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| <b>Board Office Use: Legislative File Info.</b> |              |
| File ID Number                                  | 13-0238      |
| Committee                                       | Facilities   |
| Introduction Date                               | 2-13-2013    |
| Enactment Number                                | 13-0346      |
| Enactment Date                                  | 2/13/13 O.A. |



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

## Memo

**To** Board of Education

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

**Board Meeting Date** February 13, 2013

**Subject** Independent Consultant Agreement for Professional Services - Byrens Kim Design Works - Westlake Middle School Modernization Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Byrens Kim Design Works for Structural Calculations Services on behalf of the District at the Westlake Middle School Modernization Project, in an amount not-to exceed \$2,000.00. The term of this Agreement shall commence on February 13, 2013 and shall conclude no later than April 17, 2013.

**Background** The testing lab was not contacted during construction to provide the welding inspection required by Division of State Architect Form 103.

**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 an Independent Consultant Agreement for Professional Services with Byrens Kim Design Works for Structural Calculations Services on behalf of the District at the Westlake Middle School Modernization Project, in an amount not-to exceed \$2,000.00. The term of this Agreement shall commence on February 13, 2013 and shall conclude no later than April 17, 2013.

**Fiscal Impact**

The funding source for this project is General Obligation Bond-Measure B

**Attachments**

- Independent Consultant Agreement including scope of work

## INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

### Westlake Middle School Modernization

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 7<sup>th</sup> day of January, 2013 by and between the Oakland Unified School District, Oakland, California ("District") and Byrens Kim Design Works ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

**Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

**The scope of the project is to provide structural justification by Division of State Architect for the Westlake Middle School project.**

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

**The project will commence February 13, 2013 and conclude no later than April 17, 2013.**

3. **Submittal of Documents.** The Consultant shall not commence the Work 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:

|              |   |
|--------------|---|
| <u>  X  </u> | Signed Agreement                        |
| <u>  X  </u> | Workers' Compensation Certification     |
| <u>  X  </u> | Insurance Certificates and Endorsements |

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Two thousand dollars and no cents (\$2,000.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred

Byrens Kim Design Works  
Westlake Middle School Modernization Project  
Project Number: 03036

by Consultant in performing services for District, except as follows: Not applicable.

6. **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 work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **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, except as follows: Not applicable.
8. **Performance of Services.**
  - 8.1. **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.
  - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
  - 8.3. **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.
  - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **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.
10. **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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any

purpose and in any medium.

11. **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 five (5) 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.

12. **Termination.**

12.1. **Without Cause 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 days after the day of mailing, whichever is sooner.

12.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) 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 thirty (30) 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 service 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.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives,

officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

**14. Insurance.**

14.1. The 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 shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

**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   | \$ 1,000,000        |
| <b>Automobile Liability Insurance - Any Auto</b>  |                     |
| Each Occurrence   | \$ 1,000,000        |
| General Aggregate   | \$ 1,000,000        |
| <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.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates

indicating the required coverage 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 the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured 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.

14.2.4. All policies except the Professional Liability Policy 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 rules and regulations of the governing board of the District and all 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 Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is 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 Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant 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.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **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.

19. **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, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age 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).

20. **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.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant 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. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us)
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 way the District is entitled pursuant to applicable 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. **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. Consultant 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.

27. **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:

**District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
ATTN: **Tadashi Nakadegawa,**  
**Director of Facilities**

**Consultant:**

Dong Kim  
Byrens Kim Design Works  
361-17<sup>th</sup> Street  
Oakland, CA 94601

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.

28. **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.

29. **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 administrative offices are located.

30. **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.

31. **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.

32. **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.

33. **Attorney 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.

34. **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.


**35.Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

**36.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.

**37.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.

**38.Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**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](http://www.epls.gov/epls/search.do).**

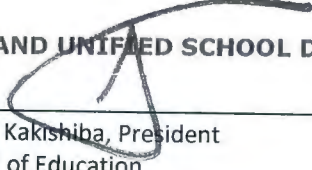


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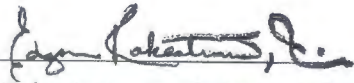
**Susie Butler-Berkley**  
**Contract Analyst**

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

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
David Kakishiba, President  
Board of Education

Date: 2/14/13

  
\_\_\_\_\_  
Edgar Rakestraw, Jr., Secretary, Board of Education

Date: 2/14/13

  
\_\_\_\_\_  
Timothy White, Associate Superintendent Facilities  
Planning and Management

Date: \_\_\_\_\_

**(Consultant Name)**

  
\_\_\_\_\_  
Dong E. Kim, President  
BYRENS KIM DESIGN WORKS

1/15/13

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Catherine Boskoff, Facilities Counsel

Date: 1-23-13

File ID Number: 13-0238  
Introduction Date: 2/13/13  
Enactment Number: 13-0346  
Enactment Date: 2/13/13  
By: o.k.

