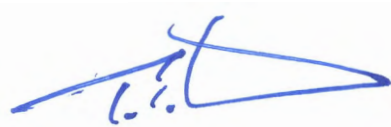


Board Office Use: Legislative File Info.	
File ID Number	12-0775
Committee	Facilities
Introduction Date	3-28-2012
Enactment Number	12-1003
Enactment Date	3-29-12 JS



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo



To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date March 28, 2012

Subject Amendment No. 4, Professional Services Facilities Contract - Ninyo & Moore - La Escuelita Educational Center Project

Action Requested Approval by the Board of Education of Amendment No. 4, Professional Services Facilities Contract with Ninyo & Moore for Environmental Services on behalf of the District at La Escuelita Educational Center in an amount not-to exceed \$323,443.20 increasing previous contract amount from \$188,750.00 to a not to exceed amount of \$512,193.20 and revising the end date from May 1, 2009 through June 30, 2012 to December 31, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background Per the Phase 1 Environmental Assessment Report hazardous material was identified and require remediation. Per the Department of Toxic Substance Control Substance (DTSC) a Removal Action Workplan is required prior to construction for Phase 2.

Local Business Participation Percentage 100.00%

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 Amendment No. 4, Professional Services Facilities Contract with Ninyo & Moore for Environmental Services on behalf of the District at La Escuelita Educational Center in an amount not-to exceed \$323,443.20 increasing previous contract amount from \$188,750.00 to a not to exceed amount of \$512,193.20 and revising the end date from May 1, 2009 through June 30, 2012 to December 31, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

County School Facilities Plan Fund 35

Attachments

- Independent Contractors Agreement including scope of work



AMENDMENT NO. 4 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Ninyo & Moore**. OUSD entered into an Agreement with CONTRACTOR for services on May 1, 2009,, 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>.
<p>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></p> <p>The CONTRACTOR agrees to provide the following amended services: <u>The scope of the project is to provide environmental services for the Removal Action Workplan Phase 2 portion of the La Escuelita Educational Center Project. Services will include project coordination, public participation activities, monitoring and oversight services of step-out soil and groundwater sampling, excavation activities, stockpile and confirmation soil sampling and laboratory analysis, vapor barrier and sub-slab ventilation system installation oversight, and preparation of two Removal Action Completion Reports for two stages of the RAW Phase 2 and implementation of the Operations & Maintenance plan for the site.</u></p>		
2. Terms (duration):	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u>.
<p>If term is changed: The contract term is extended by an additional <u>One year and six months</u>, and the amended expiration date is <u>December 31, 2013</u>.</p>		
3. Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u>.
<p>If the compensation is changed: The contract price is amended by</p> <p style="padding-left: 40px;"> <input checked="" type="checkbox"/> Increase of \$323,443.20 to original contract amount <input type="checkbox"/> Decrease of \$ _____ to original contract amount </p> <p>and the new contract total is <u>Five hundred twelve thousand, one hundred ninety-three dollars and twenty cents (\$512,193.20)</u></p>		

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:

6.

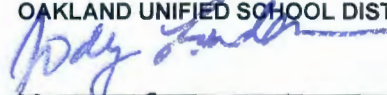
No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
1	8-11-2010	Provide step-out sampling and a removal action work plan for Phase II portion of the Downtown project site located at 314 E. 10 th Street, 110-3 rd Avenue and 1029-4 th Avenue. Scope to include project coordination, boring marking/utility clearance, sampling of soil, soil gas and groundwater, lab analysis and data compilation, preparation of an SSI Addendum Report, preparation of RAW for the Phase II area and preparation of distribution of public participation documents	\$49,450.00
2	6-22-11	Revising the end date from June 23 2011 thru June 23, 2012	\$0.00
3	9-27-2011	The scope of the project is to prepare a Technical Memorandum for Additional Soil Gas Monitoring, perform soil gas activities, and prepare a brief Soil Gas Monitoring Report for Phase 2 portion of the Downtown Project. This area encompasses Harper Building, Auto Shop and the northern portion of the La Escuelita Area.	\$13,000.00

