

Board Office Use: Legislative File Info.	
File ID Number	12-3083
Committee	Facilities
Introduction Date	12-12-2012
Enactment Number	12-2999
Enactment Date	12-12-12



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 December 12, 2012

Subject Small Design Contract - Byrens Kim Design Works - Division of Facilities Planning and Management Project

Action Requested Approval by the Board of Education of Amendment No. 1, Professional Services Agreement with Byrens Kim Design Works Project for Design Services on behalf of the District at Chabot Caldecott Tunnel Air Quality Grant Project, in an amount not-to exceed \$4,439.78 increasing previous contract amount from \$31,700.00 to a not to exceed amount of \$36,139.78 and revising the end date from August 24, 2011 through December 31, 2012 to June 30, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background The replacement of classroom heat radiators with unit ventilators requires Division of State Architect review and approval.

Local Business Participation Percentage 100.00%

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

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



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

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

Recommendation

Approval by the Board of Education of Amendment No. 1, Professional Services Agreement with Byrens Kim Design Works Project for Design Services on behalf of the District at Chabot Caldecott Tunnel Air Quality Grant Project, in an amount not-to exceed \$4,439.78 increasing previous contract amount from \$31,700.00 to a not to exceed amount of \$36,139.78 and revising the end date from August 24, 2011 through December 31, 2012 to June 30, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

County School Facilities Fund

Attachments

- Professional Services Agreement



Community Schools, Thriving Students

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT

2012 NOV - 1 11:22
FACILITIES PLANNING AND MANAGEMENT

This Amendment is entered into between the Oakland Unified School District (OUSD) and Byrens Kim Design Works, OUSD entered into an Agreement with CONTRACTOR for services on December 31, 2012, and the parties agree to amend that Agreement as follows:

1. **Services:** The scope of work is unchanged. **The scope of work has changed.**
If scope of work changed: Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. Attach revised scope of work.
The CONTRACTOR agrees to provide the following amended services: **The scope of the project is to cover revisions to construction documents for submittals to Division of State Architect (DSA) plan review, and DSA plan review application fee.**

2. **Terms (duration):** The term of the contract is unchanged. **The term of the contract has changed.**
If term is changed: The contract term is extended by an additional Six months, and the amended expiration date is June 30, 2013.

3. **Compensation:** The contract price is unchanged. **The contract price has changed.**
If the compensation is changed: The contract price is amended by
 Increase of \$4,439.78 to original contract amount
 Decrease of \$ _____ to original contract amount
and the new contract total is **Thirty-six thousand, one hundred thirty-nine dollars and seventy-eight cents (\$36,139.78)**

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

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

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

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

OAKLAND UNIFIED SCHOOL DISTRICT

CONTRACTOR

Jody London, President, Board of Education

12/13/12
Date

Contractor Signature 10/31/12
Date

Edgar Rakestraw, Jr., Secretary
Board of Education

12/13/12
Date

DONG KIM, PRINCIPAL
Print Name, Title

Timothy White, Associate Superintendent
Facilities, Planning and Management

Date

File ID Number: 12-3083
Introduction Date: 12-12-12
Enactment Number: 12-2999
Enactment Date: 12-12-12
By:

EXHIBIT "A" Scope of Work

Contractor Name:

Billing Rate: Four thousand, four hundred thirty-nine dollars and seventy-eight cents (\$4,439.78)

1. Description of Services to be Provided

The scope of the project is to cover revisions to construction documents for submittals to Division of State Architect (DSA) plan review, and DSA plan review application fee.

2. Specific Outcomes:

The replacement of the radiator's is a safety and health concern that affects the students and staff.

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

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

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

 11-7-2012

Susie Butler-Berkley
Contract Analyst



PROFESSIONAL SERVICES CONTRACT ROUTING FORM

Project Information			
Project Name	Chabot Caldecott Tunnel Air Quality Grant	Site	Chabot Elementary School
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information			
Contractor Name	Byrens Kim Design	Agency's Contact	Dong Kim
OUSD Vendor ID #	I009281	Title	Project Manager
Street Address	361-17 th Street	City	Oakland State CA Zip 94612
Telephone	510-452-3224	Policy Expires	9-1-2011
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 #	07115		

Term			
Date Work Will Begin	8-24-2011	Date Work Will End By <small>(not more than 5 years from start date)</small>	12/31/2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$ 31,700.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.				
Resource #	Resource Name	Org Key	Object Code	Amount
2122	GO Bond-Measure B	1069003890	6215	\$ 31,700.00
				\$

