

Board Office Use: Legislative File Info.	
File ID Number	21-1697
Introduction Date	6-23-2021
Enactment Number	21-1064
Enactment Date	6/23/2021 os



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marc White, Director, Buildings & Grounds Department

Board Meeting Date June 23, 2021

Subject Resolution No. 2021-0287A - Declaring An Ongoing Emergency Pursuant to California Uniform Public Construction Cost Accounting Act (CUPCCAA)-Approved Under Enactment 21-0542, and Authorizing Continued Abatement and Repair of the Sewer at Bret Harte Middle School

Action Requested Adoption by the Board of Education of Resolution No. 2021-0287A Declaring Ongoing Emergency Pursuant to California Uniform Public Construction Cost Accounting Act (CUPCCAA) approved under File Number 21-1622, and authorizing continued abatement and repair of the sewer at Bret Harte Middle School, by four-fifths vote.

On June 16, 2021, by enacting File Number 21-1622, the Board of Education declared an emergency pursuant to the Public Contract Code which authorized the District to enter into an emergency contract for procurement of equipment and services for emergency abatement and repair of the sewer at Bret Harte Middle School. Contractor was selected without competitive bidding because this was considered an emergency contract. (Public Contract Code §22035 and §22050). Under Public Contract Code section 22050, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action.

At the time of the Board's submission deadline, work on the emergency repairs had commenced but were not yet complete.

Discussion The scope of work of the contract services are being provided on an emergency basis and include construction services for sewer repair and replacement. Emergency Repair Work includes: replacement of the sewer main line that is broken and a 6" Sewer Main that exits Gymnasium into school grounds that turns out to connect with city mainline in street on MacArthur Blvd; replacement of the gymnasium lateral connection; backfill and compact all trenches; replace all concrete and asphalt affected by pipe replacement; and removal of all construction related debris from Site.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Adoption by the Board of Education, by four-fifths vote, Resolution No. 2021-0287A Declaring An Ongoing Emergency Pursuant to California Uniform Public Construction

Cost Accounting Act (CUPCCAA), approved under File Number 21-1622, and authorizing continued abatement and repair of the sewer at Bret Harte Middle School.

Fiscal Impact

None

Attachments

- Resolution 2021-0287A
- 21- 1622 Declaration of Emergency and Award of Contract for Construction Services - Non competitively bid -Bret Harte Middle School Emergency Sewer Replacement Project to ER Plumbing & Construction, Inc.

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND SCHOOL DISTRICT**

RESOLUTION NO. 2021-0287A

**DECLARING ONGOING EMERGENCY PURSUANT TO CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT (CUPCCAA), APPROVED UNDER FILE NO.
21-1622, AND AUTHORIZING CONTINUED ABATEMENT AND REPAIR OF THE SEWER
AT BRET HARTE MIDDLE SCHOOL**

WHEREAS, in cases of emergency, the Governing Board of the District ("Board") may proceed pursuant to California Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000, et seq., "CUPCCAA") to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts; and

WHEREAS, On June 16, 2021, by File Number 21-1622, the Governing Board of the Oakland Unified School District found:

- (1) There was an emergency as defined by applicable statute(s) ("Emergency");
- (2) In order to mitigate and minimize as quickly as possible the potential health and safety impact, the Repair Work needed to commence immediately and avoid the delays which would result from a competitive bidding process, and that approval of the emergency resolution was necessary to respond to the Emergency.

WHEREAS, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

WHEREAS, section 22050 required, in relevant part, that the following steps be taken:

- (1) Pursuant to a four-fifths vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;
- (2) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue;
- (3) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

WHEREAS, at the time of the Board's submission deadline, work on the emergency repairs have commenced but are not yet complete. The repairs remain outstanding and are expected to be complete by June 30, 2021; and

NOW, THEREFORE, BE IT RESOLVED, the Governing Board of the Oakland Unified School District hereby resolves, determines and finds the Emergency is still ongoing and that there is a need to continue the action.

PASSED AND ADOPTED by a four-fifths (4/5) vote by the Board of Education of the Oakland Unified School District this 23rd day of June, 2021; by the following vote, to wit:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Mike Hutchinson, Gary Yee, VanCedric Williams, Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Shanthi Gonzales

NOES: None

ABSTAINED: None

RECUSE: None

ABSENT: Jessica Ramos (Student Director), Samantha Pal (Student Director)

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on June 23, 2021.