05 : b A 8 - 8 - 11
 AMENDMENT
 PLANNING

7. **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

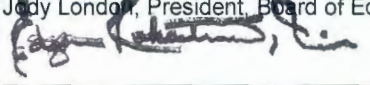
CONTRACTOR



Judy London, President, Board of Education Date 3/29/12

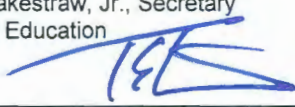


Contractor Signature Date 3/7/12



Edgar Rakestraw, Jr., Secretary
Board of Education Date 3/29/12

Kris M. Larson, Principal Environmental Geologist



Timothy White, Associate Superintendent
Facilities, Planning and Management Date _____

File ID Number: 12-0775
Introduction Date: 3-28-12
Enactment Number: 12-1003
Enactment Date: 3-29-12
By: JL

EXHIBIT "A" Scope of Work

Contractor Name:

Billing Rate: Three hundred twenty-three thousand, four hundred forty-three dollars and twenty cents (\$323,443.20)

Description of Services to be Provided

1. Description of Services to be Provided

Environmental services Removal Action Workplan

2. Specific Outcomes:

The specific plan is to complete the Removal Action Completion Reports for two of the RAW Phase 2 and implementation of the Operations & Maintenance plan.

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 checked="" type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input checked="" type="checkbox"/> Full service community district

February 3, 2012
Proposal No. P-81933

Ms. Saya Nhim
Facilities Planning & Management Department
Oakland Unified School District
955 High Street
Oakland, California 94601

Subject: Proposal for Removal Action Workplan Phase II Implementation
Downtown Educational Complex – Phase II
314 East 10th Street, 1100 3rd Avenue & 1029 4th Avenue
Oakland, California

Dear Ms. Nhim:

In accordance with the Oakland Unified School District's (OUSD's) request, Ninyo & Moore is pleased to submit this proposal to implement a Removal Action Workplan (RAW) Phase II at the subject site.

The scope of services for the RAW Phase II implementation activities is consistent with the scope of work outlined in the RAW Phase II, dated January 31, 2012, which has been prepared under the guidance of the Department of Toxic Substances Control (DTSC). The objective of the RAW Phase II implementation activities is to remediate shallow soil impacted with lead, arsenic, and organochlorine pesticides (OCPs), and remediate and/or mitigate impacts from petroleum hydrocarbons and volatile organic compounds (VOCs) in deeper soil, groundwater, and soil gas in the southeastern (Phase II) portion of the Downtown Educational Complex.

SCOPE OF SERVICES

The proposed environmental services for the RAW Phase II implementation activities at the site include: project coordination, public participation activities, abandoning of existing soil gas probes, demolition monitoring, limited step-out soil and groundwater sampling, oversight of excavation activities, stockpile and confirmation soil sampling and laboratory analysis, data compilation and analysis, vapor barrier and sub-slab ventilation system installation oversight, preparation of two Removal Action Completion Reports (RACRs) for the two stages of the RAW Phase II, and implementation of the Operations & Maintenance (O&M) Plan for the site. A brief description of each of the tasks follows:

Task 1 – Project Coordination

Project coordination activities will include: coordination and correspondence with DTSC, OUSD, the remediation contractor, and the vapor barrier installation contractor; attending project related meetings; review of required contractor documents/plans including a Project Schedule, Site Specific Health and Safety Plan, Transportation Plan, Storm Water Pollution Prevention Plan (SWPPP), Cost Estimate, and the environmental testing results for fill material to be imported to the site.

Task 1 Cost – \$19,800

Task 2 – Public Participation Activities

Prior to the implementation of the RAW Phase II, public participation activities will be performed in accordance with DTSC requirements. During the RAW Phase II scoping meeting, DTSC indicated that they would handle all of the production and distribution of public participation mailers, however Ninyo & Moore will work closely with OUSD and DTSC on the preparation and coordination of the various public participation mailings which will include:

- Generation of a project mailing list which will include community members within ¼ mile of the site, the parents of students on site, OUSD staff on site, and key contacts including elected/local officials and other affected/interested parties.
- A Community Survey to be distributed to the project mailing list.
- A Fact Sheet to be distributed to the project mailing list prior to the start of the 30 day public review and comment period.
- The Public Notice to be published in a local newspaper prior to the start of the 30 day public comment period.
- The Field Work Notice to be posted on-site and distributed to properties within line of sight from the site at least 5 days prior to the start of field activities. A Field Work Notice would be prepared and distributed for each stage of the RAW Phase II implementation.