EXHIBIT A



December 17, 2012

Tadashi Nakadegawa  
Oakland Unified School District  
955 High Street  
Oakland, CA 94601

**RE: Proposal for Structural Calculation for  
Westlake Middle School DSA #01-107355 Project Closeout**

Dear Tadashi,

We are providing this proposal to furnish structural justification requested by DSA to close out the Westlake Middle School Project, DSA #01-107355.

We understand that the testing lab was not contacted during the construction to provide the welding inspections required per the DSA 103.

Upon our engineer's discussion with Michael Fretz, the DSA Field Engineer, we understand that we may be able to provide calculations to justify minimum force transfer through the column connections; hence negating the testing requirement. This proposal is to perform the calculation and to submit to DSA for review.

Please note that additional requirements may be imposed by DSA upon the review.

I am providing this proposal to cover the following:

- Provide Structural Calculations
- Submittal To DSA for Review

|                        |                   |
|------------------------|-------------------|
| Structural Engineering | \$2,000.00        |
| <b>TOTAL</b>           | <b>\$2,000.00</b> |

We can initiate the work upon your acceptance of the proposal.

Thank you for your consideration.

Cordially,

Dong E Kim, AIA, LEED AP  
Vice President

**Information regarding Consultant:**

Consultant: BYRENS KIM DESIGN WORKS

License No.: C-30987

Address: 361 17th Street  
Oakland, CA 94612

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: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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**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: January 15, 2013

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.)

**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 Consultant 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 Consultant.

Consultant 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 Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' 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 Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

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

Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant 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 Consultant's employees and its sub-consultants' employees is

Name: Dong E. Kim


Title: President

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

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: January 15, 2013

Proper Name of Consultant: BYRENS KIM DESIGN WORKS

Signature: 

Print Name: Dong E. Kim

Title: President

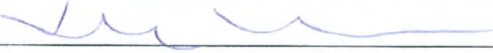
Byrens Kim Design Works  
Westlake Middle School Modernization Project  
Project Number: 03036

**DRUG/SMOKE-FREE WORKPLACE CERTIFICATION**

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: January 15, 2013

Proper Name of Consultant: BYRENS KIM DESIGN WORKS

Signature: 

Print Name: Dong E. Kim

Title: President



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

Consultant's entire Proposal is not made part of this Agreement.

**(PLEASE SEE THE ATTACHED PROPOSAL FROM Byrens Kim Design Works)**

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
1/15/13


|   |   |
|---|---|
| <b>PRODUCER</b><br>Dealey, Renton & Associates<br>P. O. Box 12675<br>Oakland, CA 94604-2675<br>510 465-3090 | 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. |
|   | <b>INSURERS AFFORDING COVERAGE</b>  |
| <b>INSURED</b><br>Byrens Kim Design Works<br>361 - 17th Street<br>Oakland, CA 94612                         | INSURER A: <b>Travelers Property Casualty Co</b>  |
|   | INSURER B: <b>Everest National Ins Co</b>   |
|   | 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  | 6808718N839   | 09/01/12                         | 09/01/13                          | EACH OCCURRENCE \$2,000,000                                     |
|          | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY   |               |                                  |                                   | FIRE DAMAGE (Any one fire) \$1,000,000                          |
|          | <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR   |               |                                  |                                   | MED EXP (Any one person) \$10,000                               |
|          |  |               |                                  |                                   | PERSONAL & ADV INJURY \$2,000,000                               |
|          |  |               |                                  |                                   | GENERAL AGGREGATE \$4,000,000                                   |
|          |  |               |                                  |                                   | PRODUCTS - COMPI/OP AGG \$4,000,000                             |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <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) \$                               |
|          | GARAGE LIABILITY   |               |                                  |                                   | AUTO ONLY - EA ACCIDENT \$                                      |
|          | <input type="checkbox"/> ANY AUTO  |               |                                  |                                   | OTHER THAN EA ACC \$<br>AUTO ONLY: AGG \$                       |
|          | EXCESS LIABILITY   |               |                                  |                                   | EACH OCCURRENCE \$  |
|          | <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  |               |                                  |                                   | AGGREGATE \$  |
|          | <input type="checkbox"/> DEDUCTIBLE  |               |                                  |                                   | \$  |
|          | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  |               |                                  |                                   | RETENTION \$  |
|          |  |               |                                  |                                   | WC STATUTORY LIMITS OTH-ER                                      |
|          |  |               |                                  |                                   | E.L. EACH ACCIDENT \$   |
|          |  |               |                                  |                                   | E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$ |
| B        | OTHER Professional Liability   | 79AE001509121 | 06/06/12                         | 06/06/13                          | \$2,000,000 per claim<br>\$2,000,000 annl aggr.                 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 General Liability excludes claims arising out of the performance of professional services.  
**PROJECT NAME:** Westlake Middle School Modernization - Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives are named as Additional Insureds to General and Auto Liability per policy form wording. Insurance is Primary and Non-Contributory.