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
	Division Head	Charles Love	Phone	510-879-8389 Fax 510-879-3673
1.	Capital Program Contract & Accounting Manager			
	Signature		Date Approved	5-31-11
2.	General Counsel, Department of Facilities Planning and Management			
	Signature		Date Approved	5-1-11
3.	Assistant Superintendent, Facilities Planning and Management			
	Signature		Date Approved	
4.	President, Board of Education			
	Signature		Date Approved	



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/27/2011

PRODUCER
STEPHANIE R. CANESSA, AGENT LICENSE #0C25369
PO BOX 13206
OAKLAND, CA 94661 (510) 339-4444

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

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURED
BYRENS KIM DESIGN WORKS
361 17TH STREET
OAKLAND, CA 94612

INSURER A: State Farm Fire and Casualty Company 25143
INSURER 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	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 0 BODILY INJURY (Per person) \$ 0 BODILY INJURY (Per accident) \$ 0 PROPERTY DAMAGE (Per accident) \$ 0
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ 0 AGGREGATE \$ 0 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	97-BP-T018-8	09/01/2010	09/01/2011	W/C STATU-TORY LIMITS OTH-FR E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 F.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 JOB: Chabot Caldecott Tunnel Air Quality Grant Project

CERTIFICATE HOLDER**CANCELLATION**

OAKLAND UNIFIED SCHOOL DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS & REPRESENTATIVES
 DEPARTMENT OF FACILITIES PLANNING & MANAGEMENT
 955 HIGH STREET
 OAKLAND, CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 STEPHANIE CANESSA

Stephanie Canessa

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

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

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

Name: _____

Title: _____

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

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

Date: 5/20/11

Notice: This page includes two separate forms.

Directions:

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

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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

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

Check only one of the boxes below.

<input checked="" type="checkbox"/> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.	<input type="checkbox"/> I do not employ anyone in the manner subject to the workers' compensation laws of California.
---	--

CONTRACTOR Name: BYRENS KIM DESIGN WORKS

Contractor Signature:  Date: 5/26/11

Print Name and Title: DONG KIM, ARCHITECT

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

GENERAL LIABILITY INSURANCE WAIVER REQUEST FORM

The following conditions must be satisfied in order to qualify for a waiver of Oakland Unified School District's requirement of general liability insurance requirement:

1. Contract is for less than \$15,000
2. Good history with the District. If the contractor has worked with OUSD in the past they received a good evaluation and there were no prior complaints, problems or injuries from prior contracts.

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

CONTRACTOR Name: _____

Contractor Signature: _____ Date: _____

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

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

SCOPE OF WORK

Contractor Name: Byrens Kim Design Works

Billing Rate: Thirty one thousand and seven hundred dollars and no cents (\$31,700.00)

Description of Services to be Provided

The scope of the project is to provide architectural and engineering services to improve Chabot Elementary School's air quality in accordance with the Caldecott Tunnel Air Quality Grant.

Exhibit A



October 9, 2012

Eric Scheuermann
Oakland Unified School District
955 High Street
Oakland, CA 94601

RE: Amendment Proposal #1 for Division of State Architect Plan Review Fee
for Chabot Elementary School Caldecott Tunnel Air Quality Project
OUSD Project No. 07115

Dear Eric,

I am providing this amendment proposal to cover our direct expenses for revisions to construction documents for submittal to DSA and the Division of State Architect Plan Review Fee.

Revisions to Construction Documents for DSA Review	\$2,000.00
<u>DSA Plan Review Application Fee:</u>	<u>\$2,439.78</u>
Total	\$4,439.78

As requested by you, we paid the plan review fee to expedite the project progress.

Please amend our contract to add \$4,439.78.

Original Contract Amount	\$31,700.00
Amendment No. 1 – Revisions to construction documents for submittal to DSA and DSA Plan Review	\$4,439.78
TOTAL	\$36,139.78

We have already completed the work outlined in this proposal. The documents have been reviewed by DSA and we will be doing the back check as soon as the old DSA number is closed out.

Cordially,

Dong E Kim, AIA, LEED AP
Vice President

Enclosed: DSA Application/Receipt of Material

BYRENS KIM DESIGN WORKS

361 17TH ST.
OAKLAND, CA 94612-3336

2564

8/13/12

Date

11-35/1210
558

Pay to the
Order of Division of the State Architect

\$ 2,439.78

Two Thousand Four Hundred Thirty Nine & 78/100 Dollars

 Security
Features
Details on
back.

