

Board Office Use: Legislative File Info.	
File ID Number	15-2182
Introduction Date	11-18-2015
Enactment Number	15-1818
Enactment Date	11-18-15



OAKLAND UNIFIED  
SCHOOL DISTRICT

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer  
Lance Jackson, Interim Deputy Chief, Facilities Planning and Management

**Board Meeting Date** November 18, 2015

**Subject** Amendment No. 1, Agreement for Architectural Services - Byrens Kim Design Works - Oakland Technical Health Clinic Project

**Action Requested** Approval by the Board of Education of Amendment No. 1, Agreement for Architectural Services with Byrens Kim Design Works for Design Services on behalf of the District at the Oakland Technical Health Clinic Project, in an amount not-to exceed \$35,200.00 increasing previous contract amount from \$223,945.00 to a not to exceed amount of \$259,145.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

**Background** The scope of the project is to provide design services for the Oakland Technical High School Site Accessibility Improvements Legal Settlement. Design to comply with the accessibility requirements defined in section 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, and 2.1.6 noted in the legal settlement. Scope to include new signage from site entry points as well as field entry gates, new tow away signage, new accessible van parking space nearest to the field and review of existing restroom for accessibility compliance. A preliminary meeting with Division of State Architect (DSA) will be included with the proposal. A design contingency of \$3,200.00 to be added to the base fee of \$32,000.00.

**Discussion** Additional site access improvements are required to address the deficiencies noted in the legal settlement filed against the District.

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

**Procurement Method** Professional Services Agreement - Formal - Advertised RFP / Awarded to entity following OUSD competitive solicitation process.

**Recommendation** Approval by the Board of Education of Amendment No. 1, Agreement for Architectural Services with Byrens Kim Design Works for Design Services on behalf of the District at the Oakland Technical Health Clinic Project, in an amount not-to exceed \$35,200.00 increasing previous contract amount from \$223,945.00 to a not to exceed amount of \$259,145.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

## Fiscal Impact

## Measure J

## Attachments

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



## AMENDMENT NO. 1, AGREEMENT FOR ARCHITECTURAL SERVICES

This Amendment is entered into between the Oakland Unified School District (OUSD) and Byrens Kim Design Works. OUSD entered into an Agreement with CONTRACTOR for services on June 24, 2015, and the parties agree to amend that Agreement as follows:

1. **Services:** ☐ The scope of work is unchanged. ☒ The scope of work has changed.

**If scope of work changed:** Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. Attach revised scope of work.

The CONTRACTOR agrees to provide the following amended services: The scope of the project is to provide design services for the Oakland Technical High School Site Accessibility Improvements Legal Settlement. Design to comply with the accessibility requirements defined in section 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, and 2.1.6 noted in the legal settlement. Scope to include new signage from site entry points as well as field entry gates, new tow away signage, new accessible van parking space nearest to the field and review of existing restroom for accessibility compliance. A preliminary meeting with Division of State Architect (DSA) will be included with the proposal. A design contingency of \$3,200.00 to be added to the base fee of \$32,000.00.

2. **Terms (duration):** ☒ The term of the contract is unchanged. ☐ The term of the contract has changed.

**If term is changed:** The contract term is extended by an additional \_\_\_\_\_, and the amended expiration date is \_\_\_\_\_.

3. **Compensation:** ☐ The contract price is unchanged. ☐ The contract price has changed.

**If the compensation is changed:** The contract price is amended by

☒ Increase of \$35,200.00 to original contract amount

☐ Decrease of \$ \_\_\_\_\_ to original contract amount

and the new contract total is **Two Hundred fifty-nine thousand, one hundred forty-five dollars and no cents (\$259,145.00)**

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

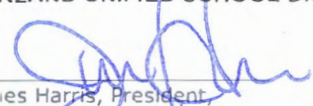
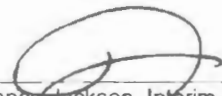
5. **Amendment History:**

☒ There are no previous amendments to this Agreement. ☐ This contract has previously been amended as follows:

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

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

## OAKLAND UNIFIED SCHOOL DISTRICT

  
James Harris, President  
Board of Education11/19/15  
Date  
Antwan Wilson, Superintendent  
Secretary, Board of Education11/19/15  
Date  
Lance Jackson, Interim Deputy Chief  
Facilities, Planning and Management10/20/15  
Date

## CONTRACTOR

  
Contractor Signature10/14/2015  
DateDong Kim, Principal  
Print Name, TitleFile ID Number: 15-2182  
Introduction Date: 11-18-15  
Enactment Number: 15-1818  
Enactment Date: 11-18-15  
By:



**EXHIBIT "A" Scope of Work****Contractor Name: Byrens Kim Design Works****Billing Rate: Thirty-five thousand, two hundred dollars and no cents - \$35,200.00****1. Description of Services to be Provided**

The scope of the project is to provide design services for the Oakland Technical High School Site Accessibility Improvements Legal Settlement. Design to comply with the accessibility requirements defined in section 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, and 2.1.6 noted in the legal settlement. Scope to include new signage from site entry points as well as field entry gates, new tow away signage, new accessible van parking space nearest to the field and review of existing restroom for accessibility compliance. A preliminary meeting with Division of State Architect (DSA) will be included with the proposal. A design contingency of \$3,200.00 to be added to the base fee of \$32,000.00.

**2. Specific Outcomes:**

Create equitable opportunities for learning; and provide accountability for quality.

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

<input type="checkbox"/> 0 Ensure a high quality instructional core	<input type="checkbox"/> 0 Prepare students for success in college and careers
<input type="checkbox"/> 0 Develop social, emotional and physical health	<input type="checkbox"/> 0 Safe, healthy and supportive schools
<input checked="" type="checkbox"/> X Create equitable opportunities for learning	<input checked="" type="checkbox"/> x Accountable for quality
<input type="checkbox"/> 0 High quality and effective instruction	<input type="checkbox"/> 0 Full service community district

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 10-14-2015*  
 Susie Butler-Berkley  
 Contract Analyst

## EXHIBIT A



September 14, 2015

Saya Nhim  
Oakland Unified School District  
Facilities Planning and Management  
955 High Street  
Oakland, CA 94601

RE: Proposal for Site Access Improvement Design  
For Oakland Tech High School

Dear Ms. Nhim,

Thank you for the opportunity to provide this Architectural service proposal for the Oakland Tech High School Field access improvement project. Our service outlined in this scope will include providing site access route improvement at Oakland Tech. We understand that the project scope is necessitated from an accessibility related litigation to the District. We received the following language from Ms. Maria Denny's email dated 8/19/15.

- 2.1.1 Provide proper tow-away signage.
- 2.1.2 Provide the required number of properly configured and identified accessible and/or van-accessible parking stalls with adjacent access aisle(s), which shall be located on the shortest accessible route to the designated accessible stadium entrance(s).
- 2.1.3 Provide a marked route of travel from the designated accessible parking to the designated accessible stadium entrance(s). Said route of travel will not be in strict compliance with the new construction standards set forth in the 2010 Americans with Disabilities Act Standards for Accessible Design and California Code of Regulations, Title 24, Part 2 (Chapter 11B).
- 2.1.4 Provide proper directional signage at all non-accessible stadium entrances indicating the location and route to the nearest designated accessible entrance.
- 2.1.5 Provide signage at the designated accessible stadium entrance(s) and at the entrance(s) to bleacher seating, stating as follows:  
"Individuals with mobility impairments and those accompanying them are permitted to spectate from any location on the track."
- 2.1.6 Provide a properly configured and identified men's or unisex restroom, which shall be in compliance with all applicable standards and located on an accessible route of travel from the designated accessible stadium entrance(s). Said restroom shall be made available at all times during stadium functions that are open to the public (including non-school youth football games). Proper directional signage shall be provided at the entrance to each non-accessible restroom, and at the designated accessible stadium entrance, indicating the location and route to the accessible restroom.

We reviewed the existing site conditions and generated the attached annotated site plan and the existing site photo graphs dated 9/8/15.