Legislative File Info.	
File ID Number:	21-1697
Introduction Date:	6/23/21
Enactment Number:	21-1064
Enactment Date:	6/23/2021 os

OAKLAND UNIFIED SCHOOL DISTRICT



Shanthi Gonzales
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to form

Board Office Use: Legislative File Info.	
File ID Number	21-1622
Introduction Date	6-16-2021
Enactment Number	21-1015
Enactment Date	6/16/2021 lf



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Memo (Non-Bid)

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marc White, Director, Buildings & Grounds Department

Board Meeting Date June 16, 2021

Subject Resolution for Declaration of Emergency and Award of Contract for Construction Services - Non competitively bid -Bret Harte Middle School Emergency Sewer Replacement Project to ER Plumbing & Construction

Action Requested Approval by the Board of Education, by four-fifths vote, of Resolution No. 2021-0287, Declaration of Emergency and Award of Contract for Construction Services for Emergency Abatement and Repair to ER Plumbing for the sewer replacement project at **Bret Harte Middle School** in the amount of **\$78,720.00**, and authorizing the President and Secretary of the Board to sign the Agreement for same with said contractor with work scheduled to commence on **June 16, 2021**, and scheduled to last until **June 23, 2021** pursuant to the contract.

Contractor was selected without competitive bidding because this is considered as an emergency contract. (Public Contract Code §22035 and §22050).

Discussion The scope of work of the contract services are being provided on an emergency basis and includes replacement of sewer main line that is broken and a 6” sewer main that exits Gymnasium into school grounds and turns out to connect with City mainline in street on MacArthur Blvd. Replace all gymnasium lateral connections. Replace all concrete and asphalt affected by pipe replacement. Removal of all construction related debris from Site to discard.

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education, by four-fifths vote, of Resolution No. 2021-0287 Declaration of Emergency and Award of Contract for Construction Services for Emergency Abatement and Repair to ER Plumbing for the sewer replacement project at Bret Harte Middle School

in the amount of \$78,720.00, and authorizing the President and Secretary of the Board to sign the Agreement for same with said contractor.

Fiscal Impact

Routine Restriction Maintenance Account not to exceed \$78,720.00.

Attachments

- Agreement
- Payment and Performance Bonds
- Insurance Certificate



CONTRACT JUSTIFICATION FORM

This Form Shall Be Submitted to the Board Office With Every Agenda Contract.

Legislative File ID No. 21-1622

Department: Buildings & Grounds Department

Vendor Name: ER Plumbing & Construction

Project Name: Bret Harte Middle School Sewer Mainline – Gym Repair

Project No.: 20016

Contract Term: Intended Start: June 16, 2021

Intended End: 6-23-2021

Annual (if annual contract) or total (if multi-year agreement) Cost: \$78,720.00

Approved by: Marc White

Is Vendor a local Oakland Business or have they meet the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

This vendor was a direct selection based on their services to provide repairs services. At this time, they have the most experience and familiarity with plumbing/sewer repair work.

Summarize the services or supplies this contractor or vendor will be providing.

This vendor will provide includes the replacement of sewer main line that is broken and a 6” Sewer Main that exits Gymnasium into school grounds, turns out to connect with city mainline in street on MacArthur Blvd. Replace all gymnasium lateral connection as well as damaged by large affected by pipe replacement. Removal of all construction related debris from Site to discard; and

Was this contract competitively bid? Check box for “Yes” (If “No,” leave box unchecked)

If “No,” please answer the following questions:

- 1) How did you determine the price is competitive?

This was deemed an emergency. Sewer leak arose that presented a serious health and safety risk for both students, staff and visitors, thus the Vendor was selected based on work done in the past and proven track record. Vendor submitted a price that was competitive and reasonable for the required repairs.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$96,700 or less (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- The Sewer problem is 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.” (Public Contract Code [“PCC”] §1102.)
- The emergency did not permit a delay that would have resulted from competitive bidding. (PCC§22050(a)(2).)
- The contract is necessary to respond to the emergency. (PCC§22050(a)(2).)

