

Board Office Use: Legislative File Info.	
File ID Number	17- 0304
Introduction Date	3-8-2017
Enactment Number	17-0305
Enactment Date	3-8-17



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Devin Dillon, Superintendent and Secretary, Board of Education
By: Vernon Hal, Senior Business Officer *YEH*
Joe Dominguez, Deputy Chief, Facilities Planning and Management

Board Meeting Date March 8, 2017

Subject Amendment No. 1, Agreement for Architectural Services - Byrens Kim Design Works - Kaiser Finishing Kitchen Upgrade Project

Action Requested Approval by the Board of Education of Amendment No. 1, Agreement for Architectural Services between the District and Byrens Kim Design Works, Oakland, CA, for the latter to provide additional architectural & engineering services to complete the fire alarm design; includes identification of existing field devices and types required to complete a substantiated battery calculation, in conjunction with Kaiser Finishing Kitchen Upgrade Project, in an amount not-to exceed \$6,675.00 increasing previous contract amount from \$184,440.00 to a not to exceed amount of \$191,115.00. All remaining portions of the agreement shall remain in full force and effect.

Discussion

Compliance with Fire Alarm Codes and OUSD Design Standards.

LBP (Local business participation percentage)

100.00%

Procurement Method

Professional Services Agreement - Formal - Adversited RFP / Awarded to entity following OUSD competitive solicitation process.

Recommendation

Approval by the Board of Education of Amendment No. 1, Agreement for Architectural Services between the District and Byrens Kim Design Works, Oakland, CA, for the latter to provide additional architectural & engineering services to complete the fire alarm design; includes identification of existing field devices and types required to complete a substantiated battery calculation, in conjunction with Kaiser Finishing Kitchen Upgrade Project, in an amount not-to exceed \$6,675.00 increasing previous contract amount from \$184,440.00 to a not to exceed amount of \$191,115.00. All remaining portions of the agreement shall remain in full force and effect.

Fiscal Impact

Fund 21, Measure J

Attachments

- Agreement for Architectural Services including scope of work
- Certificate of Insurance
- Consultant Proposal



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. 17-0304

Department: Facilities Planning and Management

Vendor Name: Byrens Kim Design Works

Project Name: Kaiser Finishing Kitchen Upgrade Project No.: 13177

Contract Term: Intended Start: 3/9/2017 Intended End: 12/31/2018

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$6,675.00

Approved by: Tadashi Nakadegawa

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

Local Business Policy? ☒ Yes (No if Unchecked)

How was this Vendor selected?

This vendor was originally selected from the pre-qualified list of architects.

Summarize the services this Vendor will be providing.

Scope includes additional architectural & engineering services to complete the fire alarm design. Tasks include identification of existing field devices and types required to complete a substantiated battery calculation.

Was this contract competitively bid? ☒ Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - ☐ Western States Contracting Alliance Contracts (WSCA)
 - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price

☒ **Other, please provide specific exception**

3) ☐ **Not Applicable - no exception - Project was competitively bid**

EXHIBIT "A" Scope of Work**Contractor Name: Byrens Kim Design Works****Billing Rate: Six thousand, six hundred seventy-five dollars & no cents (\$6,675.00)****1. Description of Services to be Provided**

The scope of the project **includes additional architectural & engineering services to complete the fire alarm design. Tasks include identification of existing field devices and types required to complete a substantiated battery calculation.**

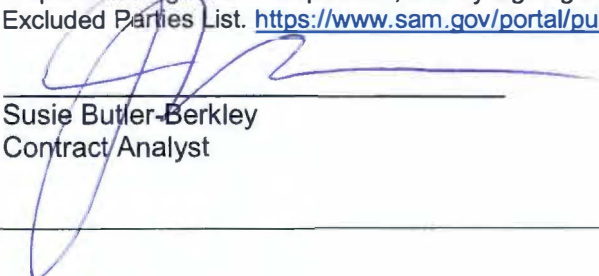
2. Specific Outcomes:

