions

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

|                             |   |
|-----------------------------|---|
| <b>Attachment Checklist</b> | <input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000<br><input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider |
|-----------------------------|---|

### Contractor Information

|                           |   |                         |   |              |              |
|---------------------------|---|-------------------------|---|--------------|--------------|
| <b>Contractor Name</b>    | Byrens Kim Design Works   | <b>Agency's Contact</b> | Dong Kim  |              |              |
| <b>OUSD Vendor ID #</b>   | I009281   | <b>Title</b>            | Project Manager   |              |              |
| <b>Street Address</b>     | 681 4 <sup>th</sup> Street  | <b>City</b>             | Oakland   | <b>State</b> | CA Zip 94621 |
| <b>Telephone</b>          | 510-452-3224  | <b>Policy Expires</b>   | 6-6-2018  |              |              |
| <b>Contractor History</b> | 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 |              |              |
| <b>OUSD Project #</b>     | 17114   |                         |   |              |              |

### Term

|                             |            |   |           |
|-----------------------------|------------|---|-----------|
| <b>Date Work Will Begin</b> | 12-14-2017 | <b>Date Work Will End By</b><br>(not more than 5 years from start date) | 4-30-2018 |
|-----------------------------|------------|---|-----------|

### Compensation

|                                      |    |                                     |             |
|--------------------------------------|----|-------------------------------------|-------------|
| <b>Total Contract Amount</b>         | \$ | <b>Total Contract Not To Exceed</b> | \$21,100.00 |
| <b>Pay Rate Per Hour (if Hourly)</b> | \$ | <b>If Amendment, Changed Amount</b> | \$          |
| <b>Other Expenses</b>                |    | <b>Requisition Number</b>           |             |

### Budget Information

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

| Resource # | Funding Source | Org Key    | Object Code | Amount      |
|------------|----------------|------------|-------------|-------------|
| 0000       | Fund 25        | 3099000831 | 6215        | \$21,100.00 |

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

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

|    |  |                      |              |            |              |
|----|--|----------------------|--------------|------------|--------------|
|    | <b>Division Head</b>   | <b>Phone</b>         | 510-535-7038 | <b>Fax</b> | 510-535-7082 |
| 1. | <b>Director, Facilities Planning and Management</b>                      |                      |              |            |              |
|    | <b>Signature</b>   | <b>Date Approved</b> | 11/16/17     |            |              |
| 2. | <b>General Counsel, Department of Facilities Planning and Management</b> |                      |              |            |              |
|    | <b>Signature</b>   | <b>Date Approved</b> | 11/16/17     |            |              |
| 3. | <b>Deputy Chief, Facilities Planning and Management</b>                  |                      |              |            |              |
|    | <b>Signature</b>   | <b>Date Approved</b> |              |            |              |
| 4. | <b>Senior Business Officer, Board of Education</b>                       |                      |              |            |              |
|    | <b>Signature</b>   | <b>Date Approved</b> |              |            |              |
| 5. | <b>President, Board of Education</b>                                     |                      |              |            |              |
|    | <b>Signature</b>   | <b>Date Approved</b> |              |            |              |