As illustrated in the settlement language and the annotated site plan, we note that the measures are to improve existing conditions. As discussed with the District, a full compliance with the current building code is not anticipated within this proposal. In general, our design scope will include the following improvement considerations:

- New signage from site entry points as well as the field entry gates directing appropriate accessible route
- New tow away signage
- New accessible van parking space nearest to the field access
- New designated accessible route to the field from the accessible parking. This pathway slope and surface will not be in strict compliance with the 2010 Americans with Disabilities Act Standards for Accessible Design and California Code of Regulations, Title 24, Part 2 (Chapter 11B) – no survey required
- Review of existing restrooms for accessibility compliance. We assume that the existing restrooms are in general compliance with the accessibility requirements and only minor modifications are required.

We plan to perform preliminary meeting with DSA to confirm the scope. Additional improvement scope may be required based on the DSA preliminary review.

The services outlined in this proposal will include Design, Construction Documents, Permitting/Agency Review, Bidding, Construction Administrations, and Project Close Out. We propose to complete the Design/Construction Documents within one month of the project authorization, ready for a final review by the District prior to DSA review. The DSA review duration will vary. We will attempt an over the counter access only review.

To complete the project as outlined, we propose the following fee.

Architect:	\$32,000.00
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This is a fully burdened fee and reimbursable costs for reproduction are included. We request that the DSA review fee is paid for by the District.

We are in a position to initiate the work upon acceptance of this proposal, and proceed in accordance with your schedule. Our Certificates of Insurance and Vendor Data Records, will be provided as requested. We can enter into a contract based on a mutually agreeable contract format.

Please feel free to call me if you have any questions or need further clarification.

Cordially,



Dong E Kim, AIA, LEED AP  
Principal  
Byrens Kim Design Works

## PROJECT BUDGET WORKSHEET

Project OUSD Oak Tech Site Access Improvement  
 Client Oakland Unified School District  
 Project Address Broadway, Oakland, CA

**NOTE:** This form lists typical services provided. Certain services may be added or deleted according to specific requirements of the project.

PHASE OF SERVICE	SERVICE TO BE PROVIDED	HOURS	COMMENTS
1 Site Analysis	Site visit and observation	16	2 staff, 4 hours, 2 visits
	Generate preliminary program diagram	12	
	- Document site elements		
	- Document scope elements		
	Review with District	2	
	Update program diagram	2	
2 Schematic Design	Preliminary DSA Review	6	Schedule and meeting
	Update program per DSA comments	4	
	Generate schematic design drawings	16	
	Generate schematic construction cost projection	4	
	Submit schematic design for District review	4	
3 Construction Documents	Generate 50% Submittal	40	
	- Site plan		
	- Signage locations		
	- Accessible parking lot layout		
	- Related Details and		
	Update cost	4	
	50% District Review	4	
	Generate 95% CD Submittal	32	
	- Updated Drawings		
	- Specifications		
4 Agency Review	Update cost	4	DSA Application Fee by District  Scanning Fee is included
	95% District Review	4	
	DSA Submittal and review	20	
	- Submittal Application and documents		
	- Address comments and revisions		
	- Backcheck		



5 Bidding	Bidding Assistance Attend Prebid	12 4	
6 Construction Administration	Provide construction administration services <ul style="list-style-type: none"> <li>- Respond to RFIs</li> <li>- Review submittal and Shop Drawings</li> <li>- Final punch list</li> </ul>	80	

## AMENDMENT SMALL ARCHITECTURAL DESIGN CONTRACT ROUTING FORM

Project Information			
Project Name	Oakland Technical Health Clinic	Site	305
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Byrens Kim Design Works	Agency's Contact	Dong Kim				
OUSD Vendor ID #	I009281	Title	Project Manager				
Street Address	681-4 <sup>th</sup> Street	City	Oakland	State	CA	Zip	94607
Telephone	510-452-3224	Policy Expires					
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 #	13198						

Term			
Date Work Will Begin	6-24-2015	Date Work Will End By (not more than 5 years from start date)	6-24-2017

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$259,145.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$ 35,200.00
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
9350	Measure J	3059905891	6215	\$35,200.00

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.				
1.	Division Head	Phone	510-535-7038	Fax 510-535-7082
	Director, Facilities Planning and Management			
	Signature	Date Approved	10/14/15	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved	10.15.15	
3.	Interim Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved	10/20/15	
4.	Senior Business Officer			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		