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



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 3/9/2017 and the parties agree to amend that Agreement as follows:

1. Services:	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
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. <u>Attach revised scope of work.</u>		
The CONTRACTOR agrees to provide the following amended services: <u>the scope of the project includes additional architectural & engineering services to complete the fire alarm design. Tasks include identification of existing field devices and types required to complete a substantiated battery calculation.</u>		
2. Terms (duration):	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
If term is changed: The contract term is extended by an additional _____, and the amended expiration date is _____.		
3. Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
If the compensation is changed: The contract price is amended by		
<input checked="" type="checkbox"/> Increase of \$6,675.00 to original contract amount		
<input type="checkbox"/> Decrease of \$ _____ to original contract amount		
and the new contract total is One hundred ninety-one thousand, one hundred fifteen dollars and no cents (\$191,115.00)		

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 Education

Date

3-8-17

Devin Dillon, Interim Superintendent,
Secretary, Board of Education

Date

3-8-17

Joe Dominguez, Deputy Chief
Facilities, Planning and Management

Date

CONTRACTOR

Contractor Signature

1/4/17

Date

Dong E Kim, President
Print Name, Title

File ID Number: 17-0304
Introduction Date: 3-8-17
Enactment Number: 17-0305
Enactment Date: 3-8-17
By: _____

EXHIBIT A



December 7, 2016

Mary Ledezma
Oakland Unified School District
Facilities Planning and Management
955 High Street
Oakland, CA 94601

RE: Amendment #1 Proposal for Architectural and Engineering Services
For Kaiser Elementary School Finishing Kitchen
Fire Alarm Scope Revision

Dear Ms. Ledezma,

I am submitting this proposal for extra services related to the change in fire alarm scope. The original scope anticipated addition of fire alarm devices to the existing fire alarm control panel. Based on the requirement of the voice evacuation system per DSA as well as the subsequent decision by the District, the project required a replacement of existing fire alarm control panel with a new voice evac capable control panel. This change updates the main panel, and allows for future expansion capability. The following scope considerations were added to meet the revised project requirement.

The existing as-built information is not available. The OUSD standard mandates that the fire alarm design is based on documented existing conditions. The project electrical engineer will schedule a site visit to assess the existing conditions with Simplex Grinnell.

- Update fire alarm scope to include new control panel in addition to the kitchen area devices.
- Document all existing fire alarm devices and types to complete a substantiated battery calculation. This is required due to the unavailable list of all existing initiation devices.

The updated fire alarm scope will be completed by the project electrical engineer, WHM, Inc. The assessment of existing fire alarm devices and documentation will be performed by WHM, Inc. in collaboration with Simplex Grinnell.

To complete the required tasks, we propose the following fee:

Architect:	\$2,500.00
Electrical Engineer:	\$3,500.00
<u>Simplex Assessment:</u>	<u>\$675.00</u>
Total:	\$6,675.00

Please refer to the attached proposal from WHM, Inc. and Simplex.

Overall update of the design for the new fire alarm panel has been completed. The site assessment by WHM, Inc. and Simplex Grinnell will proceed once the direction is confirmed by the District.

I thank you for your opportunity.

Cordially,

A handwritten signature in black ink, appearing to read 'Dong E Kim', with a stylized flourish at the end.

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

Attached: Extra Service for Fire Alarm System from WHM, Inc, dated 12/5/16
 Simplex Grinnell Quotation for Kaiser ES, dated 11/19/16

