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Enactment Date	10/9/13 <i>ah</i>



Memo

To Board of Education

From Dr. Gary Yee, Acting Superintendent and Secretary, Board of Education
 By: Vernon Hal, Deputy Superintendent, Business Operations *VH*
 Timothy White, Associate Superintendent, Facilities Planning and Management *TEW*

Board Meeting Date October 9, 2013

Subject Independent Consultant Agreement for Professional Services - MKThink Roundhouse One -Division of Facilities Planning and Management Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with MKThink Roundhouse One for Asset Management Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$360,000.00. The term of this Agreement shall commence on October 9, 2013 and shall conclude no later than October 9, 2014.

Background MKThink will continue to provide support related to the Asset Management Policy as well as assisting the Board of Education and Facilities Division in its implementation.

Local Business Participation Percentage 0.00% (Sole Source)

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,



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

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 MKThink Roundhouse One for Asset Management Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$360,000.00. The term of this Agreement shall commence on October 9, 2013 and shall conclude no later than October 9, 2014.

Fiscal Impact

General Obligation Bond-Measure B

Attachments

- Independent Consultant Agreement including scope of work

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

Division of Facilities Planning and Management

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **6th day of September, 2013** by and between the Oakland Unified School District, Oakland, California ("District") and **MK Think Roundhouse One** ("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 ongoing strategic consulting to Developing a baseline and then fully developed Educational Specifications for OUSD. Support asset management policy \$135,000.00, update educational spec. \$40,000.00, support Facilities Management System \$60,000.00 and database support \$125,000.00.

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 contract will commence October 9, 2013 and conclude no later than October 9, 2014.

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:

Signed Agreement
 Workers' Compensation Certification
 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 **Three hundred sixty thousand dollars and no cents (\$360,000.00)**. 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 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
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 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
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:

Nate Goore
MK Think Roundhouse One
1500 Sansome Street, 2nd Floor
San Francisco, CA 94111

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.

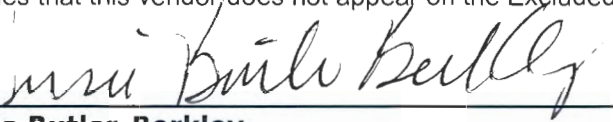
35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

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.

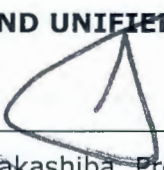
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>



Susie Butler-Berkley
Contract Analyst

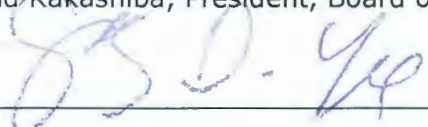
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



David Kakashiba, President, Board of Education

Date: 10/10/13



Dr. Gary Yee, Acting Superintendent and
Secretary, Board of Education

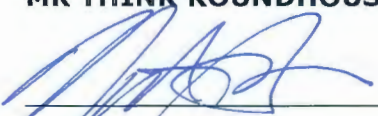
Date: 10/10/13



Timothy White, Associate Superintendent Facilities
Planning and Management

Date: 9/23/13

MK THINK ROUNDHOUSE ONE



Kate Moore, Principal

9/10/13

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 9.17.13

File ID Number: 13-2280
Introduction Date: 10/9/13
Enactment Number: 13-216
Enactment Date: 10/9/13
By: o.s.

Information regarding Consultant:

Consultant: MKThink

License No.: _____

Address: 1500 Sansome St.
San Francisco CA 94111

Telephone: 415 402 0888

Facsimile: 415 288 3393

E-Mail: Mr. goorc@mkthink.com

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: CA
- Limited Liability Company
- Other: _____

94-3358324 :
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.

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

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

- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

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

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: _____

Title: _____

_____ 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 contact 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: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

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: _____

Proper Name of Consultant: _____

Signature: _____

Print Name: _____

Title: _____

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 MK THINK ROUNDHOUSE ONE)

August 2013

August 22, 2013
Mr. Timothy E. White
Assistant Superintendent of Facilities Planning & Management
Oakland Unified School District
955 High Street
Oakland, CA 94601

Dear Mr. White:

Thank you for the opportunity to submit this proposal for ongoing strategic consulting services to OUSD Facilities Planning & Management. MKThink remains committed to assisting the Division in realizing the District's Strategic Vision, implementing the 2012 Facilities Master Plan, and supporting ongoing district initiatives.