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND SCHOOL DISTRICT**

RESOLUTION NO. 2021-0287

**DECLARING AN EMERGENCY THAT REQUIRES THE
PROCUREMENT OF CONSTRUCTION SERVICES FOR
EMERGENCY ABATEMENT AND REPAIR AT BRET HARTE MIDDLE SCHOOL, AND
AWARDING A CONTRACT FOR PERFORMANCE OF THE EMERGENCY REPAIR WORK**

WHEREAS, on or about June 9, 2021, at Bret Harte Middle School, 3700 Coolidge Avenue, Oakland, California, 94602 (the "Site") a sewer leak arose that presented a serious health and safety risk for both students, staff and visitors. The sewer line backed up, which led to overflowing sewage and then flooding onto the property. Immediate action was necessary in order to protect the health of students, staff and visitors, and to avoid closing the campus; and

WHEREAS, the immediate hiring of a plumbing is necessary;

WHEREAS, without performance of the work, areas of the Site would be closed due to health and safety violations, and having students, staff and visitors in attendance with open sewage would be a violation of the California Health and Safety Code; and

WHEREAS, the Site is being utilized from 8:30am-12:30pm Monday through Friday for a half day academic intervention program from June 7, 2021 through July 2, 2021; and

WHEREAS, in order to abate the emergency, and to provide for the safety of students, staff, and visitors at the Site, the District has to immediately perform work to repair the broken sewer without delay ("Repair Work") because of the serious health and safety concerns impact that the sewage leak would have students, staff and visitors attending and participating in the Summer Learning program; and

WHEREAS, Emergency Repair Work includes: replacement of the sewer main line that is broken and a 6" Sewer Main that exits Gymnasium into school grounds that turns out to connect with city mainline in street on MacArthur Blvd; replacement of the gymnasium lateral connection; backfill and compact all trenches; replace all concrete and asphalt affected by pipe replacement; removal of all construction related debris from Site to discard; and

WHEREAS, the District is subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000, et seq., "CUPCCAA"), which requires formal competitive bidding for construction contracts over \$200,000, and formal or informal competitive bidding for construction contracts over \$60,000; and

WHEREAS, there was insufficient time to competitively bid the contract for the Repair Work, since the sewage flooding from the leak was posing an immediate health and safety concern for students, staff and visitors; and using competitive bidding would have delayed the commencement of the work until August 11, 2021, or later, and that delay in the start of the

work would have had a severe impact on the facilities, impact on the Site's Summer Learning program, and the operation of the Site school site; and

WHEREAS, the Repair Work will commence on June 17, 2021, with award of a contract to ER Plumbing & Construction, Inc., and District staff expect that the Repair Work will be complete by June 23, 2021; and

WHEREAS, an exception to the applicable competitive bidding requirements exists in cases of emergency when repair and/or replacements are necessary, and the governing board of the District ("Board") may proceed to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts (Public Contract Code §22035); and

WHEREAS, an emergency is 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 (Public Contract Code §1102); and

WHEREAS, emergency work under Public Contract Code section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

WHEREAS, section 22050 requires, in relevant part, that the following steps be taken:

(1) Pursuant to a four-fifths vote of the Board, the District may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;

(2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;

(3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days;

(4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

WHEREAS, the proposed form of the ER Plumbing & Construction, Inc., agreement has been approved by legal counsel.

NOW, THEREFORE, BE IT RESOLVED, the Governing Board of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

1. That the above recitals are true and correct;
2. That there is an emergency at the Site as defined by applicable statute(s) ("Emergency");
3. That, as described above, in order to mitigate and minimize as quickly as possible the potential health and safety impact on students, staff and visitors the Repair Work has to commence on June 17, 2021, it would not permit the delays which would result from a competitive bidding process, and this action was necessary to respond to the Emergency;
4. That the Board of Education hereby awards the proposed contract with ER Plumbing for the Repair Work in the amount of Seventy-Eight Thousand, Seven Hundred and Twenty dollars and no cents (\$78,720.00); and
5. That (a) District staff shall report on the status of this Emergency to the Board at its next regularly scheduled meeting so that the Board may determine, by a four-fifths vote, that there is a need to continue the Emergency action, including a specific determination that the remainder of the Emergency action cannot be completed by giving notice for bids to let contracts; (b) after any four-fifths vote by the Board to continue the Emergency action, pursuant to this paragraph District staff shall report to the Board at its next regularly scheduled meeting for another continuation vote by the Board, including the above specific determination; and (c) if the Board ever fails to make the above determination by four-fifths vote, the Emergency action shall terminate, and any further Repair Work shall be performed pursuant to competitive bidding (unless another exception to the competitive bidding requirement applies).

