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Committee	Facilities
Introduction Date	5-23-2012
Enactment Number	12-1416
Enactment Date	5-23-12 JS



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

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

Board Meeting Date May 23, 2012

Subject Independent Consultant Agreement for Professional Services- Sensible Environmental Solutions - Washington Small Schools (Landscape) Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Sensible Environmental Solutions for Hazmet Services on behalf of the District at Washington Small Schools (Landscape) Project, in an amount not-to exceed \$1,990.00. The term of this Agreement shall commence on May 23, 2012 and shall conclude no later than December 31, 2012.

Background Technical Specifications for handling the existing asphalt in the Main play yards are needed in light of the recent findings of asbestos contamination.

Local Business Participation Percentage 100.00%

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

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.



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

Recommendation

Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Sensible Environmental Solutions for Hazmet Services on behalf of the District at Washington Small Schools (Landscape) Project, in an amount not-to exceed \$1,990.00. The term of this Agreement shall commence on May 23, 2012 and shall conclude no later than December 31, 2012.

Fiscal Impact

Measure B

Attachments

- Independent Consultant Agreement including scope of work

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

Washington Small School Conversion (Landscape) Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 10th day of April, 2012 by and between the Oakland Unified School District, Oakland, California ("District") and Sensible Environmental Solutions ("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 hazardous material abatement design services to support the landscape improvement project at Washington Elementary School.

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.
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 One thousand, nine hundred ninety dollars and no cents (\$1,990.00). 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.

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PLANNING DEPARTMENT

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:

Bob Sutton
Sensible Environmental Solutions
155 Filbert Street
Oakland, CA 94607

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.

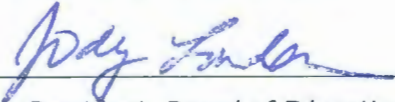
36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

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.

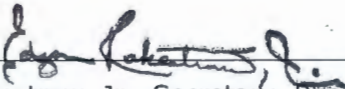
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT




Jody London, President, Board of Education

Date: 5/24/12



Edgar Rakestraw, Jr., Secretary, Board of Education

Date: 5/24/12



Timothy White, Associate Superintendent Facilities
Planning and Management

Date: _____

Sensible Environmental Solutions



Robert Sutton, President

4/26/12

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 5-8-12

File ID Number: 12-1283
Introduction Date: 5-23-12
Enactment Number: 12-1416
Enactment Date: 5-23-12
By: JS

Information regarding Consultant:

Consultant: _____

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

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

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.

(See Attached Proposal)



February 23, 2012

Mr. William Newby
Project Manager
Oakland Unified School District
955 High Street
Oakland, CA 94601
Email: William.Newby@ousd.k12.ca.us

SUBJECT: Proposal for Providing Hazardous Materials Abatement Design Services to Support the Washington Elementary School Landscape Improvement Project, Oakland, CA (SES No. 12-024)

Dear Mr. Newby:

Sensible Environmental Solutions Inc. (SES) is pleased to respond to the Oakland Unified School District (OUSD) request for a proposal to provide hazardous materials abatement design services to support the subject project. The scope of work and proposed costs are based on the project drawings dated 02/10/12 prepared by Urban Design Consulting Engineers.

SUMMARY OF SCOPE

Task 1 – Hazardous Materials Pre-design Inspection

SES will review the project drawings and existing hazardous materials survey data. The purpose of the review is to identify existing conditions and determine the extent of the hazardous material related scope of work. SES will meet with the project team and coordinate the scope of work.

Task 2 – Development of Hazardous Materials Abatement Documents

Utilizing the information collected during the pre-design investigation phase, SES will prepare detailed hazardous materials abatement plans and specifications for the abatement of identified hazardous materials that will be impacted by the Modernization Project.

SES will prepare abatement specifications including:

1. Section 00335 – Existing Hazardous Materials Conditions;
2. Section 01011 – Summary of Hazardous Materials Work; and
3. Section 02080 – Asbestos Abatement.

SES will work closely with the project team to identify the hazardous materials impacted by the project and the most practical compliance approach. SES will provide draft specifications at the 90% completion stage of work for review and comment by the District and Urban Design Consulting Engineers. SES will incorporate review comments and provide one set of Bid Documents for reproduction.

Mr. William Newby
Proposal for Hazardous Materials Design Services
Washington Elementary School Landscape Improvement Project
SES No. 12-024
February 23, 2012
Page 2

Task 3 - Bidding Services

SES will attend one pre-bid conference meeting to discuss and review the scope of work for the abatement project. SES will address contractor questions regarding the scope of work and prepare any necessary clarifications and/or addenda to clarify existing scope of work prior to the bid due date.

