

**TO: MEMBERS, BOARD OF EDUCATION** AMENDED  
**FROM: DR. ANTHONY W. KNIGHT, SUPERINTENDENT**  
**DATE: OCTOBER 20, 2015**  
**SUBJECT: B.2.f. RATIFICATION OF AGREEMENT FOR DSA INSPECTION SERVICES FOR VARIOUS DISTRICT CONSTRUCTION PROJECTS**

ACTION

**ISSUE:** Shall the Board of Education ratify an agreement for Division of the State Architect (DSA) inspection services for various district construction projects?

**BACKGROUND:** At the beginning of summer 2015, OPUSD’s DSA Inspector of Record (IOR) for multiple District construction projects was reassigned to a large project outside of Ventura County. After a search and interview process conducted by district staff and construction manager Balfour Beatty Construction, and including project architect, Mainstreet Architect + Planners, Mr. Tom Kimbrell was selected to continue the work on District projects already in progress and to provide IOR services for newly identified construction projects. The Board is asked to ratify the agreement for IOR services with Mr. Kimbrell. The agreement is attached for the Board’s information and has also be posted with the Board’s agenda on the District’s website.

- ALTERNATIVES:**
1. Ratify the agreement for DSA inspection services for various district construction projects with Mr. Tom Kimbrell.
  2. Do not ratify the agreement for DSA inspection services.

**RECOMMENDATION:** Alternative No. 1

Prepared by: Martin Klauss, Assistant Superintendent, Business and Administrative Services

Respectfully submitted:

\_\_\_\_\_  
 Anthony W. Knight, Ed.D.  
 Superintendent

Board Action: On motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the Board of Education:

VOTE:	AYES	NOES	ABSTAIN	ABSENT
Hazelton	_____	_____	_____	_____
Helfstein	_____	_____	_____	_____
Laifman	_____	_____	_____	_____
Rosen	_____	_____	_____	_____
Ross	_____	_____	_____	_____
Student Rep	_____	_____	_____	_____

**OAK PARK UNIFIED SCHOOL DISTRICT  
AGREEMENT FOR INDEPENDENT CONTRACTOR/CONSULTING SERVICES**

**THIS AGREEMENT**, made this 20th day of October, 20 15, between Oak Park Unified School District, hereinafter referred to as "**District**" and Tom Kimbrell, hereinafter referred to as "**Contractor**".

The District desires to engage the Contractor to render certain technical and/or specialized services and Contractor or Contractor's staff is specifically qualified to perform said services, the parties do therefore agree as follows:

1. **Scope of Services.** The Contractor shall perform all the necessary services provided under this contract in connection with and respecting District and shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the District, **the following** (If additional space is required, attach additional pages as Exhibits):

DSA Inspector of Record services on various District construction projects as itemized in the Contractor's attached proposal, date 07/17/15, and by reference incorporated into this agreement.

As requested by the District, and by mutual agreement, the Contractor may provide services on additional District construction projects, to be performed within the scope, and at the rates, identified in this agreement.

2. **Time of Performance.** The term of this Agreement is for the period July 17, 20 15, through June 30, 20 16, and shall be undertaken and completed in such sequence as to assure their full completion in accordance with the purposes of this Agreement.

3. **Payment. UPON PROPER INVOICING**, District agrees to pay the Contractor at the rate of \$ 75.00 per (hour/day), not to exceed the total amount of \$ N/A; or, the lump sum of \$ N/A, payable within 15 days of receipt and approval by the Program Manager designated below as District's contact. Said payment(s) to be made **as follows**:

On a monthly basis, submitted for services performed through the end of each calendar month, as specified in Paragraph 6 of the Contractor's proposal, attached.

4. **Expenses. (Mark the applicable option.)**

**A.** The contractor will not be reimbursed for travel or other expenses.

**B.** In addition to the specified compensation, travel and/or expenses will be reimbursed as follows:

**Travel:** Mileage at the rate of \$ \_\_\_\_\_ per mile up to the total of \$ \_\_\_\_\_.

Actual airfare (**original** receipts are required - canceled checks are not accepted as a receipt)  
\_\_\_\_\_ trips, up to a total maximum of \$ \_\_\_\_\_.

**Other:** List authorized expenses, limits and maximum amounts. (**original** receipts are required - canceled checks are not accepted as a receipt)

5. **Termination.** This agreement may be terminated or amended in writing at any time by mutual consent of the parties hereto; or, **upon 30 (days/months) advance notice** by either party. In the event of cancellation prior to completion of the specified services, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this agreement shall, at the option of the District, become District's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such items. If the contracted service is contingent on number of registrations, no payment shall be provided if the stated activity is cancelled within seven (7) calendar days of the scheduled date.

Notwithstanding the above, the Contractor shall not be relieved of liability to the District for damages sustained by the

District by virtue of any breach of the contract by the Contractor, and the District may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the District from the Contractor is determined.