PASSED AND ADOPTED by a four-fifths (4/5) vote by the Board of Education of the Oakland Unified School District this 16th day of June, 2021; by the following vote, to wit:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, Gary Yee, VanCedric Williams, Mike Hutchinson, Clifford Thompson, Vice President Benjamin "Sam" Dais and President Shanthi Gonzales

NOES: None

ABSTAINED: None

RECUSE: None

ABSENT: Samantha Pal (Student Director) and Jessica Ramos (Student Director)

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on June 16, 2021.

Legislative File Info.	
File ID Number:	21-1622
Introduction Date:	June 16, 2021
Enactment Number:	21-1015
Enactment Date:	6/16/2021 lf

OAKLAND UNIFIED SCHOOL DISTRICT



Shanthi Gonzales
President, Board of Education



Dr. Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education



Approved as to form

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement effective **June 16, 2021**, is by and between the Oakland Unified School District, Alameda County, hereinafter called the “Owner,” and **ER Plumbing & Construction**, hereinafter called the “Contractor,” with each a “Party,” and together the “Parties.” to this Agreement.

WITNESSETH: That the Contractor and the Owner for the consideration hereinafter named agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work required, by the Contract (the “Work”) in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers, and as specified in

**Bret Harte Middle School – Sewer Gym Mainline Replacement Project, located at
3700 Coolidge Avenue, Oakland, California, 94602,**

all in strict compliance with the plans, drawings and specifications therefore prepared by

OUSD – Buildings & Grounds Department, 955 High Street, Oakland, CA, 94601,

and other Contract Documents relating thereto.

The Contract as awarded includes the base scope of work.

During the Work, the Contractor shall comply with all legal, contractual, and local government requirements related to the novel coronavirus and COVID-19 that apply to the Work, including “social distancing,” masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents.

ARTICLE II. CONTRACT DOCUMENTS. The Contractor and the Owner agree that all of the documents listed in Article 1.1.1 of the General Conditions form the “Contract Documents” which form the “Contract.” The Contractor and its subcontractors must use the Owner’s program software (COLBI DOCS) for projects.

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.

Time is of the essence in this Contract, and the time of Completion for the Work (the “Contract Time”) shall be Ten (10) calendar days, which shall start to run either on (a) the date of commencement of the Work as established in the Owner’s Notice to Proceed, or (b) if no date of commencement is established in a Notice to Proceed from Owner, the date of Contractor’s actual commencement of the Work (including mobilization). The Owner anticipates that the Contract

Construction Agreement – ER Plumbing & Construction – Bret Harte Middle School Emergency Sewer Replacement Project - \$78,720.00

{SR526393}

Time will start to run on **June 16, 2021**, in which case the deadline for Completion would be **June 23, 2021**.

Failure to Complete the Work within the Contract Time and in the manner provided for by the Contract Documents, or failure to complete any specified portion of the Work by a milestone deadline, shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not completed within the Contract Time, or if any specified portion of the Work were not completed by a milestone deadline, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration and supervision, third party claims, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that \$1,000.00 per calendar day of delay shall be the damages which the Owner shall directly incur upon failure of the Contractor to Complete the Work within the Contract Time or Complete any specified portion of the Work by a milestone deadline, as described above. Liquidated damages will accrue for failure to meet milestone deadlines even if the Contractor Completes the Work within the Contract Time.

In addition, Contractor shall be subject to liquidated damages, or actual damages if liquidated damages are not recoverable under law, for causing another contractor on the Project to fail to timely complete its work under its contract or for causing delayed *completion* of the Project. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if another contractor on the Project were to fail to timely complete its work under its contract or delay *completion* of the Project are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of such delay include, but are not limited to, loss of the use of the Work, loss of use of the other contractor's work, loss of use of the Project, disruption of activities, costs of administration and supervision, third party claims, the incalculable inconvenience and loss suffered by the public, and an Owner's inability to recover its delay damages from the contractors whose work was delayed by Contractor.

Accordingly, the parties agree that \$ 1,000.00 for each calendar day of delay shall be the amount of damages which the Owner shall directly incur upon Contractor causing another contractor on the Project to fail to timely complete its work under its contract or causing delayed *completion* of the Project.

For Contractor's obligations regarding claims against Owner from other contractors on the Project alleging that Contractor caused delays to their work, see General Conditions sections 3.7.4, 3.16 and 6.2.3.