Task 2 Cost – \$4,150

Task 3 – Soil Gas Probe Abandonment

Prior to the commencement of demolition activities in the Stage 1 portion of the Phase II area, Ninyo & Moore will abandon existing soil gas probes in the Stage 1 portion of the

Phase II area. The soil gas probes in the Stage 2 portion of the Phase II area will be left in place until a later time per DTSC's request. Permits to abandon the soil gas probes will be obtained from the Alameda County Public Works Agency (ACPWA), and the soil gas probes will be abandoned by removing all sample tubing, bentonite, and sand from the boring, and filling the boring and well box with cement grout.

Task 3 Cost – \$4,700

Task 4 – Demolition Monitoring

Demolition monitoring will be performed by Ninyo & Moore during removal of above ground and/or surface features which may potentially disturb soil to ensure that adequate dust control is being performed. Ninyo & Moore will observe and document the placement of a geotextile fabric on unpaved surfaces around the perimeters of structures prior to demolition of the outer walls to minimize the potential for lead based paint from the outer walls of structures to impact the surrounding soil. Demolition oversight will also be performed during removal of concrete floor slabs and subsurface features including hydraulic elevator/lift pits, the Auto Shop grease trap, and floor drains, to evaluate whether previously undetected impacts may be present in soil beneath site structures. If impacts are observed beneath site structures during demolition activities, the observations will be discussed with DTSC and an appropriate sampling strategy will be developed to assess the magnitude and extent of impacts and evaluate whether removal of impacted soil should be performed. It is assumed that during demolition of the Harper Building a section of the East 10th Street sidewalk located above the abandoned heating oil UST outside the northwest corner of the Harper Building will be removed to observe and evaluate whether the UST was filled with cement grout as previously reported. Following the removal of the sidewalk section, the fill and/or vent piping of the abandoned UST will be located and inspected to confirm that the UST has been filled with cement grout. If the fill and/or vent piping cannot be located an alternative approach for evaluating the condition of the UST will be developed in consultation with DTSC. If inspection of the fill and/or vent piping indicates that the UST was not filled with cement grout, DTSC will be consulted to determine an appropriate course of action to address the abandoned UST.

Task 4 Cost – \$27,400

Task 5 – Limited Step-Out Soil and Groundwater Sampling

A deeper soil “hot spot” excavation may be performed near the southern corner of the site in the area currently occupied by the southeastern portion of the Harper Building. Following demolition of the southeastern portion of the Harper Building, three step-out soil borings (AOC8-B-1A through AOC-8-B-1C) will be advanced to approximately 20 feet bgs within approximately 10 to 15 feet of previous boring location AOC8-B-1, where elevated concentrations of petroleum hydrocarbons and VOCs were detected in soil and groundwater samples. One soil sample will be collected from each boring at the depth where physical signs of impacts are most pronounced, and a groundwater sample will be collected from each boring. Samples will be analyzed for total petroleum hydrocarbons (TPH) as gasoline (TPHg), as diesel (TPHd), and as motor oil (TPHmo) by EPA Method 8015M, polycyclic aromatic hydrocarbons (PAHs) by EPA Method 8270-SIM, and VOCs by EPA Method 8260B on a 24-hour turn around time (TAT). Approximately 10% duplicate samples, equipment blank samples, and trip blank samples will be collected and analyzed in accordance with the Quality Assurance Project Plan (QAPP).