Board Office Use: Legislative File Info.	
File ID Number	15-1143
Introduction Date	6-24-2015
Enactment Number	15-1188
Enactment Date	6/24/15



OAKLAND UNIFIED  
SCHOOL DISTRICT  
*Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Mia Settles-Tidwell, Chief Operations Officer  
Lance Jackson, Interim Deputy Chief, Facilities Planning and Management

**Board Meeting Date** June 24, 2015

**Subject** Small Architectural Design Contract - Byrens Kim Design Works - Oakland Technical High School Health Clinic Project

**Action Requested** Approval by the Board of Education of a Small Architectural Design Contract with Byrens Kim Design Work for Design Services on behalf of the District at the Oakland Technical High School Health Clinic Project, in an amount not-to exceed \$223,945.00. The term of this Agreement shall commence on June 24, 2015 and shall conclude no later than June 24, 2017.

**Background** The scope of the project is to provide architectural and engineering services for the Oakland Technical High School Community Health Center Project. The architect is to review the existing conditions and generate a detailed program document.

**Discussion** Oakland Technical High School is following along the lines of the various other health centers in the OUSD system.

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

**Recommendation** Approval by the Board of Education of a Small Architectural Design Contract with Byrens Kim Design Work for Design Services on behalf of the District at the Oakland Technical High School Health Clinic Project, in an amount not-to exceed \$223,945.00. The term of this Agreement shall commence on June 24, 2015 and shall conclude no later than June 24, 2017.

**Fiscal Impact** Measure J

**Attachments**

- Small Architectural Design Contract including scope of work
- Certificate of Insurance
- Consultant Proposal

**AGREEMENT FOR ARCHITECTURAL SERVICES  
BY AND BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT  
AND**

**Byrens Kim Design Works**

This Agreement for Architectural Services is made as of the **29th day of April 2015**, between the **Oakland Unified School District**, a California public school district ("District"), and Byrens Kim Design Works ("Architect") (individually a "Party" and collectively the "Parties"), for the following project ("Project"):

**Oakland Technical High School Health Clinic**, located at 4351 Broadway Street, CA 94611.

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

**Definitions**

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
  - 1.1.1. **Agreement**: The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
  - 1.1.2. **Architect**: The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.
  - 1.1.3. **As-Built Drawings ("As-Builts")**: Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
  - 1.1.4. **Bid Set**: The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
  - 1.1.5. **Conforming Set**: The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
  - 1.1.6. **Consultant(s)**: Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
  - 1.1.7. **District**: The **Oakland Unified School District**.
  - 1.1.8. **DSA**: The Division of the State Architect.
  - 1.1.9. **Project Budget**: The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
  - 1.1.10. **Record Drawings**: A final set of drawings prepared by the Architect based upon marked-up prints, drawings, and other data furnished to Architect by Contractor that

incorporates all changes from all As-Builts, sketches, details, and clarifications.

- 1.1.11. **Service(s)**: All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project.
- 1.1.12. **Visually Verify**: To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

## **Article 2. Scope, Responsibilities, and Services of Architect**

- 2.1. Architect shall provide the Services as described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed or authorization from District to perform Services requested hereunder.
- 2.2. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 2.3. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

### **Completion of Services**

- 2.4. The Architect shall commence Services under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the time as specified in the notice, if any.

## **Article 3. Compensation and Value of Agreement**

- 3.1. District shall pay Architect for all Services contracted for under this Agreement on a time and materials basis. The total compensation paid Architect pursuant to this Agreement may not exceed **Two hundred twenty-three thousand, nine hundred forty-five Dollars (\$223,945.00).**
- 3.2. Architect shall notify District if District requested services or reimbursables will exceed the Zero Dollars (\$0.00) limit of this Agreement. If any work is performed by Architect without the prior written authorization of District, District shall not be obligated to pay for such work. The Parties may, by written agreement, increase the monetary limit of this Agreement.
- 3.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Architect 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.
- 3.4. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing Services for District.