Client#: 51

BYRENASSO

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/03/2016

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

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

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090		CONTACT NAME: Nancy Ferrick PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS: nferrick@dealeyrenton.com													
INSURED Byrens Kim Design Works 681 - 4th Street Oakland, CA 94607		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <td>INSURER A : Sentinel Insurance Co. LTD</td> <td>NAIC # 11000</td> </tr> <tr> <td>INSURER B : Hartford Ins. Co of Midwest</td> <td>37478</td> </tr> <tr> <td>INSURER C : Wesco Insurance Co.</td> <td>25011</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>		INSURER A : Sentinel Insurance Co. LTD	NAIC # 11000	INSURER B : Hartford Ins. Co of Midwest	37478	INSURER C : Wesco Insurance Co.	25011	INSURER D :		INSURER E :		INSURER F :	
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INSURER C : Wesco Insurance Co.	25011														
INSURER D :															
INSURER E :															
INSURER F :															

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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<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"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X X	57SBWBG9346	09/01/2015	09/01/2016	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	AUTOMOBILE LIABILITY <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 UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$	X X	57SBWBG9346	09/01/2015	09/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	57WEGGG7714	09/01/2015	09/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability		ARA112011402	06/06/2016	06/06/2017	\$2,000,000 per claim \$2,000,000 annl aggr.

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

General Liability excludes claims arising out of the performance of professional services.

Ref: Kaiser Finishing Kitchen Upgrade.

Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives are named as Additional Insureds to General and Auto Liability. Insurance is Primary and Non-Contributory per policy form. A Waiver of Subrogation applies to Workers Compensation.

CERTIFICATE HOLDER

CANCELLATION

Oakland Unified School District 955 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Elise Fisher</i>
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Insured: Byrens Kim Design Works
Insurer: Sentinel Insurance Co. LTD
Policy Number: 57SBWBG9346
Policy Effective Date: 09/01/2015

Oakland Unified School District, 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: 09/01/2015

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
955 High Street
Oakland, CA 94601

PERSON(S) OR ORGANIZATION(S), CONT: Oakland Unified School District, 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:

Board Office Use: Legislative File Info.	
File ID Number	16-0675
Introduction Date	4-27-2016
Enactment Number	16-0573
Enactment Date	4-27-2016



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Antwan Wilson, Superintendent and Secretary, Board of Education
By: Vernon Hal, Senior Business Officer *VH*
Roland Broach, Executive Director, Buildings, Custodial & Grounds
Facilities Planning and Management *RB*

Board Meeting Date April 27, 2016

Subject Agreement for Architectural Services - Byrens Kim Design Works - Kaiser Finishing Kitchen Upgrade Project

Action Requested

Approval by the Board of Education of Agreement for Architectural Services between District and Byrens Kim Design Works, Oakland, CA, for the latter to provide architectural services for programming, schematic design, design development, construction documents, DSA submittal, bidding, construction administration and close-out services for a new Kitchen Addition housing a fully equipped kitchen with a service line of hot food wells, salad bar and milk coolers, in conjunction with the Kaiser Finishing Kitchen Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, upon issuance of the Notice to Proceed and/or Board Approval and concluding no later than December 31, 2018, in an amount not to exceed \$184,440.00.

Background

The scope of the project includes programming, schematic design, design development, construction documents, DSA submittal, bidding, construction administration & close-out services for a new Kitchen Addition (1200 SF) housing a fully equipped kitchen with a service line of hot food wells, salad bar and milk coolers.

Discussion

Kaiser Elementary School does not currently have a kitchen to prepare lunch meals. Students currently eat pre-packaged food delivered to the Multi-Purpose Room. The new kitchen addition will house a fully equipped kitchen with a service line of hot food wells, salad bar and milk coolers.

100.00%

LBP (Local Business Participation Percentage)

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

Procurement Method

Recommendation

Approval by the Board of Education of Agreement for Architectural Services between District and Byrens Kim Design Works, Oakland, CA, for the latter to provide architectural services for programming, schematic design, design development, construction documents, DSA submittal, bidding, construction administration and close-out services for a new Kitchen Addition housing a fully equipped kitchen with a service line of hot food wells, salad bar and milk coolers, in conjunction with the Kaiser Finishing Kitchen Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, upon issuance of the Notice to Proceed and/or Board Approval and concluding no later than December 31, 2018, in an amount not to exceed \$184,440.00.