The analytical results for soil and groundwater samples collected from these step-out borings will be discussed with DTSC to evaluate whether deeper soil “hot spot” excavation should be performed, and if so, the limits of the deeper soil excavation. If analytical results from the step-out borings indicate the impacts from VOCs and TPH compounds detected in boring AOC8-B-1 to be localized and limited in extent, excavation of deeper soil may not be required.

Task 5 Cost – \$6,250

Task 6 – Excavation Oversight

Ninyo & Moore will provide oversight of field activities including pre-excavation preparation of the site, marking of cellular excavation areas, excavation and soil stockpiling activities, meteorological monitoring and air monitoring activities, loading and transportation of stockpiled soil, importing of clean fill material, excavation backfilling and compaction, and grading of the site. Ninyo & Moore personnel will take part in a health and safety meetings held prior to the start of field activities. Ninyo & Moore’s oversight role will also include verifying that the contractor follows the procedures described in the RAW Phase II, Site Specific Health

and Safety Plan, Storm Water Pollution Prevention Plan, Dust Monitoring and Control Plan, and Transportation Plan.

Task 6 Cost – \$70,350

Task 7 – Stockpile and Confirmation Sampling & Laboratory Analysis

Ninyo & Moore will perform stockpile and confirmation sampling during excavation activities as described in the following sections.

Stockpile Sampling for Disposal Purposes

Soil stockpile sampling will be performed to characterize waste soil for disposal purposes. Stockpile samples for disposal purposes will be collected at a frequency of one 4-point composite sample for every 1,000 cubic yards of shallow metals impacted soil and analyzed for Title 22 Metals by EPA Method 6010B and additionally for soluble lead using waste extraction tests (WETs) to evaluate the classification of the stockpile as non-hazardous, or hazardous (either California Hazardous, or RCRA) waste. Soil stockpile samples from excavated petroleum hydrocarbon impacted soils will be collected at a frequency of one 4-point composite sample for up to every 500 cubic yards of soil if less than 1,500 cubic yards of petroleum hydrocarbon impacted soils will be generated, and at a frequency of one 4-point composite sample for up to every 1,000 cubic yards of soil to be disposed if greater than 1,500 cubic yards will be generated. Soil stockpile samples from excavated petroleum hydrocarbon impacted soils will be analyzed for Title 22 Metals, TPHd, TPHmo, and TPHg, and VOCs.

Stockpile samples will be collected as discrete samples and will be composited by the laboratory. Based on initial analytical results from composite stockpile samples, analysis of discrete stockpile samples for total lead and soluble lead may be required to isolate areas of a stockpile which may be classified as hazardous waste.

A total of eight 4-point composites are assumed to be required for shallow metal impacted soil waste characterization. For cost estimating purposes it is assumed that up to 20 discrete samples would require further waste characterization analysis for total and soluble lead to evaluate potential hazardous waste. Shallow soil stockpile samples will be analyzed on a 3-day TAT which is the fastest TAT available for soluble lead (WET) analysis. A total of

five 4-point composites are assumed to be required for deeper petroleum impacted soil waste classification. Deeper soil stockpile samples will be analyzed on a 2-day TAT. Further waste characterization analysis is not anticipated to be required for the deeper soil stockpile samples.

Potentially Clean Soil Stockpile Sampling

If excavation of potentially clean overburden soil is required to remove deeper petroleum hydrocarbon impacted soil, the potentially clean over-burden soil will be placed in a segregated stockpile and may be re-used as backfill material on-site pending the analytical results of stockpile samples collected from the segregated potentially clean stockpile. Stockpile samples would be collected at a rate of one discrete stockpile samples per 100 cubic yards of potentially clean overburden soil. The potentially clean overburden soil would be analyzed for Title 22 Metals, TPHg, TPHd, TPHmo, PAHs, and VOCs. The analytical results of the potentially clean stockpile samples would be discussed with DTSC prior to approving the soil for re-use as backfill material on-site. The soil would also need to be approved by the Geotechnical Engineer of Record for re-use as backfill material on-site.

Potentially clean soil stockpile samples will be analyzed on a 2-day TAT. A total of 10 discrete stockpile samples are anticipated to be required for characterize of potentially clean soil for possible re-use.

