

- Student Learning and Achievement
- Health and Safety of Students and Schools
- Credibility and Communication
- Fiscal Solvency, Accountability and Integrity

- Consent
- Action/Discussion
- Information/Discussion
- Public Hearing

SUBJECT: ***WALK-ON*** Contract for Services to Conklin Bros. for PGHS Culinary Room Improvements

DATE: May 12, 2021

PERSON(S) RESPONSIBLE: Matt Kelly, Director of Facilities and Transportation

RECOMMENDATION:

The District Administration recommends the Board review and approve contract of services for \$31,820.00 to Conklin Bros. for the flooring work at PGHS Culinary Room Improvements.

BACKGROUND:

Last year, PGHS Culinary purchased replacement ranges, hoods, and exhaust fans using CTIG funding totaling \$34,121.57. The existing ranges were installed in 2001 and were in need of major repair for the class to function. In addition, the existing ranges and hoods were located in the center of the room blocking line of site on students and creating classroom management issue. For this project, the ranges and roods will be moved to the exterior walls of the classroom and opening up the center of the room. The new equipment transforms the class into a Culinary Arts room from a Home Economics room.

INFORMATION:

Conklin Bros.'s flooring scope includes demolition of the old VCT flooring and installation of new flooring. In the main classroom a non-slip easy to clean and maintain flooring will be installed. In the pantry and laundry room the District's standard carpeting will be installed to encapsulate the existing asbestos tile.

FISCAL IMPACT:

\$31,820.00 from Measure D. Work will begin on or around June 28, 2021 and is anticipated to complete in 1 week.

Bid Results

	All-County Flooring	Conklin Bros.	
Base Bid	\$38,320.00	31,820.00	

Note: No Other Bidders Responded

Budget

<u>PGHS Culinary Room Improvements</u>	<u>\$100,000.00</u>
Richard Petty Electric	\$24,350.00
Steele Tape Construction	\$24,000.00
Satellite Painting	\$13,200.00
Conklin Bros.	\$31,820.00
Home Depot (Budget)	\$7,500.00
<u>Central Restaurant Supply</u>	<u>\$17,986.73</u>
Total	\$118,856.73
Remainder in Budget	<\$18,856.73>

Project ran over budget because of recent construction material increases and adding interior painting to the project.

Budget Adjustments

- ✓ Move \$18,856.73 to PGHS Culinary Room Improvements from Series A Contingency.
 - PGHS Culinary Room Improvements Budget will increase to \$118,856.73
 - Series A Contingency will decrease to \$425,072.04

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is hereby entered into by the **Pacific Grove Unified School District**, hereinafter referred to as DISTRICT, and:

Conklin Bros.	CA License #248874		
CONTRACTOR	SOCIAL SECURITY NUMBER BUSINESS ID # LICENSE #		
2250 Almaden Expressway	San Jose	CA	95125
MAILING ADDRESS	CITY	STATE	ZIP

hereinafter referred to as CONTRACTOR.

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

Article I. **SCOPE OF WORK.** The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for:

**Pacific Grove High School Culinary Improvements
615 Sunset Blvd
Pacific Grove, CA 93950**

Article II. **CONTRACT DOCUMENTS.** The Contractor and the Owner agree that all of the documents provided by Owner form the Contract Documents which form the Contract.

Article III. **TIME TO COMPLETE.** Services shall begin on or about June 03, 2021 and shall be completed on or before October 30, 2021.

Article IV. **PAYMENT AND RETENTION.** The Owner agrees to pay the Contractor in current funds thirty one thousand eight hundred and twenty 0/100 dollars (\$31,820.00) for work satisfactorily performed after receipt of properly documented and submitted Applications for Payment and to make payments on account thereof.

Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall retain the other five percent (5%) of the undisputed value of the Work. The value of the Work completed

shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall base an Application for Payment only on the original Contract Sum plus any fully executed and Board-approved Change Orders. Contractor shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplished with. Payment shall not be a waiver of any such direction.

Source of Funds: Measure D

Article V. **CHANGES.** Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided below.

A change order (CO) is a written instrument signed by the Owner and the Contractor, and approved by the Owner's Governing Board, stating the agreement of Owner and Contractor upon all of the following:

- A. A change in the Work;
- B. The amount of the adjustment in the Contract Sum, if any; and
- C. The extent of the adjustment in the Contract Time, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Contractor constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Contractor waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier.

A Construction Change Directive (CCD) is a written unilateral order signed by the Owner directing a change in the Work and stating an adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions.

A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change if Contractor believes it is entitled to changes in the Contract Sum or Contract Time.

Article VI. **TERMINATION.** Contractor may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

The Owner may terminate the Contract if the Contractor:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion within the Contract Time;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;

- C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);
- D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- E. Otherwise is in breach of the Contract Documents.

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

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

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

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

Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

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

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

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

Contractor shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$1,000,000.00 per accident for bodily injury and property damage combined single limit.

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

Article XI. **EXECUTION OF OTHER DOCUMENTS.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

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

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

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

Article XV. **AMENDMENTS.** The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, including change orders, signed by the parties and approved or ratified by the Governing Board.

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

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

(CONTRACTOR)

(OWNER)

Board Approved May 20, 2021

SIGNED BY (Contractor) Date

Assistant Superintendent Date

CALIFORNIA CONTRACTOR'S
LICENSE NO.

Director of Human Resources Date

LICENSE EXPIRATION DATE

Site/Program Administrator Date

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

Conklin Bros.

C.L. #248874 DIR #1000015903

FLOORCOVERING...You can count on us. People have since 1880

2250 ALMADEN EXPRESSWAY • SAN JOSE, CA 95125 • (408) 266-2250 • FAX (408) 266-0151

BID TRANSMITTAL

Date: 05-17-21

Order #

To: Matt Kelly
PGUSD Transportation / Facilities Director
Ph: 831-646-6537

Project: PG HS food prep kitchen, laundry & storage rooms.

Scope: Replacement of flooring & base

Specifications:

Furnish & Install slip resistant commercial sheet vinyl flooring Style: Eternal Step Color: TBS with welded seams & Burke 4" Rubber Cove base Color: TBS in kitchen, laundry & store room as per plans & specifications discussed on site visit. Price includes demo of existing flooring as required and normal floor prep. Job to be installed during normal business hours. School is responsible for emptying the rooms prior to installation of flooring.

Total Job Cost: \$ 31,820.00

Alternate #01:

If desired Tandus Infinity Powerbond 6 ft wide Carpet can be installed in either or both Laundry & storage rooms in place of the Eternal Step sheet vinyl.

Excluded:

1. Installation of underlayment
2. Excessive floor prep and/or repair due to unforeseen subfloor conditions

This job is figured: Union _____ Non-Union _____ Prevailing Wage __X__ Davis Bacon _____

Conklin Bros. guarantees that competent, experienced installers will install your flooring and that the installation will comply in strict accordance to manufacturers recommended installation procedures. You can count on us...people have since 1880.

Dan Miller V.P.Commercial Sales
Cell Phone: 831-206-4932

Approved & Accepted signature Date

Printed Name Title