If liquidated damages accrue as described above, the Owner, in addition to all other remedies provided by law, shall have the right to assess the liquidated damages at any time, and to withhold

liquidated damages (and any interest thereon) at any time from any and all retention or progress payments, which would otherwise be or become due the Contractor. In addition, if it is reasonably apparent to the Owner before liquidated damages begin to accrue that they will accrue, Owner may assess and withhold, from retention or progress payments, the estimated amount of liquidated damages that will accrue in the future. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If Owner accepts any work or makes any payment under the Contract Documents after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any provision in the Contract Documents regarding time of Completion, milestone deadlines, or liquidated damages.

ARTICLE IV. PAYMENT, AND RETENTION. The Owner agrees to pay the Contractor in current funds SEVENTY-EIGHT THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$78,720.00) for work satisfactorily performed after receipt of properly documented and submitted Applications for Payment and to make payments on account thereof, as provided in the General Conditions.

The above contract price does not include any allowances.”

The above contract price does not include any specific allowances. Any payment from an allowance is entirely at the discretion, and only with the advanced written approval, of the Owner. To request payment from a contractual allowance, the Contractor must fully comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4 and 7 of the General Conditions and its provisions regarding waiver of rights for failure to comply. If the Owner approves in writing a payment from a contractual allowance, no change order approved by Owner’s governing body shall be required and the Contractor may include a request for such payment in its next progress payment application. Contractor’s inclusion of a request for such payment in a progress payment application, or Contractor’s acceptance of a progress payment that includes such payment, shall act as a full and complete waiver by Contractor of all rights to recover additional amounts, or to receive a time extension or other consideration, related to the underlying basis of such payment; and such waiver shall be in addition to any other waiver that applies under the Contract Documents (including Article 4 of the General Conditions). If Contractor requests a time extension or other consideration in connection with or related to a requested payment from a contractual allowance, Contractor must comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4 and 7 of the General Conditions and their provisions regarding waiver of rights for failure to comply, and no such time extension or other consideration may be issued until a change order is approved by the Owner’s governing body pursuant to the Contract Documents. The amount of any contractual allowance may only be increased by a change order approved by Owner’s governing body. Once a contractual allowance is fully spent, the Contractor must request any additional compensation pursuant to the procedures in the Contract Documents for Notices of Potential Claim, Change Order Requests,

and Claims, and payment must be made by a change order approved by the Owner's governing body pursuant to the General Conditions. Upon Completion of the Work, all amounts in a contractual allowance that remain unspent and unencumbered shall remain the property of the Owner, Contractor shall have no claim to such funds, the Owner shall be entitled to a credit for such unused amounts against the above contract price, and the Owner may withhold such credit from any progress payment or release of retention.

ARTICLE V. CHANGES. Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions. To be enforceable, any written amendment or change order must be signed by both parties and approved by the Owner's governing body.

ARTICLE VI. TERMINATION. The Owner or Contractor may terminate the Contract as provided in the General Conditions.

ARTICLE VII. PREVAILING WAGES. The Project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract and Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State

Department of Industrial Relations. The Contractor and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. For all projects over Twenty-Five Thousand Dollars (\$25,000), a contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. For all projects over Twenty-Five Thousand Dollars (\$25,000), a contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

ARTICLE VIII. WORKING HOURS. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Contractor shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

ARTICLE IX. APPRENTICES. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

ARTICLE X. DSA OVERSIGHT PROCESS. The Contractor must comply with the applicable requirements of the Division of State Architect (“DSA”) Construction Oversight Process (“DSA Oversight Process”), including but not limited to (a) notifying the Owner’s Inspector of Record/Project Inspector (“IOR”) upon commencement and completion of each aspect of the Work as required under DSA Form 156; (b) coordinating the Work with the IOR’s inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner’s Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Work or Project.

Contractor shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Contractor’s wrongful act or omissions. If inspected Work is found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Contractor’s expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

ARTICLE XI. INDEMNIFICATION AND INSURANCE. The Contractor will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the General Conditions.

By this statement the Contractor represents that it has secured the payment of Workers’ Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Contractor shall supply the Owner with certificates of insurance evidencing that Workers’ Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days’ notice of cancellation.

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$2,000,000 per accident for bodily injury and property damage combined single limit.