6. **Independent Contractor.** It is expressly understood and agreed that the Contractor, while engaged in carrying out and complying with any of the terms and conditions of this contract, is an independent contractor and is not an officer, agent or employee of District. Contractor further understands and agrees that he or she is an independent contractor and that the filing and acceptance of this declaration creates a rebuttable presumption of his or her status as an independent contractor and that, as such, Contractor or Contractor's employees are not entitled to coverage under the California Workers' Compensation Insurance laws, Unemployment Insurance or any other benefit normally conveyed to District's employees. Contractor will be responsible for payment of all Contractor's employees' wages, payroll taxes, employee benefits and any amounts due for federal and state income taxes and Social Security taxes since these taxes will not be withheld from payments under this agreement.

**Both Contractor and the District's Manager shall initial the attached "IRS 20 Factor Checklist"** indicating they have reviewed the "checklist" and, by signing this contract, certify that the duties, terms and conditions of this Agreement meet the definition of an independent contractor per IRS guidelines.

7. **Subcontracting.** None of the services covered by this contract shall be subcontracted without the prior written consent of the District. The Contractor shall be as fully responsible to the District for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by him/her, as if the acts and omissions were performed by him/her directly.
8. **Insurance.** ~~(If the contractor is a public school agency within Ventura County, participating in the VCSSFA liability program this insurance section does not apply.)~~ **If requested**, Contractor shall, at Contractor's sole cost and expense, provide for and maintain in force and effect, from the commencement of services until expiration of this Agreement, a policy or policies of insurance covering Contractor's services. All insurance shall be with an insurance company with a rating of A or better, as rated by the current edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey 08858 and authorized to conduct business in the State of California.

Required insurance coverage shall include: Comprehensive general liability and property damage insurance and comprehensive automobile liability insurance covering activities and operations of the Contractor. Such liability insurance shall provide a minimum coverage of \$1,000,000.

~~If requested~~, Contractor shall furnish to District, prior to commencement of services under this Agreement, Certificates of Insurance as evidence of the coverage and limits stated above. Certificates of Insurance shall:

- A. Name the District as additional insured.
  - B. Provide a minimum of 30 days advance written notice of cancellation or material changes.
  - C. State that coverage afforded the District, as additional insured shall apply as primary and not excess to any insurance issued the District.
9. **Copyright.** Contractor hereby agrees that District shall be the sole owner of the copyright for any publications, writings, materials or product developed by or as a result of this Agreement. Contractor shall maintain the confidentiality of any such materials produced.
10. **Arbitration.** Any dispute arising out of the performance of this Agreement shall be resolved by binding arbitration in accordance with rules and procedures of the American Arbitration Association.

11. **Obey All Laws.** Contractor hereby agrees he/she will obey all local, state and federal laws in the performance of this contract, including prohibitions against discrimination.
12. **Indemnification.** Contractor shall indemnify and hold harmless the District, its' officers, agents and employees from every claim or demand made, and every liability, loss, damages, or expense of any nature whatsoever, which may be incurred as a result of Contractor's performance under this agreement, except for liability resulting from the sole negligence or willful misconduct of the District, its officers, employees, or agents who are directly employed by the District, and except for liability resulting from the active negligence of the District.

District shall indemnify and hold harmless the Contractor, as specified in paragraph 7 of the Contractor's attached proposal, by reference incorporated into this agreement.

**IN WITNESS WHEREOF**, the District and Contractor have executed this agreement as of the date first written above.

OAK PARK UNIFIED SCHOOL DISTRICT

CONTRACTOR: TOM KIMBRELL

Martin Klauss, Asst. Supt., Business Services  
Requested by: Program Manager

Signature

October 20, 2015  
Date

Date

General Fund or Measure R Bond Fund, as appropriate  
Charge to Account

Contractor's Mailing Address

Approved by: Authorized Representative

City, State, Zip Code

Asst. Supt., Business Services  
Title

Telephone/Fax Number

October 21, 2015  
Date

E-Mail Address

Tax I.D.# - (W-9 form must be on file)

**Review and initial "checklist" on page 4 of 4.**

### IRS 20 FACTOR CHECKLIST

Below are the 20 factors used by the IRS to determine whether the control over a worker is sufficient to constitute an employer-employee relationship. If the relationship is an Independent Contractor, you should only be concerned with the results of the work, not the way in which it is performed. Though these rules are intended only as a guide (the IRS says the importance of each factor depends on the individual circumstances) they should be helpful in determining whether enough control is exercised to show an employer-employee relationship.

If you answer "YES" to all of the first four questions, you're probably dealing with an independent contractor; "YES" to any of questions 5 through 20 means your worker is probably an employee.