This proposal includes work in four interdependent topic areas, each of which focuses on supporting OUSD Facilities Planning & Management through planning & design, stakeholder engagement, data management and organizational guidance. We believe this scope of work will allow the Division to leverage MKThink in support of work on a range of projects based on the evolving needs of the District as a whole.

1: Asset Management

- Provide ongoing strategic guidance on the development and implementation of OUSD's Asset Management policy.
- Provide strategic services related to the redevelopment of 1025 2nd Avenue.
- Provide strategic services related to lease and/or alternate use of underutilized OUSD facilities.
- Support creation of a new Real Estate Manager position.

2: Update, publish, and assist with the implementation of Design Guidelines and Educational Specifications.

- Update and revise Design Guidelines/Ed Specs based on stakeholder feedback.
- Engage with Nutrition Services master planning process to ensure alignment with Central Kitchen planning.
- Engage with Technology Services to ensure alignment with and support of evolving technology standards.
- Engage with Special Education to ensure alignment with Programs for Exceptional Children.

3: Support Facilities Division Management System Improvements

- Assist in the functional analysis of Division operations.
- Help define departmental roles and responsibilities, including engagement with the State of California, OUSD departments, and school communities.
- Make recommendations to optimize management systems.

4: Migrate OUSD 4DPro facilities database to online platform with simplified user interface and improved data-table exporting.

- Develop online database for facility data storage.

- Develop simple, controlled-access web-based platform for data viewing.
- Enable simple querying, filtering, and exporting of data tables.

1: Support Asset Management Policy

1A. Context for Proposed Work

As stated by the OUSD Board of Education's Asset Management Policy: "The physical assets of the Oakland Unified School District shall be managed and maintained as a system to provide safe, secure, healthy, and technologically ready learning environments for students in Oakland's publicly funded schools in alignment with the District's Strategic Plan. To support the District's educational and operational functions, the District shall also use its properties to realize unrestricted revenue to support programs and services for District students."

MKThink will continue to support engagement with the Board of Education, data collection and analysis related to property utilization, and other strategic services associated with achieving the goals established by the Asset Management Policy.

1B. Anticipated Outputs and Outcomes

MKThink will provide support related to the Asset Management Policy as well as assisting the Board of Education and Facilities Division in its implementation. MKThink will also provide support to the District's Real Estate Manager.

Support may include:

- Strategic guidance on the redevelopment of 1025 Second Avenue including:
 - Stakeholder engagement to develop goals and guiding principles for redevelopment plans.
 - Evaluation and cost-benefit analysis of planning alternatives in terms of district goals.
 - Participation in negotiations with potential development partners.
 - Production of digital and print materials associated with public engagement related to 1025 Second Avenue redevelopment.
- Engagement with School Portfolio Management, Special Education, and other departments to ensure alignment between OUSD programs and school facility planning.
- Engagement with potential lease partners at any OUSD-owned site.

2: Update, publish, and assist with the implementation of Design Guidelines and Educational Specifications.

2A. Context for Work

Having completed a multi-phased engagement process to produce OUSD's Design Guidelines and Educational Specifications, MKThink will continue to update and revise these documents as needed during their initial implementation.

2B. Anticipated Outputs and Outcomes

To follow up on the initial writing of the Design Guidelines and Educational Specifications that were produced through collaborative working groups in 2012-2013, MKThink will

- Update and revise Design Guidelines/Ed Specs based on stakeholder feedback during implementation.
- Engage with Nutrition Services master planning process to ensure alignment with Central Kitchen planning.
- Engage with Technology Services to ensure alignment with and support of evolving technology standards.
- Engage with Programs for Exceptional Children to ensure alignment with special program needs.
- Support outreach and engagement with school communities associated with Design Guideline/Ed Spec implementation.