PROPOSED COSTS

Proposed costs for the services described herein will be performed on a time and materials basis, not to exceed **\$1,990.00**. Refer to the attached "Hazmat Design and Monitoring Services – Detailed Costs" for a detailed breakdown of proposed costs.

Your acceptance of this proposal can be indicated by issuance of a notice to proceed and a mutually acceptable contract. Should you have any questions, please contact Bob Sutton at (925) 689-9737.

Sincerely,

SENSIBLE ENVIRONMENTAL SOLUTIONS INC.



Robert C. Sutton, CAC, CDPH
Manager, Environmental Services

Attachment: Hazmat Design Services – Detail Costs

Hazmat Design Services - Detail Costs

Project: Washington Elementary School -Landscape Improvements

Proposal Due Date: 2/23/2012

IH Firm: Sensible Environmental Solutions Inc.

Contact: Bob Sutton

Email Address: bob@sensibleinc.net

Scope of Work: Provide hazardous materials consulting services to facilitate the Landscape Improvement Project at Washington Elementary School. Services include hazmat investigation design, development of hazardous materials abatement documents and bidding services,

Task 1: Hazardous Materials Pre-design Investigation

Labor

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Surveys, Data Analysis & Reporting	2	\$130.00	\$260.00
Administrative Support	Clerical, Data Entry, etc.	1	\$45.00	\$45.00
Total Other Costs				\$305.00

Other Costs

Item	No. of Item	Fixed Unit Rate	Total
PLM Analysis (24 Turnaround Time (TAT))		\$21.00	\$0.00
PLM Point Count Analysis - 1,200 Point Count (3 to 5 Day TAT)		\$200.00	\$0.00
AAS Analysis for Lead Paint Chip (3 to 5 Day TAT)		\$19.00	\$0.00
XRF Rental (Daily Rate)		\$250.00	\$0.00
Office Consumables	3	\$5.00	\$15.00
Total Other Costs			\$15.00

TOTAL TASK 1

\$320.00

Task 2: Development of Hazardous Materials Abatement Documents

Labor

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Haz. Mat. Plans & Specs	8	\$130.00	\$1,040.00
Drafter	CAD, Drafting		\$75.00	\$0.00
Administrative Support	Clerical, Data Entry, etc.	1	\$45.00	\$45.00
Office Consumables		9	\$5.00	\$45.00
Total				\$1,130.00

TOTAL TASK 2

\$1,130.00

Task 3: Bidding Services**Labor**

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Attendance to 1 Pre-bid Walk	4	\$130.00	\$520.00
Office Consumables (Reproduction, Shipping, etc.)		4	\$5.00	\$20.00
Total Labor Costs				\$540.00
TOTAL TASK 3				\$540.00

TOTAL: Tasks 1-3	\$1,990.00
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DESCRIPTIONS (Continued from Page 1)

Insurance is Primary Non-Contributory

Waiver of Subrogation applies to Worker's Compensation coverage per policy form wording.

**AUTOMATIC ADDITIONAL INSURED –
OWNERS, LESSEES OR CONTRACTORS**

This endorsement, effective 07/15/2011 attaches to and forms a part of Policy Number
ECC10100189803. This endorsement changes the Policy. Please read it carefully.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART**

SCHEDULE

Name of Person or Organization:

Any person(s) or organization(s) whom the *Named Insured* agrees, in a written contract, to name as an additional insured. However, this status exists only for the project specified in that contract.

The person or organization shown in this Schedule is included as an insured, but only with respect to that person's or organization's vicarious liability arising out of your ongoing operations performed for that insured.

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 99 03 76 (00) -

POLICY NUMBER: UB3718T616

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS
ENDORSEMENT - CALIFORNIA
(BLANKET WAIVER)**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be
premium otherwise due on such remuneration.

% of the California workers' Compensation pre-

Schedule

Person or Organization:

Oakland Unified School District
of Facilities Planning & Mgmt
Attn: Timothy E. White
955 High Street
Oakland, CA 94601

Job Description:

ALL OPERATIONS OF THE NAMED
INSURED.*** Oakland United School
District, its Directors, Officers,
Employees, Agents and
Representatives

DATE OF ISSUE: 07/21/11


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

DATE SUBMITTED: 2/28/2012
SUBMITTED BY: Wil Newby

V058814

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

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

2/28/12

Timothy E. White
Asst. Superintendent

Date

Tadashi Nakadegawa
Facilities Director

Date

SECTION II. LOCAL BUSINESS PARTICIPATION PERCENTAGE:

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

SECTION III. AGREEMENT INFORMATION:

Project Name:	Washington ES Landscape Improvement Phase II <i>small schools</i>	Project No:	06012-3
Vendor Name:	Sensible Environmental Solutions	Vendor Contact:	Bob Sutton
Vendor Phone Number:	(510) 835-9737	Vendor Mailing Address:	155 Fillbert Street Oakland, CA 94607
Agreement Start and Stop Dates:	Start: 4/25/2012 Stop: 12/31/2012	Amounts:	Current Contract Amount: \$0.00 Not to Exceed Amount: \$1,990.00 Revised Contract Amount: \$0.00
Has Work Started?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes give an explanation:</i>	Has Work Been Completed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date:

1619901880 -
Cel 70

Certificate of Insurance Attached Yes No Date provided:

RECEIVED

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

4-10-2012

- 1) Number of Bids Received, List of Bidders and Amounts (Bid Form) *(Attach Bid Documents)*
 - 2) Date(s) of Bid Advertisement -
 - 3) Date of Bid Opening -
 - 4) Name of Architect - Urban Design Consulting
 - 5) Liquidated damages per day - \$
 - 6) Performance Bonds Attached
 - 7) Payment Bonds Attached
- (Sections 6 and 7 to be completed by Contract Administration department)

Scope of Work: *(Needed to prepare Executive Summary)* Please attach separately along with Vendor's proposal.
To provide hazardous material abatement design services to support the landscape improvement project at Washington Elementary School.

The scope of work and proposed costs are based on the project drawings dated 2/10/12 prepared by Urban Design Consulting Engineers.

Summary of Scope:

Task 1 - Hazardous Materials Pre-Design Inspection

Task 2 - Development of Hazardous Materials Abatement Documents

Task 3 - Bidding Services

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

Discussion Info: *(Needed to prepare Executive Summary)* (Provide **detailed** background - Why is contract required and what is the benefit to students) - Add additional pages as needed

Technical Specifications for handling the existing asphalt in the Main Play Yard are needed in light the recent findings of asbestos contamination.

Funding Source: Measure B _____

Budget Number: _____

SECTION IV. L/LS/LSRBE - RATIONAL FOR NON COMPLIANCE CHECK LIST

1.)	<p>Specialty Service: This contractor provides a unique / specialty service that is currently not available from a certified L/S/SLRBE. Government Code § 53060 / school districts may contract without bidding for, "special services and advice in financial, economic, accounting, . . . legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required."</p>	
2.)	<p>District Discretion under L/SL/SLRBE due to lack of certified firms at time of bid: If at least three L/SL/SLRBEs are not certified, then the requirement may, subject to the discretion of the District, be waived, or the 20% requirement may be re-set from 19 % to 0%, depending on the particular circumstances at time of bid.</p>	
3.)	<p>Futility: It would be futile to require that the contract be subjected to the L/SL/SLRBE due to (circle one) COST / TIME CONSTRAINTS / NO CERTIFIED BIDDERS. California law provides that "[w]here competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage...the statute requiring competitive bidding does not apply." (Hiller v. City of Los Angeles (1961) 197 Cal. App. 2d 685, 694.)</p>	
4.)	<p>Field Test / (1) In order that a field test or experiment may be made to determine the product's suitability for future use. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
5.)	<p>Product Match/(2) In order to match other products in use on a particular public improvement either completed or in the course of completion. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
6.)	<p>Sole Source / (3) In order to obtain a necessary item that is only available from one source. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
7.)	<p>Emergency Repair / (4) (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals. PUBLIC CONTRACT CODE SECTION 3400-3410 / See also: Public Contract Code Section 1102. "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.</p>	



February 23, 2012

Mr. William Newby
Project Manager
Oakland Unified School District
955 High Street
Oakland, CA 94601
Email: William.Newby@ousd.k12.ca.us

SUBJECT: Proposal for Providing Hazardous Materials Abatement Design Services to Support the Washington Elementary School Landscape Improvement Project, Oakland, CA (SES No. 12-024)

Dear Mr. Newby:

Sensible Environmental Solutions Inc. (SES) is pleased to respond to the Oakland Unified School District (OUSD) request for a proposal to provide hazardous materials abatement design services to support the subject project. The scope of work and proposed costs are based on the project drawings dated 02/10/12 prepared by Urban Design Consulting Engineers.

SUMMARY OF SCOPE

Task 1 – Hazardous Materials Pre-design Inspection

SES will review the project drawings and existing hazardous materials survey data. The purpose of the review is to identify existing conditions and determine the extent of the hazardous material related scope of work. SES will meet with the project team and coordinate the scope of work.

Task 2 – Development of Hazardous Materials Abatement Documents

Utilizing the information collected during the pre-design investigation phase, SES will prepare detailed hazardous materials abatement plans and specifications for the abatement of identified hazardous materials that will be impacted by the Modernization Project.

SES will prepare abatement specifications including:

1. Section 00335 – Existing Hazardous Materials Conditions;
2. Section 01011 – Summary of Hazardous Materials Work; and
3. Section 02080 – Asbestos Abatement.

