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OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools Thriving Students

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Mia Settles-Tidwell, Chief Operations Officer  
Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** January 14, 2015

**Subject** Independent Consultant Agreement - KW Engineering - Glenview Elementary School Expansion - New Construction Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement with KW Engineering for Commissioning Services on behalf of the District at the Glenview Elementary School Expansion - New Construction Project, in an amount not-to exceed \$273,907.00. The term of this Agreement shall commence on January 14, 2015 and shall conclude no later than September 1, 2018. *29 EW*

**Background** The District has selected to have KW Engineering to provide the commissioning services for the Glenview Elementary School project.

**Local Business Participation Percentage** 78.00%

**Strategic Alignment** Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for

all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

**Recommendation**

Approval by the Board of Education of an Independent Consultant Agreement with KW Engineering for Commissioning Services on behalf of the District at the Glenview Elementary School Expansion - New Construction Project, in an amount not-to exceed \$273,907.00. The term of this Agreement shall commence on January 14, 2015 and shall conclude no later than September 1, 2018. *29 ER*

**Fiscal Impact**

Measure J

**Attachments**

- Independent Consultant Agreement including scope of work
- Certificate of Insurance
- Consultant Proposal

**OAKLAND UNIFIED SCHOOL DISTRICT**  
**INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES**  
**ENVIRONMENTAL SERVICES**

**Glenview Elementary School New Construction Project**

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the **18nd day of November in the year 2014**, between the **Oakland Unified School District** ("District") and **Kilowatt Engineering, Inc.** ("Contractor") (referred to herein individually as a "Party" and collectively as the "Parties").

**WHEREAS**, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required;

**WHEREAS**, the District is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

**WHEREAS**, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** The Contractor shall furnish to the District the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work");
2. **Term.** Contractor shall commence providing services under this Agreement on **January 29, 2015**, and will diligently perform as required or requested by District as applicable. The term for these services shall expire on **September 1, 2018**. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> Workers' Compensation Certificate
<input checked="" type="checkbox"/> Insurance Certificates & Endorsements	<input type="checkbox"/> W-9 Form
<input type="checkbox"/> Bonds (as requested by District)	<input checked="" type="checkbox"/> Other: Fingerprinting
<input checked="" type="checkbox"/> Debarment Certificate	

4. **Compensation.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit "A,"** on an hourly basis and a per-item basis, as applicable, and up to **a maximum amount not-to-exceed Two hundred seventy-three thousand, nine hundred seven dollars (\$273,907.00)**. District shall pay Contractor only for all undisputed amounts in installment payments within thirty (30) days after the Contractor 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.
5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work. Expenses will not be charged on the Work above the

maximum not-to-exceed amount of NA (\$0.00). Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit "B"**.

6. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.
8. **Standard of Care.** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
9. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
11. **Termination.**
  - 11.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.
  - 11.2. **Without Cause by Contractor.** Contractor may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
  - 11.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
    - 11.3.1. material violation of this Agreement by the Contractor; or

- 11.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 11.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation ceases, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of such termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

- 11.4. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**12. Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, employees, trustees, and volunteers (the "Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "Claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and reasonable attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, to the extent caused by the negligence or willful misconduct of Contractor, its employees or subcontractors. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the Indemnified Parties.

**13. Insurance.**

- 13.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

- 13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Contractor's performance of any portion of the Services. (Form CG 0001 and CA 0001)

- 13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor 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.

13.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	\$ 1,000,000 \$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

13.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

13.2.1. 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."

13.2.2. 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.

13.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

13.3. **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.

14. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

15. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or

regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

16. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
17. **Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
18. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
21. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
22. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any manner which is permissible

under the law. The District's evaluation may include, without limitation:

22.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.

22.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

23. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall 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 in connection with this Agreement.

24. **Disputes.** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.

25. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

26. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**Oakland Unified School District**

955 High Street  
Oakland, CA 94601

**Attn: Tadashi Nakadegawa**

Tel: 510-535-7038

Fax: 510-535-7082

**Contractor**

KW Engineering

287-17<sup>th</sup> Street

Oakland, CA 94610

**Attn: Jim Kelsey**

Tel: 510-834-6420

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

27. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE Program).** Contractor 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](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

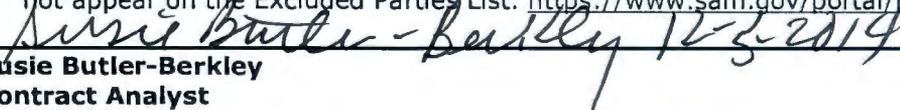
28. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a

written instrument executed by both Parties.

29. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administration offices are located.
30. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
31. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**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**

ACCEPTED AND AGREED on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
David Kakishiba, President, Board of Education Date

\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education Date

\_\_\_\_\_  
Timothy White, Facilities Planning and Management Date  
*12/17/14*

**CONTRACTOR**

\_\_\_\_\_  
By: James Kelsey Date  
Its: President  
*11/19/2014*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
OUSD Facilities Legal Counsel Date  
*12.10.14*

**EXHIBIT A**  
**Scope of Services**

**(Attached Consultant Proposal)**

Consultant shall perform the following Services:

**EXHIBIT A****Glenview Elementary**

<b>Design</b>		
1. Develop or review District's Requirements		\$13,425
2. Design document review of plans, specifications, narratives		\$62,678
3. Commissioning plan, specification development and bid meeting		\$17,970
4. Other		\$13,756
<b>Subtotal</b>		<b>\$107,829</b>
kW Engineering		55%
Zeiger Engineers, Inc.		26%
Healthy Building Science		19%
<b>Construction</b>		
1. Commissioning plan and submittal reviews		\$24,300
2. Construction checklists, observations of installation and start-up		\$36,014
3. Functioning test writing		\$15,722
4. Functioning test execution		\$24,986
5. O&M manual review and training review		\$10,532
6. Compilation of Commissioning Record		\$11,358
7. System manual development		\$9,738
8. Other		\$17,500
<b>Subtotal</b>		<b>\$150,150</b>
kW Engineering		56%
Zeiger Engineers, Inc.		21%
Healthy Building Science		23%
<b>Warranty Period</b>		
1. Seasonal testing		\$6,538
2. Near-warranty end review		\$9,390
<b>Subtotal</b>		<b>\$15,928</b>
kW Engineering		44%
Zeiger Engineers, Inc.		29%
Healthy Building Science		27%
<b>Total</b>		<b>\$273,907</b>
<b>kW Engineering</b>		<b>55%</b>
<b>Zeiger Engineers, Inc.</b>		<b>23%</b>
<b>Healthy Building Science</b>		<b>22%</b>

**EXHIBIT B**  
**Hourly Personnel Rates**  
**and**  
**Schedule of Fees and Charges**

**Information regarding Contractor:**

Contractor: Kilowatt Engineering, Inc.  
d/b/a kW Engineering, Inc.

License No.: N/A

Address: 287 17th Street, Suite 300  
Oakland, CA 94612

Telephone: 510-834-6420

Facsimile: 510-834-6421

E-Mail: summary@kw-engineering.com

Type of Business Entity:  
 Individual                       Sole  
Proprietorship  
 Partnership                       Limited  
Partnership  
 Limited Liability Company  
 Corporation, State: California  
 Other: \_\_\_\_\_

**FIN** 86-1121883  
Employer Identification and/or Social  
Security Number

**NOTE: Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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**WORKERS' COMPENSATION CERTIFICATION**

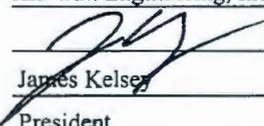
Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

Date: 11/19/2014

Proper Name of Contractor: Kilowatt Engineering, Inc. d/b/a kW Engineering, Inc.

Signature: 

Print Name: James Kelsey

Title: President

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Independent Contractor Agreement- Special Services ("Agreement"):

X **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- \_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.
- \_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- \_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**  
Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

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

Kilowatt Engineering, Inc. d/b/a

I am aware of and hereby certify that neither  kW Engineering, Inc.  [Type name of Contractor] 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 Contractor 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 Contractor on the  19  day of  November  2014 for the purposes of submission of this Agreement.

By:     
Signature  
 James Kelsey   
Typed or Printed Name  
 President   
Title

Date: 11/19/2014

Name of Consultant or Company: Kilowatt Engineering, Inc. d/b/a kW Engineering, Inc.

Signature: 

Print Name and Title: James Kelsey, President

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
6/24/2014

<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>INSURERS AFFORDING COVERAGE</b>	
<b>INSURED</b> Kilowatt Engineering, Inc dba: kW Engineering, Inc. 287 17th Street, Suite 300 Oakland, CA 94612	INSURER A: <b>Hartford Casualty Insurance Co.</b> INSURER B: <b>Travelers Property Casualty Co</b> INSURER C: <b>U.S. Specialty Insurance Compan</b> INSURER D: INSURER E:

**COVERAGES**

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	57SBWKD1700	01/07/14	01/07/15	EACH OCCURRENCE <b>\$2,000,000</b>
	<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				<b>GENERAL LIAB EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.</b>
A	AUTOMOBILE LIABILITY	57SBWKD1700	01/07/14	01/07/15	COMBINED SINGLE LIMIT (Ea accident) <b>\$2,000,000</b>
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	EXCESS LIABILITY	57SBWKD1700	01/07/14	01/07/15	EACH OCCURRENCE <b>\$1,000,000</b>
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION <b>\$10000</b>				AGGREGATE <b>\$1,000,000</b> \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB4232T675	02/28/14	02/28/15	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
					E.L. EACH ACCIDENT <b>\$1,000,000</b>
					E.L. DISEASE - EA EMPLOYEE <b>\$1,000,000</b>
C	OTHER Professional Liability	USS1424800	04/02/14	04/02/15	E.L. DISEASE - POLICY LIMIT <b>\$1,000,000</b>
					<b>\$2,000,000 per claim</b> <b>\$2,000,000 annl aggr.</b>

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

All operations of the named insured.