Fiscal Impact

Measure J

Attachments

- Agreement for Architectural Services including scope of work
- Certificate of Insurance
- Consultant Proposal



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. _____

Department: OUSD Facilities

Vendor Name: Byrens Kim Design Works

Project Name: Kaiser Finishing Kitchen

Project No.: 13177

Contract Term: Upon issuance of the Notice to Proceed and/or Board Approval and
concluding no later than December 31, 2018.

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$ 184,440.00

Approved by: Roland Broach & Cesar Monterrosa

Is Vendor a local Oakland Business or have they meet the requirements of the
Local Business Policy? Yes ☒ No ☐

Why was this Vendor selected?

This vendor provided a best value proposal after evaluation of several firms. Vendor is an Oakland-based company. Vendor's Local Business Participation high at 74%.

Summarize the services this Vendor will be providing.

Scope includes programming, schematic design, design development, construction documents, DSA submittal, bidding, construction administration & close-out services for a new Kitchen Addition housing a fully equipped kitchen with a service line of hot food wells, salad bar and milk coolers.

A new Kitchen Addition will provide space to serve students whom currently eat pre-packaged food in a makeshift kitchen inside the Multi-Purpose Room (MPR).

Was this contract competitively bid? Yes ☒ No ☐

If No, answer the following:

1) How did you determine the price is competitive?

Request for Proposals were solicited from several firms already listed in the pool of Pre-Qualified Architectural Firms. Comparison of services & fees were used to determine best fit and best value.

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - ☐ Western States Contracting Alliance Contracts (WSCA)
 - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**

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 10th day of March, 2016, 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"):

Kaiser Finishing Kitchen Upgrade, located at 25 South Hill Court, Oakland, CA.

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. **Upon issuance of the Notice to Proceed and/or Board Approval and concluding no later than December 31, 2018.**

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 **One hundred eighty-four thousand, four hundred forty dollars and no cents (\$184,440.00).**
- 3.2. Architect shall notify District if District requested services or reimbursables will exceed the NA 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 (10th) 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
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 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
(510)-535-7038**

Architect:

Byrens Kim Design Works
681 4th Street
Oakland, CA 94607

**Attn: Dong Kim
(510) -452-3224**

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, under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

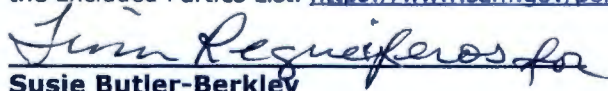
Article 26. Other Provisions

- 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.

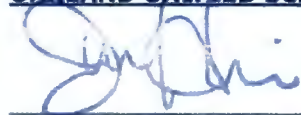
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions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

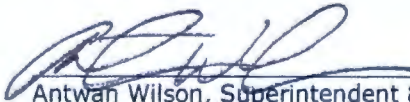
OAKLAND UNIFIED SCHOOL DISTRICT



James Harris, President, Board of Education

4/28/16

Date



Antwan Wilson, Superintendent & Secretary, Board of Education

4/28/16

Date



Roland Broach, Executive Director, Buildings, Custodial & Grounds, Facilities Planning and Management

3-22-16

Date

ARCHITECT



By: Dong E. Kim
Its: President

3/11/16

Date


APPROVED AS TO FORM:



OUSD Facilities Legal Counsel

3.17.16

Date

File ID Number: 10-0675
Introduction Date: 4-27-2016
Enactment Number: 10-0573
Enactment Date: 4-27-2016
By: 

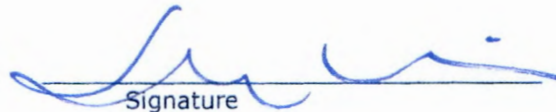
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Dong E. Kim [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 11th day of March 2016 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.]**



EXHIBIT A

November 13, 2015

Maria Denney, AIA
Oakland Unified School District
Facilities Planning and Management
955 High Street
Oakland, CA 94601