Bank of America 

Montclair
1959 Mountain Blvd
Oakland CA
510.649.6600

VALUED
Customer Since
2010

For _____

Paul M. Byrens

⑆ 1 210003581 2564 05585 71910 ⑈

Forward Check

GUARANTEE SERVICE

Board Office Use: Legislative File Info.	
File ID Number	11-2050
Committee	Facilities
Introduction Date	8-16-2011
Enactment Number	11-1572
Enactment Date	8-24-11 <i>JS</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

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

Board Meeting Date August 24, 2011

Subject Professional Services Facilities Contract - Byrens Kim Design Works - Chabot Caldecott Tunnel Air Quality Grant Project

Action Requested Approval by the Board of Education of a Professional Services Facilities Contract with Byrens Kim Design Works for Architect Services on behalf of the District Chabot Caldecott Tunnel Air Quality Grant Project, in an amount not-to exceed \$31,700.00. The term of this Agreement shall commence on August 24, 2011 and shall conclude no later than December 31, 2012.

Background The Caldecott Tunnel Air Quality Grant was made available due to the expansion (4th bore addition) of the Caldecott Tunnel.

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 a Professional Services Facilities Contract with Byrens Kim Design Works for Architect Services on behalf of the District Chabot Caldecott Tunnel Air Quality Grant Project, in an amount not-to exceed \$31,700.00. The term of this Agreement shall commence on August 24, 2011 and shall conclude no later than December 31, 2012.

Fiscal Impact

The funding source for this project is a Grant.

Attachments

- Professional Services Contract including scope of work

Key Code:

1069003890-6215



OAKLAND UNIFIED
SCHOOL DISTRICT

PROFESSIONAL SERVICES FACILITIES CONTRACT

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

1. **Services:** The CONTRACTOR shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Terms:** CONTRACTOR shall commence work on 8-24-2011. The work shall be completed no later than 12-31-2012.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Thirty one thousand and seven hundred dollars and no cents (\$31,700.00). This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

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

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

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

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

4. **Submittal of Documents:** CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
 - Signed Agreement
 - Workers' Compensation Certification
 - Insurance Certificates and Endorsements
5. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of the Agreement *except:* NA
6. **CONTRACTOR Qualifications / Performance of Services.**
 - a. **CONTRACTOR Qualifications.** CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.
 - b. **Standard of Care.** CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

7. **Notices/Invoicing:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

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

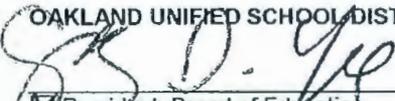
CONTRACTOR:
 Name: Dong Kim
 Title: Project Manager
 Address: 361-17th Street
Oakland, CA 94612
 Phone: 510-452-3224

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

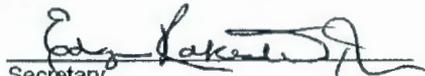
Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 et seq. and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.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

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

OAKLAND UNIFIED SCHOOL DISTRICT


 President, Board of Education
 Superintendent

8/25/11
Date


Secretary,
Board of Education

8/25/11
Date

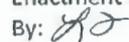
Assistant Superintendent,
Department of Facilities Planning and Management

Date

CONTRACTOR


Contractor Signature 5/26/11
Date

DONG KIM, ARCHITECT
Print Name, Title

File ID Number: 11-2050
Introduction Date: 8-16-11
Enactment Number: 11-1572
Enactment Date: 8-24-11
By: 

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

CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

12. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.
13. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
14. **Anti-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s).
15. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.

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

Contractor initial:

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

11. Insurance:

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

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

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

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

COMMERICAL 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.

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 District
Attn: Susie Butler-Berkley
955 High Street
Oakland, CA 94601-0000

PROJECT/LOCATION OF COVERED OPERATIONS:

NAME OF ADDITIONAL INSURED PERSON(S) OR ORGANIZATIONS CONT'D: 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

DESCRIPTIONS (Continued from Page 1)

as Additional Insureds to General and Auto Liability per policy form wording. Insurance is Primary and Non Contributory.

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ROUTING FORM

Project Information			
Project Name	Chabot Caldecott Tunnel Air Quality Grant	Site	Chabot
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information			
Contractor Name	Byrens Kim Design Works	Agency's Contact	Linda Della Maggiora
OUSD Vendor ID #	1009281	Title	Architect of Record
Street Address	361-17 th Street	City	Oakland
Telephone	510-452-3224	State	CA
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Policy Expires	9-1-2013
OUSD Project #	07115	Worked as an OUSD employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Term			
Date Work Will Begin	12-31-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	6-30-2013

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$36,139.78
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$ 4,439.78
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
3535	County School Facilities	1069003890	6215	\$4,439.78

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>				
	Division Head	Charles Love	Phone	510-879-8389
			Fax	510-879-3673
1.	Capital Program Contract & Accounting Manager		Signature	Date Approved
				11-7-12
2.	General Counsel, Department of Facilities Planning and Management		Signature	Date Approved
				11.8.12
3.	Associate Superintendent, Facilities Planning and Management		Signature	Date Approved
				
4.	President, Board of Education		Signature	Date Approved