## **Article 4. Ownership of Data**



- 4.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, Record Drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.
- 4.2. The Architect retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.
- 4.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive and/or compact disc with these documents that is compatible with AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 4.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.
- 4.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word) which the District shall have the right to utilize in any way permitted by statute:
  - 4.5.1. One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
  - 4.5.2. One set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
  - 4.5.3. One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical, and electrical), roof plan, sections, and exterior elevations of the Project.
  - 4.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data, and reports prepared by the Architect under this Agreement.
- 4.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of responsibility for such changes, and shall indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed

documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's consultants.

#### **Article 5. Termination of Contract**

- 5.1. If Architect fails to perform Architect's duties to the satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 5.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.
- 5.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 5.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed Invoice(s) for Services performed until the Architect's notice of termination.
- 5.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the costs associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 5.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

#### **Article 6. Indemnity/Architect Liability**

- 6.1. To the furthest extent permitted by California law, Architect shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("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, to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Architect, its directors, officials,

officers, employees, contractors, subcontractors, consultants, subconsultants 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. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

#### **Article 7. Mandatory Mediation for Claims**

- 7.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10<sup>th</sup>) day after termination of the Mediation, unless otherwise agreed to by the Parties.
- 7.2. Except as set forth below, the Parties agree to refrain from filing, maintaining, or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.
- 7.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, or any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.
- 7.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.
- 7.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.
- 7.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 7.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provisions herein.

#### **Article 8. Fingerprinting**

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).



#### **Article 9. Responsibilities of the District**

- 9.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 9.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 9.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- 9.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and desirable for the coordination or management of work related to the Project.
- 9.5. The District shall provide to the Architect all relevant information it knows it possesses regarding the Project that the Architect needs to perform its Services. The District shall provide this information and its decisions required under this Agreement in a timely manner and to avoid unreasonable delay in the Project.

#### **Article 10. Liability of District**

- 10.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided for 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.
- 10.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Architect, or by its employees, even though such equipment may be furnished or loaned to Architect by District.

#### **Article 11. Nondiscrimination**

- 11.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such person.

- 11.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

## **Article 12. Insurance**

- 12.1. The Architect shall procure and maintain at all times it performs any portion of Services the following insurance with minimum limits equal to the amount indicated below.

**12.1.1. Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Architect, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from or in connection with the performance of any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

- 12.1.2. Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of Architect's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect 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.

- 12.1.3. Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Architect's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

- 12.2. **Proof of Carriage of Insurance.** The Architect 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:

- 12.2.1. 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.”

12.2.2. 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.

12.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, 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 Architect’s insurance policies shall be primary to any insurance or self-insurance maintained by District.

12.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

12.3. **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.

#### **Article 13. Covenant Against Contingent Fees**

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or to recover, the full amount of such compensation, fee, commission, percentage fee, gift, or contingency.

#### **Article 14. Entire Agreement/Modification**

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

#### **Article 15. Non-Assignment of Agreement**

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation, or sublease without the District’s prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation, or sublease without Architect’s prior written consent shall be considered null and void.

#### **Article 16. Law/Venue**

16.1. This Agreement has been executed and delivered in the State of California and the validity,



enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

- 16.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

## **Article 17. Alternative Dispute Resolution**

### **17.1. Architect's Invoices**

17.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, what portion or amount of the Architect's invoices that are disapproved for payment, what portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's invoices ("Disputed Architect Invoice Detail").

17.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to any such disapproved portion or amount of the Architect invoices and the Disputed Architect Invoice Detail to determine if the dispute can be resolved. Such meet and confer communications shall include, but are not limited to, face-to-face meetings within thirty (30) days of the Architect's notice to the District with the appropriate District and Architect personnel as appropriate and necessary.

17.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a dispute as indicated herein.

- 17.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:

17.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail shall satisfy this negotiation requirement.

17.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one party by the other party of a demand for mediation, the parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

17.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

- 17.3. Architect shall neither rescind nor stop the progress of its work pending the outcome of any dispute under this Agreement.

## **Article 18. Severability**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

#### **Article 19. Employment Status**

- 19.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 19.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical, or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a District employee.
- 19.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 19.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 19.5. A determination of employment status pursuant to the preceding paragraphs of this Article shall be solely for the purposes of the particular tax in question and, for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 19.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

#### **Article 20. Warranty and Certification of Architect**

- 20.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

- 20.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 20.3. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation may be One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

#### **Article 21. Cost Disclosure - Documents And Written Reports**

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over Five Thousand Dollars (\$5,000).