RE: Proposal for Architectural and Engineering Services
For Kaiser Elementary School Finishing Kitchen

Dear Ms. Denney,

Thank you for the opportunity to provide this Architectural and Engineering service proposal for the Kaiser Elementary School Finishing Kitchen Project. We want to thank you for the opportunity to submit this proposal, and illustrate our strong interest in delivering this project to the District. As you are aware, we have been working on the District's Central Commissary project, and are familiar with the District's goal to provide healthy and nutritious meals to the student. We are familiar with the District's food services goals and the Nutritional Services' process.

As requested by your email dated 11/2/15, we understand that the intent of the project is to provide the following spaces;

- ± 1,200 SF finishing kitchen
- Consider site built construction vs. modular/prefabricated options
- Construction Budget of \$1.2 million

We understand that the project will involve community outreach process. In addition, we believe the following potential design considerations may be applicable for this project.

- Provide site path of travel improvement

The project will be delivered under the DSA project delivery. In addition, it will require the Oakland Fire Prevention Bureau and the County of Alameda Environmental Health review.

Our service will include a review of existing conditions. We understand that the project program is well defined and our service is to confirm the provided program and start the schematic design.

We note that there are site and program related uncertainties. We understand the following requirement.

- District to provide site survey
- Fire sprinkler requirement as well as the service main information is unknown at this point. We will provide a separate fee proposal to address the sprinkler design upon investigation
- District to engage commissioning agent for CBC commissioning requirement
- Utility company coordination by the District. We will provide the necessary documents.
- CGS approval may not be required. We will need to confirm upon review.

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	
H&M Mechanical	Mechanical Engineers	(Small Local Business Enterprise)
WHM Inc	Electrical Engineers	
Silva Cost Consulting	Cost Estimator	
RAS Design		
	Food Services	

Please refer to the attached Project Budget Worksheet for detailed understanding of the project deliverables and scope.

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

PROJECT PHASES	Percent	PROPOSED FEE
Program	13%	\$20,470.00
Schematic Design	13%	\$20,470.00
Design Development	15%	\$23,620.00
Construction Documents	22%	\$34,640.00
Agency Approval & Bidding	3%	\$4,720.00
Construction Administration	24%	\$37,780.00
Project Closeout	10%	\$15,740.00
TOTAL		\$157,440.00
Reimbursables		\$27,000.00

In house document printing is included in the basic services. Reimbursable expense may include the following:

- DSA Application fee ±\$15,650 based on \$1.2 million Construction budget
- Oakland Fire Prevention review and approval ±\$1,000
- County of Alameda Food Services ±\$2,500
- Permit submittal document reproduction

The reimbursable cost will be billed cost + 10% markup.

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 OUSD as well as other commercial kitchen experience will best serve your needs.

Cordially,

A handwritten signature in dark ink, appearing to read 'Dong E Kim', with a stylized flourish extending to the right.

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

PROJECT BUDGET WORKSHEET

Project OUSD Kaiser Finishing Kitchen
 Client Oakland Unified School District
 Project Address _____

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 Program Confirmation	Initial Client Meeting	4	Meetings include 2 staff
	Gather existing documents	4	
	Visit site and review existing conditions	4	
	Generate initial project schedule	8	
	Review existing program furnish by the District	4	
	Meeting with the OUSD Food Services	4	
	Generate Building Model based on provided docs	24	
	- Site Plans		
	- Floor Plans		
	Program confirmation meeting	6	
	Refine program schemes	12	
	Consultant coordination for generation of program document	6	
	Initial meeting with the Community outreach coordinator (Mtg #1)	4	
	Submit final program document	4	
2 Schematic Design	Update schedule	8	
	Generate Schematic Design Documents	60	
	- Preliminary Code Analysis		
	- Site Plan		
	- Floor plan		
	- Elevations		
	- Interior Elevations		
	Consultant coordination	12	
	DSA Preliminary review meeting	4	
	Alameda Environmental Health Prelim mtg	4	
	City of Oakland Fire Prevention Prelim mtg	6	
	Coordinate utility company initial investigation	12	
	Coordinate Schematic Design Cost Estimate	4	
	Community Meeting #2 & Preparation	16	