3: Support Facilities Division Management System Improvements

3A. Context for Work

In an effort to optimize the performance of Facilities Division operations in service of OUSD's Strategic Vision, Division leadership has been investigating opportunities to reorganize the organization's management structure. MKThink is eager to continue providing strategic support in this process. MKThink will:

- Assist in the functional analysis of Division operations;
- Help define departmental roles and responsibilities, including those associated with engaging the State of California, OUSD departments, and school communities;
- Make recommendations to optimize management systems.

3B. Anticipated Outputs and Outcomes

As a result of MKThink's participation in the management system improvements, OUSD's Facilities Division will feature:

- Streamlined operations requiring less hands-on oversight from leadership;
- Greater accountability to District leadership and the public;

- Improved employee training and knowledge sharing;
- Improved institutional resiliency to handle changes in staffing and unexpected crises.

4: Migrate OUSD 4DPro facilities database to online platform with simplified user interface and improved data-table exporting.

4A. Context for Work

MKThink's 4DPro facility database consolidates diverse data into a central repository. Although the 4DPro database has been successfully leveraged to help informed strategic decisions, the Facilities Division seeks a revised database platform that provides a simpler user interface and greater flexibility in terms of data editing and exporting. Additionally, this platform should provide web-based access without requiring software installation.

Working closely with OUSD Facilities Division leadership, MKThink will develop an software tool through an iterative process to ensure that the online database fulfills the needs of the Division.

4B. Anticipated Outputs and Outcomes

MKThink will develop a custom web-database for OUSD with information being organized at the school site, building, and room level. The database will also organize some school program information as it is relevant to facility planning. Users will be able to:

- View information that includes information on basic facility parameters (such as square footage, classroom counts and resource consumption) and school program data (including enrollment and test scores).
- Update data for sites, buildings, and rooms.
- Publish profiles of each site to an online public portal.
- Filter data based on multiple criteria, select data columns, and define summaries to be exported as tables.

4C. Timeline

Sep 1:

- Release of final Filemaker-based 4DPro (legacy version) with updated data for 2013-2014 school year, including facility data adjustments based on summer projects and projected enrollment.
- Preliminary development of 4Daptive OUSD implementation.

Oct 1 – OUSD 4Daptive Alpha:

- Core data import/viewing ready to demonstrate
- Charts and basic data import will be ready to view
- Facilities staff will be able to use and test this prototype online database
- MKThink will collect feedback and make adjustments to the system.

Nov 1 – OUSD 4Daptive Beta:

- Build data import will be more mature
- Fine tuning data manipulation will be ready to demonstrate

August 2013



- Adjustments will be integrated
- Nov 7 – OUSD 4Daptive Gamma:
- Additional refinements to platform
 - Wider adoption among OUSD Facilities staff
 - Public-facing “Site Profiles” will be ready to demonstrate.

- Dec 20 – OUSD 4Daptive v1.0.0:
- Quality Assurance testing will be complete
 - Application will be ready to move to final production server
 - Access opened up to all relevant OUSD staff

Includes server maintenance and monitoring, quality control and oversight through September 1 2014.

D. Project Leadership

Nate Goore, Principal
Josh Jackson, Senior Strategist

E. Basis of Compensation

MKThink anticipates work to be roughly equivalent in each topic area, though emerging priorities may result in some topic areas receiving more labor than others. In net effect, however, MKThink anticipates time and materials costs of \$360,000.

1: Support Asset Management Policy
-- \$135,000

2: Update, publish, and assist with the implementation of Design Guidelines and Educational Specifications.
-- \$40,000

3: Support Facilities Division Management System Improvements
-- \$60,000

4: Migrate OUSD 4DPro facilities database to 4Daptive online platform with simplified user interface. Includes ongoing data management and oversight, hosting and maintenance of server and interface through September 1 2014.
-- \$125,000

Expenses incurred in the direct performance of this project, such as, but not limited to travel beyond 60 miles from the project site, printing of meeting and deliverables materials, delivery services, etc., will be reimbursed to MKThink with a surcharge of 10% for processing and handling.

If the Scope of Service, Project Scope, or the Client's design directives change materially, or the project schedule adjusts in a significant manner, the total non-to-exceed budget will be equitably adjusted.

Additional Services will be compensated on a Time and Materials basis according to MKThink standard hourly rates – Academic Consulting.

