

**Board Office Use: Legislative File Info.**

File ID Number	15-2010
Introduction Date	10/28/15
Enactment Number	15-1738
Enactment Date	10/28/15 OAS



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education  
From Jacqueline Minor, General Counsel  
Board Meeting Date October 28, 2015  
Subject **AGREEMENT WITH AURORA ENVIRONMENTAL SERVICES, INC**

Action Requested Ratification of the Agreement with AURORA ENVIRONMENTAL SERVICES, INC

Background The General Counsel on behalf of the District is retaining Aurora Environmental Services to undertake environmental health and safety services and testing at Lakeview Elementary School.

Discussion The Agreement is a short term agreement. The assessments will be completed by November 30, 2015. The term of the Agreement is September 1, 2015 to November 30, 2015 at an amount not to exceed \$60,000.

Recommendation Ratification of the Agreement with AURORA ENVIRONMENTAL SERVICES, INC

Fiscal Impact Funding resource name: General Purpose

Attachments

- Agreement

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Introduction Date	10/28/15
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**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

## PROFESSIONAL SERVICES CONTRACT 2015-2016

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

1. **Services:** CONTRACTOR shall provide the ("Services" or "Work") as described in Exhibit "A," attached hereto and incorporated herein by reference.
2. **Terms:** CONTRACTOR shall commence work on September 1, 2015. The work shall be completed no later than November 30, 2015.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement. The compensation under this Contract shall not exceed \$60,000 [per fiscal year], at an hourly billing rate specified in the scope of services attached hereto. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

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

Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

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

4. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
5. **CONTRACTOR Qualifications / Performance of Services:**

**CONTRACTOR Qualifications:** CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

**Standard of Care:** CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

6. **Invoicing:** Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: Contractor name, Contractor address, invoice date, invoice number, purchase order number, name of school or department service was provided to, period of service, name of the person performing the service, date service was rendered, brief description of services provided, number of hours of service, hourly rate, total payment requested.
7. **Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

### OUSD Representative:

Name: Jacqueline Minor, General Counsel  
 Site /Dept.: Legal  
Jacqueline.minor@ousd.org



**CONTRACTOR:**

**Name:** *Thomas M. Jamison*  
**Vice President**  
**Aurora ESI**  
**Ph:** 925-689-2174  
**Fax:** 855-710-6294  
**tjamison@auroraesi.com**

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address.

8. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

9. **Insurance:**

1. Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

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

- ii. CONTRACTOR shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.
10. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.
11. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
12. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.
13. **Drug-Free / Smoke Free Policy:** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
14. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection



with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement.

15. **Copyright/Trademark/Patent/Ownership:** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
16. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
17. **Termination:** OUSD may at any time terminate this Agreement upon 30 days prior written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
18. **Conduct of CONTRACTOR:** By signing this Agreement, CONTRACTOR certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, which include:
  1. **Tuberculosis Screening:** CONTRACTOR is required to screen employees who will be working at OUSD sites for more than six hours. CONTRACTOR affirms that each employee has current proof of negative TB testing on file and TB results are monitored.
  2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows: "CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.
- In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an OUSD school site and, or property, CONTRACTOR shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.
19. **No Rights in Third Parties:** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
20. **Limitation of OUSD Liability:** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
21. **Confidentiality:** CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractors will be permitted access to student data only where permissible under state and federal law and only after executing OUSD's Confidentiality Agreement Regarding Student Data.
22. **Conflict of Interest:** CONTRACTOR shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

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

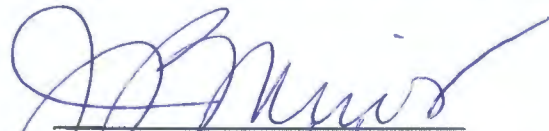
Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which




constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.

23. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals 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/>).
24. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement.
25. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
26. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
27. **Counterparts:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
28. **Signature Authority:** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
29. **Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
30. **W-9 Form:** If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.

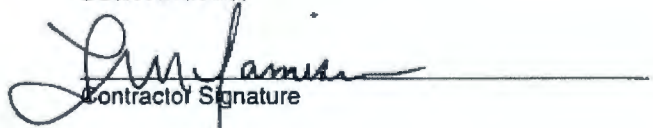
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
Jacqueline Minor, General Counsel


- ☒ President, Board of Education  
☐ Superintendent  
☐ Chief or Deputy Chief

  
Secretary, Board of Education

**CONTRACTOR**

  
Contractor Signature

T.M. JAMISON - V.P./OPS. MGR.  
Print Name, Title

File ID Number: 15-2060  
Introduction Date: 10/28/15  
Enactment Number: 15-1738  
Enactment Date: 10/28/15  
By: 



220 Fourth Street, Suite 200  
Oakland, CA 94607  
Phone (855) 500-2374 • Fax (855) 710-6294

September 23, 2015

Jacqueline P. Minor, General Counsel  
Office of the General Counsel  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

**Proposal: P0287**

Re: Proposal for Environmental, Health & Safety Services  
Site: Lakeview Elementary School  
746 Grand Ave, Oakland, CA 94610  
Oakland, CA

Dear Ms. Minor:

Aurora Environmental Services, Inc. (Aurora ESI) appreciates the opportunity to submit this proposal to provide the Oakland Unified School District (OUSD) with professional environmental health & safety services at Lakeview Elementary School.