	Draft schematic submittal mtg Update schmatic design per Client comments Submit final Schematic design	6 16 6	Fire Sprinkler scope is unknown at this point. Additional work may be required based on the conditions and the requirement generated during the investigation.
3 Design Development	Generate design development documents - Preliminary Code Analysis - Site Plan - Floor plans - Elevations - Interior Elevations - Sections - Outline Specifications Update schedule Gather material sample board Community Meeting #3 & Preparation Coordinate with District regarding engagement of code/sustainability commissioning agent Consultant coordination Draft DD submittal mtg Community Meeting #4 & Preparation Update DD per Client comments Submit final DD	60 4 16 16 16 8 6 16 24 6	
4 Construction Documents	Generate CD Documents 50% Submittal Mtg Community Meeting #5 & Preparation 95% Submittal Mtg Coordinate commisioning agent Assist the District with Utility applications Community Meeting #6 & Preparation Consultant coordination	96 6 16 6 8 8 16 8	
5 Permit	Oakland Fire Prevention Approval Alameda County Environment Health Review DSA plan submittal and approval	6 24 40	Fee as Reimbursables Fee as Reimbursables Fee as Reimbursables
5 Bidding	Coordinate bid package preparation Attend prebid walk	4 6	

	Respond to contractor questions Review bids as required	12 4	
6 Construction Administration	Construction Administration - CA activities - DSA Coordination - Sustainability/Commissioning coord.	360	Assume 5 month CA
7 Close Out	DSA Close out document coordination Commissining coordination Prepare as-built document per contractor set Submit as-built document	60 16 16 8	

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/10/2017

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

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

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	CONTACT NAME: Nancy Ferrick PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS: nferrick@dealeyrenton.com														
INSURED Byrens Kim Design Works 681 - 4th Street Oakland, CA 94607	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Sentinel Insurance Co. LTD</td> <td>11000</td> </tr> <tr> <td>INSURER B: Hartford Ins. Co of Midwest</td> <td>37478</td> </tr> <tr> <td>INSURER C: Wesco Insurance Co.</td> <td>25011</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Sentinel Insurance Co. LTD	11000	INSURER B: Hartford Ins. Co of Midwest	37478	INSURER C: Wesco Insurance Co.	25011	INSURER D:		INSURER E:		INSURER F:	
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INSURER E:															
INSURER F:															

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 CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> 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 OTHER:	X	X	57SBWBG9346	09/01/2016	09/01/2017	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 - COMP/OP AGG \$4,000,000 \$
A	AUTOMOBILE LIABILITY <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	X	X	57SBWBG9346	09/01/2016	09/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	57WEGGG7714	09/01/2016	09/01/2017	<input checked="" type="checkbox"/> PER STATUTE <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	Professional Liability			ARA112011402	06/06/2016	06/06/2017	\$2,000,000 per claim \$2,000,000 annl aggr.

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


General Liability excludes claims arising out of the performance of professional services.

REF: Amendment No. 1, Kaiser Finishing Kitchen.

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

CERTIFICATE HOLDER

CANCELLATION

Oakland Unified School District Dept. of Facilities & Mgt. 955 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Insured: Byrens Kim Design Works
Insurer: Sentinel Insurance Co. LTD
Policy Number: 57SBWBG9346
Policy Effective Date: 09/01/2016

REF: Amendment No. 1, Kaiser Finishing Kitchen. 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.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WORKERS' COMPENSATION BROAD FORM ENDORSEMENT EXTENDED OPTIONS

Policy Number: 57WEGGG7714

Effective Date: 9/1/16

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address:

Byrens Kim Design Works
681 - 4th Street
Oakland, CA 94607

Section I of this endorsement expands coverage provided under WC 00 00 00.