#### **Article 22. Notices & Communications**

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

**District:**

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

**Architect:**

Byrens Kim Design Works  
~~631 4<sup>th</sup> Street~~ 681 4th Street  
Oakland, CA 94607  
**Attn:** Dong Kim

Any notice personally given shall be effective upon receipt. Any notice sent by facsimile shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

#### **Article 23. Disabled Veteran Business Enterprise Participation**

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBES") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes this Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBES in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.

#### **Article 24. District's Right to Audit**

- 24.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all

Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.

- 24.2. The District's Right includes the right to examine any and all books, records, documents, and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with all requirements of this Agreement.
- 24.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred or anticipated to be incurred.
- 24.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit all Project related accounting records and documents and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.
- 24.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 24.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

**Article 25. Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE).** Architect shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

#### **Article 26. Other Provisions**

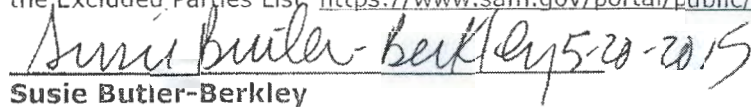
- 26.1. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.
- 26.2. Each Party warrants that it has had the opportunity to consult counsel and understands the terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.
- 26.3. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all



facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.

- 26.4. **Exhibit "A"** and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

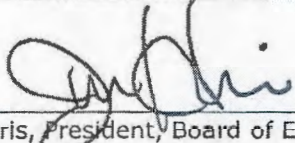
**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered 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>

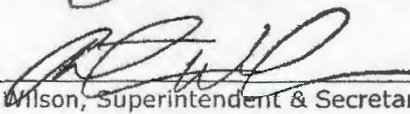
  
**Susie Butler-Berkley**  
**Contract Analyst**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

**ACCEPTED AND AGREED** on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

 4/25/15  
\_\_\_\_\_  
James Harris, President, Board of Education Date

 6/25/15  
\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education Date

 5/27/15  
\_\_\_\_\_  
Lance Jackson, Interim Deputy Chief, Facilities Planning and Management Date

**BYRENS KIM DESIGN WORKS**

 5/19/15  
\_\_\_\_\_  
By: Dong E Kim Date  
Its: President

**APPROVED AS TO FORM:**

 5-21-15  
\_\_\_\_\_  
OUSD Facilities Legal Counsel Date

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Byrens Kim Design Works [Type name of Architect] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Architect or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Architect on the 19th day of May, 2015 ~~2014~~ for the purposes of submission of this Agreement.

By:

  
Signature

Dong E Kim

Typed or Printed Name

President

Title

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

Architect's entire Proposal is not made part of this Agreement. **[IF ARCHITECT PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES CAN BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]**



#13198

EXHIBIT A



March 18, 2015

Tadashi Nakadegawa  
Oakland Unified School District  
Facilities Planning and Management  
955 High Street  
Oakland, CA 94601

RE: Proposal for Architectural and Engineering Services  
For Oakland Tech Health Center

Dear Tadashi,

Thank you for the opportunity to provide this Architectural and Engineering service proposal for the Oakland Tech High School Community Health Center project. Needless to say, we are extremely enthusiastic about the opportunity to provide a value added project delivery. We fully acknowledge the District and the Site's intent to create a full service community based school and approach to providing an improved, permanent health center in lieu of the existing health center located in a portable structure. As you are aware, we have completed various school based health centers in OUSD as well as other linked health centers in Oakland. Our experience in completing these project will best serve the District's need to providing a successful permanent health center at Oakland Tech.

Based on the preliminary information provided by the District, we believe the following description summarizes the project intent.

- Provide a new school based health center within existing basement space.
- New Health Center shall account for approximately 3,000 SF of floor area. The remaining  $\pm 4,000$  SF of area will be designed for open student space.
- Design of New Health Center will include  $\pm 2$  dental exam chairs, 2 to 3 exam rooms, 1 to 2 conference rooms, as many behavioral/mental health rooms, a lab, a triage, a reception, and the related spaces.
- Preliminary construction budget of \$2 million

Our service will include a review of existing conditions, and working with the District to generate a detailed program document.