ARTICLE XII. ENTIRE AGREEMENT. The Contract constitutes the entire agreement between the parties relating to the Work, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner’s award of the Contract to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties’ agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XIII. EXECUTION OF OTHER DOCUMENTS. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the

completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE XIV. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XV. BINDING EFFECT. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

ARTICLE XVI. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM. If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

ARTICLE XVII. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, which includes a change order signed by the parties and approved or ratified by the Governing Board.

ARTICLE XVIII. ASSIGNMENT OF CONTRACT. The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XIX. WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

OAKLAND UNIFIED SCHOOL DISTRICT

Shanthi Gonzales, President, Board of Education

Date

Kyla Johnson-Trammell, Superintendent,
Secretary, Board of Education

Date

Melissa Cole *Coordinator for Marc White*

Marc White, Director of
Buildings & Grounds Department

6-11-21

Date

CONTRACTOR

David Ball

Signature

DAVID BALL

Print Name

PRES>/OWNER

Title: Chairman, Pres., or Vice-Pres.

Rachel Vivas

Signature

RACHEL VIVAS

Print Name

Secretary

Title: Secretary, Asst. Secretary, CFO, or Asst. Treasurer

1000384

CALIFORNIA CONTRACTOR'S
LICENSE NO.

01-30-2023

LICENSE EXPIRATION DATE

APPROVED AS TO FORM

General Counsel

NOTE: Contractor must give the full business address of the Contractor and sign with

Contractor's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

E R Plumbing & Construction

Repair/Video, Plumbing & Drain Cleaning
52 Sea Bridge Way Alameda, CA.94502 * Fax: 510-238-8738 * Cell: 510-388-0567
State Lic.# : 1000384

CONTRACT/PROPOSAL

PROPERTY LINES: Owner shall locate and point out property lines. Contractor may, at his option, require the owner to provide a licensed land surveyors map of property.

Submitted to: Oakland Shool District: Bret Harte Middle School

Job Info

Job Name/Number:	Job Phone:	Job Location: 3700 Coolidge Ave, Oakland
Architect:	Date of Plans:	Date of Proposal 06/10/2021
Contractors Licence #:	Starting Date:	Completion Date(Approximate):
Home Improvement Salesperson:	Salesperson Registration #:	Substantial commencement of work shall consist of: Sewer Mainline Main Gymnasium Bathroom

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATE FOR:

1. Sewer Mainline is broken Clay Piping in several area causing backup to Gymnasium Bathrooms
 2. 6" Sewer Main exits Gymnasium into school grounds, turns out to connect with city mainline in street on MacArthur Blvd.
 3. Replace 6" inch sewer main from building to City Streets.
 4. Replace all Gymnasium lateral connection as well damaged by large trees
 5. Backfill and compact all trenches, replace all concrete and asphalt affected by pipe replacement.
 6. Remove all construction related debris from job site to discard
- Notes: Provide all necessary financial bonding which is included in Contract.
Prevailing wage rates.

We Propose to perform the above work in accordance with the drawings and specifications submitted, and to complete it in a workmanlike manner according to standard practices for the sum of: \$78,720 Down payment of: _____

Payment should be made as follows:

_____% (\$_____) Upon signing contract.

_____% (\$_____) Upon completion of _____.

_____% (\$_____) Upon completion of _____.

_____% (\$ \$78,720) Shall be made upon completion of this work under this contract.

You the Owner or Tenant have the right to require the Contractor to have a performance and payment bond.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. It is understood and agreed that this work is not provided for in any other agreement and no contractual rights arise until this proposal is accepted in writing.

Failure by the Contractor, without lawful excuse, to substantially commence work within twenty (20) days from the approximate date specified in this contract when the work will begin, is a violation of the Contractor's License Law.

Authorized Signature David Ball Date 06/10/2021

Acceptance _____ Date _____

(OWNER'S SIGNATURE) You, the Buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the Notice of Cancellation form (reverse side) for an explanation of this right.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Table with Project Name, Site, and other details.

Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist table with checkboxes for insurance requirements.

Contractor Information

Table with Contractor Name, OUSD Vendor ID #, Street Address, Telephone, Contractor History, and OUSD Project #.

Term of Original/Amended Contract

Table with Date Work Will Begin, Date Work Will End By, and New Date of Contract End.

Compensation/Revised Compensation

Table with Contract Price, Pay Rate Per Hour, Other Expenses, and 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.

Table with Resource #, Funding Source, Org Key, Object Code, and Amount.

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.

Approval routing table with columns for Division Head, Signature, Date Approved, and other details.