Section II of this endorsement provides additional coverage usually only provided by endorsement.

Section III of this endorsement is a Schedule of Covered States.

You may use the index to locate these coverage features quickly:

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SECTION I

PARTS ONE and TWO

1. WE WILL ALSO PAY

- D. **We Will Also Pay** of **Part One** (WORKERS' COMPENSATION INSURANCE); and
- E. **We Will Also Pay** of **Part Two** (EMPLOYERS' LIABILITY INSURANCE) is replaced by the following:

We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, **INCLUDING** loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this law; and
5. expenses we incur.

PART THREE

2. How This Insurance Applies

Paragraph 4. of **A. How This Insurance Applies** of **Part 3** (Other States Insurance) is replaced by the following:

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within **sixty** days.

PART SIX

3. Transfer Of Your Rights and Duties

- C. **Transfer Of Your Rights and Duties** of **Part 6** (Conditions) is replaced by the following:

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within **sixty** days after your death, we will cover your legal representative as insured.

4. Liberalization

If we adopt a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this policy. It will apply when the change becomes effective in your state.

SECTION II

VOLUNTARY COMPENSATION AND EMPLOYERS' LIABILITY COVERAGE

5. Voluntary Compensation Insurance

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by any officer or employee not subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page.
2. The bodily injury must arise out of and in the course of employment or incidental to work in a state shown in Item 3.A. of the Information Page.

3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen, or otherwise legal resident, and legally employed, in the United States or Canada and temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of the

officer's or employee's employment. The officer's or employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay an amount equal to the benefits that would be required of you as if you and your employees were subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page. We will pay those amounts to the persons who would be entitled to them under the law.

C. Exclusion

This insurance does not cover:

1. any obligation imposed by workers' compensation or occupational disease law or any similar law.
2. bodily injury intentionally caused or aggravated by you.
3. officers or employees who have elected not to be subject to the state workers' compensation law.
4. partners or sole proprietors not covered under the Standard Sole Proprietors, Partners, Officers and Others Coverage Endorsement.

D. Before We Pay

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it.

If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

F. Employers' Liability Insurance

Part Two (Employers' Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment was shown in Item 3.A. of the Information Page.

This provision 5. does not apply in New Jersey or Wisconsin.

EMPLOYERS' LIABILITY STOP GAP COVERAGE

6. Employers' Liability Stop Gap Coverage

- A. This coverage only applies in Montana, North Dakota, Ohio, Washington, West Virginia and Wyoming.
- B. Part One (Workers' Compensation Insurance) does not apply to work in states shown in Paragraph A above.
- C. Part Two (Employers' Liability Insurance) applies in the states, shown in Paragraph A., as though they were shown in Item 3.A. of the Information Page.
- D. Part Two, Section C. **Exclusions** is changed by adding these exclusions.

This insurance does not cover;

5. bodily injury intentionally caused or aggravated by you or in Ohio bodily injury resulting from an act which is determined by an Ohio court of law to have been committed by you with the belief that an injury is substantially certain to occur. However, the cost of defending such claims or suits in Ohio is covered.
 13. bodily injury sustained by any member of the flying crew of any aircraft.
 14. any claim for bodily injury with respect to which you are deprived of any defense or defenses or are otherwise subject to penalty because of default in premium under the provisions of the workers' compensation law or laws of a state shown in Paragraph A.
- E. This insurance applies to damages for which you are liable under West Virginia Code Annot. S 23-4-2.

EXTENDED OPTIONS

1. Employers' Liability Insurance

Item 3.B. of the Information Page is replaced by the following:

B. Employers' Liability Insurance:

1. **Part Two** of the policy applies to work in each state listed in Item 3.A.