We note that there are various existing utility lines that are located within the space that will affect our design. This proposal includes a 3D scan of the existing spaces that would allow the clear understanding of the existing utility conditions. The cost related to this service is outlined in the following. We request

that the existing equipment/furnishing currently occupying the space is disposed prior to completing the 3D scan.

We fully acknowledge and support the District's goal to utilize Local Business Participation to create state of the art sustainable facilities. Our team is gathered to specifically meet this requirement. The following is the list of team members based on the preliminary information.

Byrens Kim Design Works	Architects	(Small Local Resident Business Enterprise)
Buehler & Buehler	Structural Engineers	
Integral Group	MEP Engineers	(Local Business Enterprise)
Leland Saylor Associates	Cost Estimator	(Local Business Enterprise)
F3 & Associates	3D Scanning	

Our intended goal is to provide +90% LBE/SLBE/SLRBE participation. The following is the proposed goal breakdown;

SLBE/SLRBE	52%
<u>LBE</u>	<u>38%</u>
TOTAL	90%

In addition to the local business participation goals, we also understand the District's goal to pursue sustainable building practices. Our team is fully capable of delivering a design that incorporates the practices.

The following illustrates the anticipated services to be included in this proposal.

The **Programming** includes the following tasks:

- Review existing program elements and site conditions
- Collaborate with the District and the Site administration to generate program goals intent.
- Coordinate with the District to acquire site documentation, i.e. survey,, site utility information, and etc.
- Conduct community meetings if required.
- Preliminary review with DSA, City of Oakland, and other agencies based on possible issues arising from program elements.
- Generate programming documents to confirm project elements
- Generate a preliminary cost estimate.
- Perform 3D scan of existing spaces and generate Revit background file.

The **Schematic Design** includes the following tasks:

- Generate schematic design package based on the approved program documents.
- Generate sustainable project intent and program elements.
- Conduct required District/User meetings to update the development.

- Review site utility upgrade requirement including power, waste water, fire water, and etc. Initiate utility improvement coordination with various organizations.
- Update cost estimate.

The **Design Development** includes the following tasks:

- Collaborate with the District on project progress.
- Generate design development documents.
- Coordinate design development with the District Facilities and the OUSD Design Standards.
- Update cost estimate.

The **Construction Documents** includes the following tasks:

- Generate construction document package suitable for DSA approval and the public Design-Bid-Build contracting requirement.
- Provide construction cost estimates.

The **Agency Review** includes the following tasks:

- Submit for DSA review and approval.

The **Bidding** includes the following tasks:

- Coordinate bidding document generation with the District's contracts department.
- Attend bid walk/pre-bid meeting.
- Provide bidding services that may include clarifications and Addenda generation.
- Review bids.

The **Construction Administration** includes the following tasks:

- Attend construction meetings.
- Generate DSA required documentations. Administer DSA review.
- Perform Construction Administration services including RFIs, ASI, site observations, and etc.
- Perform Punch-walk.

The **Project Closeout** includes the following tasks:

- Acquire DSA closeout certification.
- Participate in Commissioning process. Basic/Fundamental Building Commissioning is included in this proposal.



To complete the project as outlined, we propose the following fee.

PROJECT PHASES	Percent	PROPOSED FEE
Schematic Design	20%	\$44,790.00
Design Development	19%	\$42,550.00
Construction Documents	25%	\$55,985.00
Agency Approval & Bidding	2%	\$4,480.00
Construction Administration	24%	\$53,745.00
Project Closeout	10%	\$22,395.00
TOTAL		\$223,945.00

Please note that the percentage of overall fee allocation. This allocation differs from the standard District fee allocation. Our delivery of the project will include detailed studies of all built environment including 3 dimensional building modeling. The conventional fee allocation does not allow the project to be delivered this way. In addition, the schematic design includes the service related to the 3D scanning scope.

The fee is fully burdened and no additional reimbursable expenses will be required.

We assume the following to be provided by the District.