The following scope of services will be performed by Aurora ESI in accordance with generally accepted professional practices and standards, and applicable rules and regulations for the locality in which the services are provided and for the intended use of the project at the time such services are performed. Aurora ESI makes no other warranty either expressed or implied.

**A. Scope of Services**

**Building Hazardous Materials Air Sampling**

Collect indoor air samples in accordance to regulations applicable to schools for asbestos airborne fibers, and the presence of lead and mold particles at various locations throughout the site including:

- Main building, classrooms and auditorium.
- Portable/modular classrooms.
- Review laboratory sample results.



### Traffic Air Pollutants Testing and Analysis

- Review applicable rules, regulations and state law criteria for toxic air contaminants and health risk limits applicable to schools.
- Collect outdoor air samples at various locations during proposed use hours of 7:00 AM – 5:00 PM.
- Collect indoor air samples at various locations during proposed use hours of 7:00 AM – 5:00 PM.
- Review air sample laboratory reports submitted for CO<sub>2</sub>, CO levels, Particulate Matter, NO<sub>x</sub> and Benzene analysis and identification.
- Compare air sample contaminants/pollutants results to applicable criteria.
- Identify air contaminants that may be harmful to the health of student/school staff at risk.

### Traffic Noise Analysis

- Review applicable acoustical criteria for traffic noise affecting schools (City, State, LEED, CHPS and ANSI).
- Conduct acoustical measurements of traffic noise at the school to document exterior and interior noise levels. Measurements will include 48-hour monitors at two locations and short term (15-minute attended) measurements at various locations and conditions including:
  - o Outdoor play area.
  - o Main building classrooms and auditorium.
  - o Portable/modular classrooms.
  - o Windows open and windows closed.
- Compare noise levels to applicable criteria.
- Identify conceptual noise attenuation measures necessary to achieve criteria.

## **B. Reporting**

Aurora ESI will prepare a written report summarizing analysis and presenting our findings (one draft report and one final report). Additionally, Aurora ESI team members will meet with school representatives to discuss findings.

## **C. Compensation**

Fees are based on the hourly rates shown in Section D below. In consideration for Aurora ESI providing the services noted in **A. Scope of Services** of this Proposal under standard turn around laboratory times, OUSD agrees to compensate Aurora ESI as follows:

*Hourly not-to-exceed fee of \$55,644.*

#### **D. Additional Services**

Any services not specifically provided for under **A. Scope of Services** in this proposal, shall be considered Additional Services. Additional services shall only be performed if mutually agreed to in writing by OUSD or Aurora ESI. Fees for additional services would be based on the hourly rates shown in Section E below. The hourly rates shall remain in effect for one (1) year from the date of this agreement after which is subject to change in accordance with Aurora ESI's standard hourly rates in effect at the time of the additional service. Additional services could include:

- Hazardous Materials Abatement Specifications.
- Measurements and analysis of mechanical equipment noise.
- Measurements and analysis sound transfer from classroom to classroom.
- Measurements and analysis reverberation analysis in classrooms and auditorium.
- Detailed recommendations and design for noise control treatments.
- Additional requested report revisions beyond one draft and one final report.

#### **E. Professional Hourly Labor Rate Schedule**

Principal .....	\$200 / hr.
Senior Consultant .....	\$160 / hr.
Project Manager .....	\$140 / hr.
Technician/CAD .....	\$110 / hr.
Certified Asbestos Consultant / Lead Consultant.....	\$95 / hr.
Project Administrator.....	\$85/ hr.
Field Industrial Hygienist.....	\$75/ hr.
Environmental Data / IAQ Specialist.....	\$70/ hr.

#### **F. Terms and Conditions**

##### **OUSD's Responsibilities**

- A. OUSD shall provide complete and accurate, and timely information regarding its requirements for the project and shall designate by name a project representative authorized to act on its behalf.
- B. OUSD shall examine documents or other instruments of service submitted by Aurora ESI and shall render any decisions necessary promptly in order to avoid unreasonable delay.
- C. OUSD shall also provide any additional services, other than those which Aurora ESI is responsible to provide, which are reasonably necessary to complete the project, including, but not limited to accurate and complete surveys, geotechnical engineering services, testing services and inspection and reports required by law.

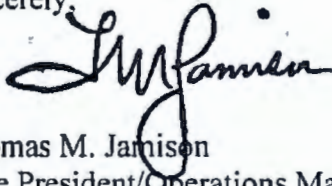


Ms. Jacqueline Minor  
Proposal for Environmental, Health & Safety Services  
Site: Lakeview Elementary School  
September 23, 2015

- D. Due to the sensitivity of the services, drawings, specifications, and any other instruments of service to be provided by Aurora ESI shall remain the property of Aurora ESI and shall not be used by OUSD on any other project or for completion of this project by others without the written authorization of Aurora ESI.

Ms. Minor, thank you again for allowing us to submit this proposal. We look forward to providing the Oakland USD with highly responsive and professional environmental consulting services. If you have any questions involving this proposal, please do not hesitate to contact me.

Sincerely,



Thomas M. Jamison  
Vice President/Operations Manager