1. Profit or loss. Can the worker make a profit or suffer a loss as a result of the work aside from the money earned from the project? (This should involve real economic risk - not just the risk of not getting paid.)
2. Investment. Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)
3. Works for more than one firm. Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but employees can also work for more than one business.)
4. Services offered to the general public. Does the worker offer services to the general public?
5. Instructions. Do you have the right to give the worker instructions about when, where, and how to work? (This shows control over the worker.)
6. Training. Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)
7. Integration. Are the worker's services so important to your business that they have become a necessary part of the business? (This may show that the worker is subject to your control.)
8. Services rendered personally. Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, and not just the results.)
9. Hiring assistants. Do you hire, supervise, and pay the worker's assistants? (Independent contractors hire and pay their own staffs.)
10. Continuing relationship. Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)
11. Work hours. Do you set the worker's hours? (Independent contractors are masters of their own time.)
12. Full-time work. Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)
13. Work done on premises. Must the individual work on your premises, or do you control the route or location where the work must be performed? (Answering no doesn't by itself mean independent contractor status.)
14. Sequence. Do you have the right to determine the order in which services are performed? (This shows control over the worker.)
15. Reports. Must the worker give you reports accounting for his or her actions? (This may tend to show lack of independence.)
16. Pay schedules. Do you pay the worker by the hour, week, or month? (Independent contractors are generally paid by the job or on commission, although by industry practice, some are paid by the hour.)
17. Expenses. Do you pay the worker's business or travel costs? (This tends to show control.)
18. Tools and materials. Do you provide the worker with equipment, tools or materials? (Independent contractors generally supply the materials for the job and use their own tools and equipment.)
19. Right to fire. Can you fire the worker? (An independent contractor can't be fired without subjecting you to the risk of a breach of contract lawsuit, so long as the results meet specifications.)
20. Worker's right to quit. Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)

By affixing my initials below, I certify I have reviewed the above "checklist."

\_\_\_\_\_  
Program Manager

\_\_\_\_\_  
Contractor

**Tom Kimbrell**  
DSA Inspector #5688

## **Proposal for Construction Inspection Services**

**DATE:** 7/17/2015

**CLIENT:** OAK PARK UNIFIED SCHOOL DISTRICT  
5801 East Conifer Street  
Oak Park, Ca. 91377

**PROJECT:** 03-116375, 03-116390, 03-116395, Shade structures, Bleachers, Fieldhouse and forensic closeout of various projects.

**INSPECTOR:** Tom Kimbrell, DSA Class 2 Inspector #5688

**PROJECT ESTIMATE:** unknown hours at \$75 per hour

### **PROJECT INSPECTOR AGENCY AGREEMENT AND CONTRACT DUTIES:**

1. Tom Kimbrell agrees to provide continuous inspection for work in compliance with the approved contract documents. Project inspector's duties are outlined in Title 24, Part 1, Chapter 4, Sections 4-333 through 4-342 of the California Code of Regulations, including DSA Interpretive Regulations A-6, A-7, A-8 and as incorporated in the following sections.
2. Maintain required project inspector job files and document uploads to the DSA box.
3. Represent the client under the guidance of the project Architect or Engineer of Record.
4. Attend all planning and pre-construction meetings and other meetings as required by the client.
5. Monitor and observe all special inspections performed by the client-contracted testing lab(s) as required by the Testing and Inspection Sheet and as outlined by the Project Specifications. Maintain a log for time spent on the project by each special inspector. Costs for Lab services or other consultants shall be paid directly by the client.
6. The Client agrees to pay Tom Kimbrell the cost of project services billed at a rate of \$75 per hour for project inspection and project management within 15 days of receipt of invoice. Tom Kimbrell will provide laptop computer, cell phone, digital camera, and equipment necessary to maintain proper documentation and administrative functions through the duration of the project. The Inspector, Tom Kimbrell, as a condition of employment, shall have and maintain on the job at all times, the editions of Title 24, Parts 1, 2, 3, 4 and 5 referred to in the plans and specifications.

7. The Client and Tom Kimbrell shall each defend and hold harmless each other against any losses, liabilities, damages, injuries, claims, costs, or expenses arising out of or connected with the provisions of this agreement and contract documents.

8. . The District shall provide all utility lines, office space and equipment per the project specifications. If these items are not included in the project specifications, the District shall provide office space with power, internet access, book case or shelves, minimum 2 drawer file cabinet and desk.

9. The client shall be billed a four (4) hour minimum and one hour (1) hour increments for the first eight (8) hours of the Day. Hours invoiced for purposes of this agreement shall include drive time for days invoiced for less than eight hours. Overtime beyond the first eight (8) hours shall be billed in one half (1/2) hour increments. Overtime shall be billed at 1.5 times the hourly rate of \$78 per hour. Overtime includes any time in excess of 40 hours/week, Holidays and any hours worked beyond 8 hours per day.

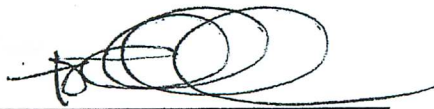
10. Tom Kimbrell shall maintain in effect a General Liability Insurance policy. Client requests for additional insurances, errors & omissions, liability, workman's compensation, or other insurances shall be billed to the client and paid additionally, by the client, at current market rates.

11. The agreement shall begin on the date of acceptance by the client, and remain in effect continuously until project closeout unless terminated in writing. Contract is intended to be an agency agreement and may be terminated in 30 days by either party with or without cause.

12. This proposal is valid for (30) days from the date signed by Tom Kimbrell below.

Dated: 7/17/15

Dated: \_\_\_\_\_



Tom Kimbrell - Project Inspector

\_\_\_\_\_  
Agent of Oak Park Unified School District  
(Client)