- Existing utility and systems as-built drawings available for reference. We will furnish 3D scan of the existing spaces.
- All existing site information.
- Available program data.
- All Permitting/Agency Review Fees.

We thank you for the opportunity to submit this proposal and look forward to continue providing value-added service to the District. Our experience in various school based health centers will best serve your needs.

Cordially,



Dong E Kim, AIA, LEED AP  
Principal  
Byrens Kim Design Works

Client#: 51

BYRENASSO

ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/21/2015

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

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

<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS:	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Sentinel Insurance Co. LTD	
		<b>INSURER B:</b> Hartford Ins. Co of Midwest	
		<b>INSURER C:</b> Wesco Insurance Co.	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

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	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			57SBWBG9346 GENERAL LIAB EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.	09/01/2014	09/01/2015	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COM/OP AGG \$4,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			57SBWBG9346	09/01/2014	09/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	57WEGGG7714	09/01/2014	09/01/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	<b>Professional Liability</b>			ARA112011400	06/06/2014	06/06/2015	\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

PROJECT NAME: Oakland Technical High School Health Clinic. Oakland Unified School District and its directors, officers, employees, agents and representatives are named as Additional Insureds to General and Auto Liability per policy form wording. Insurance is Primary and Non-Contributory and severability of interests apply per policy form. A Waiver of Subrogation applies to Workers' Compensation.

<b>CERTIFICATE HOLDER</b> Oakland Unified School District Dept of Facilities Planning & Mgt. 955 High Street Oakland, CA 94601	<b>CANCELLATION</b> 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 <i>Elise Fisher</i>
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Insured: Byrons Kim Design Works  
Insurer: Sentinel Insurance Co. LTD  
Policy Number: 57SBWBG9346  
Policy Effective Date: 09/01/2014

Oakland Unified School District and its directors, officers, employees, agents and representatives

Additional Insured:

EXCERPTS FROM: Hartford Form SS 00 08 04 05

## BUSINESS LIABILITY COVERAGE FORM

### C. WHO IS AN INSURED

#### 6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit. A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

##### f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury, "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products- completed operations hazard, but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to: "Bodily injury, "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including: inspection, or engineering

### E.5. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom a claim is made or "suit" is brought.

### E.7.b.(7).(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

### E.8.b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

EXCERPT FROM Hartford Form SS 04 38 06 01

### HIRED AUTO AND NON-OWNED AUTO

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

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



Insured: Byrens Kim Design Works

Policy Number: 57WEGGG7714

Effective Date: 09/01/2014

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

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

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. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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 \_\_\_\_\_ % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE**

**Person or Organization**

**Job Description**

Oakland Unified School District  
Dept of Facilities Planning & Mgt.  
955 High Street  
Oakland, CA 94601

PROJECT NAME: Oakland Technical High School Health Clinic. SCHEDULE CONTINUED:  
Oakland Unified School District and its directors, officers, employees, agents and  
representatives

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

Form WC 04 03 06  
Process Date:

(1) Printed in U.S.A.

Policy Expiration Date:



## SMALL ARCHITECTURAL DESIGN ROUTING FORM

### Project Information

Project Name	Oakland Technical High School Health Clinic	Site	305
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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	Byrens Kim Design Works	Agency's Contact	Dong Kim				
OUSD Vendor ID #	I009281	Title	Architect of Record				
Street Address	618-4 <sup>th</sup> Street	City	Oakland	State	CA	Zip	94607
Telephone	510-452-3224	Policy Expires	9-1-2015				
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #	13198						

### Term

Date Work Will Begin	6-24-2015	Date Work Will End By (not more than 5 years from start date)	6-24-2017
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### Compensation

Total Contract Amount	\$	Total Contract Not To Exceed	\$223,945.00
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
9350	Measure J	3059905891	6215	\$223,945.00

### 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	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities Planning and Management				
	Signature	Date Approved	5/21/15		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature	Date Approved	5-21-15		
3.	Interim Deputy Chief, Facilities Planning and Management				
	Signature	Date Approved	5-27-15		
4.	Chief Operations Officer, Board of Education				
	Signature	Date Approved	6/1/15		
	President, Board of Education				
5.	Signature	Date Approved			