|   |  |   |
|---|--|---|
| <b>CERTIFICATE HOLDER</b><br>Oakland Unified School Dist.<br>Divs. of Facilities Planning & Mgt.<br>Attn: Susie Butler-Berkley, Contract Analyst<br>955 High Street<br>Oakland, CA 94601-0000 | <b>ADDITIONAL INSURED; INSURER LETTER:</b> | <b>CANCELLATION</b><br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL <del>SEND BY MAIL</del> <b>30</b> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY <del>MAIL TO THE CERTIFICATE HOLDER</del> |
|   |  | AUTHORIZED REPRESENTATIVE<br>   |

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

## DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|  |                                       |
|--|---------------------------------------|
| Endorsement effective                    |                                       |
| Named Insured<br>Byrens Kim Design Works | Countersigned by <i>Michelle C...</i> |

(Authorized Representative)

### SCHEDULE

**Name of Person(s) or Organization(s):**

PROJECT NAME: Westlake Middle School Modernization \*\*\* Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

POLICY NUMBER: 6808718N839

COMMERCIAL GENERAL LIABILITY  
ISSUE DATE: 09/01/12

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

## **ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**NAME OF PERSON(S) OR ORGANIZATION(S):** Oakland Unified School Dist.  
Divs. of Facilities Planning & Mgt.  
Attn: Susie Butler-Berkley, Contract Analyst  
955 High Street

**PROJECT/LOCATION OF COVERED OPERATIONS:**

PROJECT NAME: Westlake Middle School Modernization \*\*\* Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives

### **PROVISIONS**

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, 'property damage' or 'personal 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 premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

## COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

## INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

| Project Information  |   |             |                        |
|--|---|-------------|------------------------|
| <b>Project Name</b>  | Westlake Middle School Modernization  | <b>Site</b> | Westlake Middle School |
| 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 |   |                  |   |       |    |     |       |
|------------------------|---|------------------|---|-------|----|-----|-------|
| Contractor Name        | Byrens Kim Design Works   | Agency's Contact | Dong Kim  |       |    |     |       |
| OUSD Vendor ID #       | 1009281   | Title            | Project Manager   |       |    |     |       |
| Street Address         | 361-17 <sup>th</sup> Street   | City             | Oakland   | State | CA | Zip | 94601 |
| Telephone              | 510-452-3224  | Policy Expires   | 9-1-2013  |       |    |     |       |
| Contractor History     | Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |                  | Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |       |    |     |       |
| OUSD Project #         | 03036   |                  |   |       |    |     |       |

| Term                 |           |   |           |
|----------------------|-----------|---|-----------|
| Date Work Will Begin | 2-13-2013 | Date Work Will End By<br><small>(not more than 5 years from start date)</small> | 4-17-2013 |

| Compensation                  |    |                              |             |
|-------------------------------|----|------------------------------|-------------|
| Total Contract Amount         | \$ | Total Contract Not To Exceed | \$ 2,000.00 |
| Pay Rate Per Hour (If Hourly) | \$ | If Amendment, Changed Amount | \$          |
| Other Expenses                |    | Requisition Number           |             |

| Budget Information  |                |            |             |            |
|---|----------------|------------|-------------|------------|
| <i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i> |                |            |             |            |
| Resource #  | Funding Source | Org Key    | Object Code | Amount     |
| 9399, 9599, 9699  | Measure B      | 2139901811 | 6215        | \$2,000.00 |

| Approval and Routing (in order of approval steps)  |  |   |              |               |                         |
|--|--|---|--------------|---------------|-------------------------|
| <small>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.</small> |  |   |              |               |                         |
|  | <b>Division Head</b>   | Charles Love  | <b>Phone</b> | 510-535-7081  | <b>Fax</b> 510-535-7082 |
| 1.   | <b>Capital Program Contract &amp; Accounting Manager</b>                 |   |              |               |                         |
|  | Signature  |  |              | Date Approved | 1-16-13                 |
| 2.   | <b>General Counsel, Department of Facilities Planning and Management</b> |   |              |               |                         |
|  | Signature  |  |              | Date Approved | 1-23-13                 |
| 3.   | <b>Associate Superintendent, Facilities Planning and Management</b>      |   |              |               |                         |
|  | Signature  |  |              | Date Approved |                         |
| 4.   | <b>President, Board of Education</b>                                     |   |              |               |                         |
|  | Signature  |   |              | Date Approved |                         |