Payment to Design Consultant and Miscellaneous

Payment may be sent via check to:
MKThink
1500 Sansome Street, Roundhouse One, 2nd Floor
San Francisco, CA 94111
T.I.N.: 94-3358324

August 2013



Payments due to MKThink and unpaid beyond 30 days of date of invoice will bear finance charges beginning from thirty days after the issue of the invoice compounded at 1.5% per month.

MKThink appreciates your review and confirmation of this submission. Please indicate your agreement to proceed with the project by returning a sign copy of this letter to our office.

Faithfully submitted by MKThink

Approved by Oakland Unified School District

Nate Goore, Principal

Timothy E. White, Assistant Superintendent
of Facilities Planning & Management

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

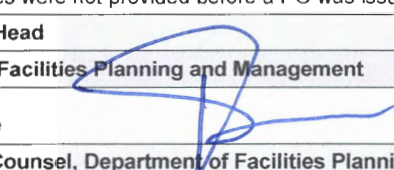
Project Information			
Project Name	Division of Facilities Planning and Management	Site	918
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, 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	MKThink Roundhouse One	Agency's Contact	Nate Goore
OUSD Vendor ID #	V059162	Title	Project Manager
Street Address	1500 Sansome Street	City	SF State CA Zip 94111
Telephone	415-402-0888	Policy Expires	10-24-2013
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 #	NA		

Term			
Date Work Will Begin	10-9-2013	Date Work Will End By <small>(not more than 5 years from start date)</small>	10-9-2014

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$ 360,000.00
Pay Rate Per Hour <small>(If Hourly)</small>	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<small>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</small>				
Resource #	Funding Source	Org Key	Object Code	Amount
9599	Measure B	9189901832	5825	\$360,000.00

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>				
1.	Division Head	Phone	510-535-7038	Fax 510-535-7082
	Director, Facilities Planning and Management			
	Signature 	Date Approved	9/15/13	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature 	Date Approved	9-13-13	
3.	Associate Superintendent, Facilities Planning and Management			
	Signature 	Date Approved	9-23-13	
4.	Deputy Superintendent, Board of Education			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		



CERTIFICATE OF LIABILITY INSURANCE

OP ID: SG

DATE (MM/DD/YYYY)

09/10/13

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

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

PRODUCER MacCorkle Insurance Service CA License #0606920 577 Airport Blvd. 5th Floor Burlingame, CA 94010 MacCorkle Insurance Service	650-349-2364 650-349-4631	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: MILLE-1	FAX (A/C, No):
INSURED Miller Kelley Architects, Inc. MK Think 1500 Sansome, Roundhouse One San Francisco, CA 94111		INSURER(S) AFFORDING COVERAGE INSURER A : Travelers Indemnity Co of Conn INSURER B : Travelers Property Casualty INSURER C : Admiral Insurance Company INSURER D : INSURER E : INSURER F :	
		NAIC # 25682	


COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> GENERAL LIABILITY			6806284R278TIL12	10/24/12	10/24/13	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 5,000
C	<input checked="" type="checkbox"/> Prof. Liability			EO000011313-05	07/01/13	07/01/14	PERSONAL & ADV INJURY	\$ 1,000,000
	<input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG	\$ 2,000,000
							Prof Liab	\$ 2,000,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY			6806284R278TIL12	10/24/12	10/24/13	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS							\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB			CUP8530R176-11-47	10/24/12	10/24/13	EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> CLAIMS-MADE							\$
	<input checked="" type="checkbox"/> DEDUCTIBLE							\$
	RETENTION \$ -0-							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			XJUB3553T06-7-12	10/24/12	10/24/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Building			6806284R278TIL11	10/24/12	10/24/13	Special	5,248,880
A	Business Income			6806284R278TIL11	10/24/12	10/24/13	Form	ALS

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Oakland Unified School District and its directors, officers, employees, agents and representatives are named as Additional Insured. Coverage is primary and contains Blanket Additional Insured

CERTIFICATE HOLDER**CANCELLATION**

OAKOA00 Oakland Unified School District 955 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

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

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

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as 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 on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. 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 the insurance provided to an additional insured under this 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". 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 insured when the insured is 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 any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

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 a person or organization as an additional insured on this Cov-

erage 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.