The Limits of Liability under Part Two are the higher of:

Bodily Injury by Accident	\$500,000	Each Accident
--------------------------------------	------------------	----------------------

Bodily Injury by Disease	\$500,000	Policy Limit
-------------------------------------	------------------	---------------------

Bodily Injury by Disease	\$500,000	Each Employee
-------------------------------------	------------------	----------------------

OR

2. The amount shown in the Information Page.

This provision 1 of **EXTENDED OPTIONS** does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from **\$500,000** to **\$1,000,000** in California.

2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

3. Waiver of Our Right To Recover From Others

- A. 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 any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

- B. This provision 3. does not apply in the states of Pennsylvania and Utah.

4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

A. How This Reimbursement Applies

Form WC 99 03 03 B Printed in U.S.A. (Ed. 8/00)

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.

4. liability for any consequence, whether direct or indirect, of war, invasion, act of Foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No endorsement now or subsequently attached to this policy shall be construed as overriding or waiving this limitation unless specific reference is made thereto.

D. Before We Pay

Before we reimburse you for the benefits to the persons entitled to them, you must have them:

1. release you and us, in writing, of all responsibility for the injury or death,
2. transfer to us their right to recover from others who may be responsible for their injury or death,
3. cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits paid fail to do these things, our duty to reimburse ends at once. If they claim damages from us for the injury or death, our duty to reimburse ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we reimbursed. We will pay the balance to the persons entitled to it. If persons entitled to the benefits make a recovery from others, they must repay us for the amounts that we have reimbursed you.

F. Reimbursement for Actual Loss Sustained

This endorsement provides only for reimbursement for the loss you actually sustain. In order for you to recover loss or expenses under this reimbursement you must:

1. actually sustain and pay the loss or expense in money after trial, or
2. secure our consent for the payment of the loss or expense.

G. Repatriation

Our reimbursement includes the additional expenses of repatriation to the United States

of America necessarily incurred as a direct result of bodily injury.

Our reimbursement shall be limited as follows:

1. to the amount by which such expenses exceed the normal cost of returning the officer or employee if in good health, or
2. in the event of death, to the amount by which such expenses exceed the normal cost of returning the officer or employee if alive and in good health.

In no event shall our reimbursement exceed the bodily injury by accident limit shown in Item 3.B. of the Information Page as respects any one such officer or employee whether dead or alive.

H. Endemic Disease

The word "disease" includes any endemic diseases.

The coverage applies as if endemic diseases were included in the provisions of the workers' compensation law.

5. Longshore and Harbor Workers' Compensation Act Coverage

General Section C. Workers' Compensation Law is replaced by the following:

C. Workers' Compensation Law

Workers' Compensation Law means the workers or workers' compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workers' compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers' Liability Insurance), C. Exclusions, exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.

This coverage does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.

SECTION III

1. SCHEDULE OF COVERED STATES

A. This endorsement only applies in the states listed in this Schedule of Covered States.

B. If a state, shown in Item 3.A. of the Information Page, approves this endorsement after the effective date of this policy, this endorsement will apply to this policy. The coverage will apply in the new state on the effective date of the state approval.

C. Schedule of Covered States:

Countersigned by _____ Authorized Representative



DEPARTMENT OF FACILITIES PLANNING AND MANAGEMENT ROUTING FORM

Project Information			
Project Name	Kaiser Finishing Kitchen Upgrade	Site	171
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 #	1009281	Title	Architect of Record				
Street Address	681-4 th Street	City	Oakland	State	CA	Zip	94607
Telephone	510-452-3224	Policy Expires	6-6-2017				
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 #	13177						

Term			
Date Work Will Begin	3-9-2017	Date Work Will End By (not more than 5 years from start date)	12-31-2018

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$6,675.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$ 191,115.00
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	Fund 21, Msr J	1719905890	6215	\$6,675.00 LAK

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	2/7/17	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved	2/6/17	
3.	Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved		
4.	Senior Business Officer, Board of Education			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		