Oakland Unified School District, and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named as Additional Insured's to General Liability per policy form wording. Insurance is Primary.

<b>CERTIFICATE HOLDER</b> Oakland Unified School District Attn: Tadashi Nakadegawa Director of Facilities 955 High Street Oakland, CA 94601-0000	<b>ADDITIONAL INSURED; INSURER LETTER:</b> _____ <b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL <del>SEND BY MAIL</del> <b>30</b> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY <del>MAIL OR TELEPHONE</del> <del>WHICH SHALL BE CONSIDERED AS A NOTICE OF CANCELLATION</del> AUTHORIZED REPRESENTATIVE 
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Insured: Kilowatt Engineering, Inc  
Insurer: Hartford Casualty Insurance Co.  
Policy Number: 57SBWKD1700  
Policy Effective Date: 01/07/14

Additional Insured: All operations of the named insured. Oakland Unified School District, and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers

**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.

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
6/24/2014

**PRODUCER**  
Dealey, Renton & Associates  
P. O. Box 12675  
Oakland, CA 94604-2675  
510 465-3090

**INSURED**  
Kilowatt Engineering, Inc  
dba: kW Engineering, Inc.  
287 17th Street, Suite 300  
Oakland, CA 94612

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A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	57SBWKD1700	01/07/14	01/07/15	COMBINED SINGLE LIMIT (Ea accident) <b>\$2,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ GARAGE LIABILITY <input type="checkbox"/> ANY AUTO AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION <b>\$10000</b>	57SBWKD1700	01/07/14	01/07/15	EACH OCCURRENCE <b>\$1,000,000</b> AGGREGATE <b>\$1,000,000</b> \$ \$ \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	UB4232T675	02/28/14	02/28/15	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT <b>\$1,000,000</b> E.L. DISEASE - EA EMPLOYEE <b>\$1,000,000</b> E.L. DISEASE - POLICY LIMIT <b>\$1,000,000</b>
C	<b>OTHER Professional Liability</b>	USS1424800	04/02/14	04/02/15	<b>\$2,000,000 per claim</b> <b>\$2,000,000 annl aggr.</b>

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Oakland Unified School District Attn: Tadashi Nakadegawa Director of Facilities 955 High Street Oakland, CA 94601-0000		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL <del>SEND BY</del> MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY <del>MAIL TO THE CERTIFICATE HOLDER</del> <del>MAIL TO THE CERTIFICATE HOLDER</del> <del>MAIL TO THE CERTIFICATE HOLDER</del> AUTHORIZED REPRESENTATIVE 

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## BUSINESS LIABILITY COVERAGE FORM

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#### 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;

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(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

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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

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## INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Glenview Elementary School Expansion	<b>Site</b>	119
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### Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

<b>Attachment Checklist</b>	<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
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### Contractor Information

<b>Contractor Name</b>	KW Engineering	<b>Agency's Contact</b>	Jim Kelsey		
<b>OUSD Vendor ID #</b>	V060571	<b>Title</b>	Project Manager		
<b>Street Address</b>	287-17 <sup>th</sup> Street	<b>City</b>	Oakland	<b>State</b>	CA Zip 94610
<b>Telephone</b>	510-834-6420	<b>Policy Expires</b>	1-17-15		
<b>Contractor History</b>	Previously been an OUSD contractor? x Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes x No		
<b>OUSD Project #</b>	13134				

### Term

<b>Date Work Will Begin</b>	1-29-2015	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	9-1-2018
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### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$273,907.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### 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	Measure J	1199905820	6215	\$273,907.00

### 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.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>	<b>Signature</b>	<b>Date Approved</b>	12/3/14	
2.	<b>General Counsel, Department of Facilities Planning and Management</b>	<b>Signature</b>	<b>Date Approved</b>	12-10-14	
3.	<b>Deputy Chief, Facilities Planning and Management</b>	<b>Signature</b>	<b>Date Approved</b>	12/5/14	
4.	<b>Chief Operations Officer, Board of Education</b>	<b>Signature</b>	<b>Date Approved</b>	12/17/14	
5.	<b>President, Board of Education</b>	<b>Signature</b>	<b>Date Approved</b>		