SES will work closely with the project team to identify the hazardous materials impacted by the project and the most practical compliance approach. SES will provide draft specifications at the 90% completion stage of work for review and comment by the District and Urban Design Consulting Engineers. SES will incorporate review comments and provide one set of Bid Documents for reproduction.

Mr. William Newby
Proposal for Hazardous Materials Design Services
Washington Elementary School Landscape Improvement Project
SES No. 12-024
February 23, 2012
Page 2

Task 3 - Bidding Services

SES will attend one pre-bid conference meeting to discuss and review the scope of work for the abatement project. SES will address contractor questions regarding the scope of work and prepare any necessary clarifications and/or addenda to clarify existing scope of work prior to the bid due date.


PROPOSED COSTS

Proposed costs for the services described herein will be performed on a time and materials basis, not to exceed **\$1,990.00**. Refer to the attached "Hazmat Design and Monitoring Services – Detailed Costs" for a detailed breakdown of proposed costs.

Your acceptance of this proposal can be indicated by issuance of a notice to proceed and a mutually acceptable contract. Should you have any questions, please contact Bob Sutton at (925) 689-9737.

Sincerely,

SENSIBLE ENVIRONMENTAL SOLUTIONS INC.



Robert C. Sutton, CAC, CDPH
Manager, Environmental Services

Attachment: Hazmat Design Services – Detail Costs

Hazmat Design Services - Detail Costs

Project: Washington Elementary School -Landscape Improvements

Proposal Due Date: 2/23/2012

IH Firm: Sensible Environmental Solutions Inc.

Contact: Bob Sutton

Email Address: bob@sensibleinc.net

Scope of Work: Provide hazardous materials consulting services to facilitate the Landscape Improvement Project at Washington Elementary School. Services include hazmat investigation design, development of hazardous materials abatement documents and bidding services,

Task 1: Hazardous Materials Pre-design Investigation

Labor

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Surveys, Data Analysis & Reporting	2	\$130.00	\$260.00
Administrative Support	Clerical, Data Entry, etc.	1	\$45.00	\$45.00
Total Other Costs				\$305.00

Other Costs

Item	No. of Item	Fixed Unit Rate	Total
PLM Analysis (24 Turnaround Time {TAT})		\$21.00	\$0.00
PLM Point Count Analysis - 1,200 Point Count (3 to 5 Day TAT)		\$200.00	\$0.00
AAS Analysis for Lead Paint Chip (3 to 5 Day TAT)		\$19.00	\$0.00
XRF Rental (Daily Rate)		\$250.00	\$0.00
Office Consumables	3	\$5.00	\$15.00
Total Other Costs			\$15.00
TOTAL TASK 1			\$320.00

Task 2: Development of Hazardous Materials Abatement Documents

Labor

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Haz. Mat. Plans & Specs	8	\$130.00	\$1,040.00
Drafter	CAD, Drafting		\$75.00	\$0.00
Administrative Support	Clerical, Data Entry, etc.	1	\$45.00	\$45.00
Office Consumables		9	\$5.00	\$45.00
Total				\$1,130.00
TOTAL TASK 2				\$1,130.00

Task 3: Bidding Services**Labor**

Labor Category	Description of Work	No. of Hours	Hourly Rate per SOQ	Total
Senior Project Professional	Attendance to 1 Pre-bid Walk	4	\$130.00	\$520.00
Office Consumables (Reproduction, Shipping, etc.)		4	\$5.00	\$20.00
Total Labor Costs				\$540.00
TOTAL TASK 3				\$540.00

TOTAL: Tasks 1-3	\$1,990.00
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INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information

Project Name Washington Small School Landscaping	Site Washington Small Schools
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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
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Contractor Information

Contractor Name	Sensible Environmental Solutions	Agency's Contact	Bob Sutton
OUSD Vendor ID #	V058814	Title	Project Manager
Street Address	155 Filbert Street	City	Oakland
Telephone	510-835-9737	State	CA
		Zip	94607
Policy Expires	7-15-2012		
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 #	06012		

Term

Date Work Will Begin	5-23-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-31-2012
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Compensation

Total Contract Amount	\$	Total Contract Not To Exceed	\$1,990.00
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 #	Funding Source	Org Key	Object Code	Amount
9299, 9399, 9499	Measure B	1619901881	6170	\$1,990.00

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	510-535-7081	Fax	510-535-7082
1.	Capital Program Contract & Accounting Manager					
	Signature 			Date Approved	5-7-12	
2.	General Counsel, Department of Facilities Planning and Management					
	Signature 			Date Approved	5.8.12	
3.	Associate Superintendent, Facilities Planning and Management					
	Signature 			Date Approved		
4.	President, Board of Education					
	Signature			Date Approved		