Confirmation Sampling

Confirmation soil samples will be collected from the bottoms and sidewalls of excavations to verify that a sufficient amount of impacted soil was removed to achieve the established cleanup goals for the site. Confirmation samples will be analyzed for the contaminants related to a particular cellular excavation area. The confirmation sample analysis for shallow excavations will include some or all of the following analyses: lead, arsenic, and OCPs. The confirmation sample analysis for deeper excavations (the abandoned heating oil UST removal and the possible excavation for TPH and VOC impacts in the southeastern portion of the Harper Building) will include the following analyses: TPHg, TPHd, TPHmo, PAHs by EPA Method 8270-SIM, and VOCs. If analytical results reveal concentrations exceeding the cleanup goals established for the site, over-excavation of impacted areas and collection of additional confirmation samples may be necessary.

Approximately 130 shallow soil confirmation samples and approximately 10 deeper soil confirmation samples will be collected in accordance with the RAW Phase II. For cost estimating purposes it is assumed that up to 15 additional shallow soil confirmation samples will be required for analysis of lead, arsenic, and OCPs, and 4 additional deeper soil confirmation samples will be required for analysis of TPHg, TPHd, TPHmo, PAHs, and VOCs. Confirmation soil samples will be analyzed on a 2-day TAT. Approximately 10% duplicate samples and trip blank samples will be collected and analyzed in accordance with the QAPP.

Task 7 Cost – \$27,300

Task 8 – Data Compilation and Analysis

As analytical results are received for stockpile and confirmation samples, the data will be reviewed and results which may affect the field activities will be discussed with DTSC to evaluate the appropriate course of action. Statistical analyses of confirmation sample results for lead and arsenic will also be performed to evaluate whether the cleanup goals are being achieved. The results of stockpile sample analysis will be forwarded to the remediation contractor and landfill for waste acceptance purposes.

Task 8 Cost – \$8,000

Task 9 – Vapor Barrier and Sub-Slab Ventilation System Installation Oversight

Following installation of the building foundations (footings and grade beams) and subsurface utilities, vapor barriers and sub-slab ventilation systems will be installed within the building footprints prior to pouring the concrete floor slabs. The vapor barriers and sub-slab ventilation systems will be installed by a licensed contractor certified by Land Science Technologies for installation of the Geo-Seal Vapor Barrier Membrane System. The vapor barrier installation contractor will be hired directly by OUSD or their general contractor.

Oversight and inspection of vapor barrier and sub-slab ventilation system installation will be performed by Ninyo & Moore representatives who are certified by Land Science Technologies to perform the required inspection activities. The inspection activities will include:

- Verifying that installation of sub-slab ventilation lines and vertical ventilation risers is performed in accordance with the manufacturer's specifications (Attachment A of Appendix J of the RAW Phase II) and the design drawings (Appendix J).
- Performing coupon sampling to verify the thickness of the spray-applied Geo-Seal CORE layer.
- Observing smoke testing of the membrane to find and repair leaks.
- Documenting the successful completion of installation and inspection activities.

Task 9 Cost – \$32,900

Task 10 – Removal Action Completion Reports

Following Stage 1 of the RAW Phase II implementation, receipt of final laboratory reports, and installation of the vapor barrier and sub-slab installation systems, the field activities and findings will be presented in a Removal Action Completion Report (RACR) which will be prepared and submitted for DTSC review. A separate RACR will be prepared and submitted for DTSC review following Stage 2 of the RAW Phase II implementation and receipt of final laboratory reports. The RACRs will provide a description of field activities, sampling and analytical methods, a statistical analysis of confirmation sample results, and will include figures, site photographs, and copies of laboratory reports.

Task 10 Cost – \$32,700

Task 11 – Operation & Maintenance (O&M) Plan Implementation

Implementation of the Operations & Maintenance (O&M) Plan presented as Appendix K of the RAW Phase II will be performed for a period of one year following completion of construction activities. O&M activities to be performed include:

- Coordination with OUSD and DTSC to ensure that all conditions of the O&M Plan are followed.
- Quarterly monitoring of the sub-slab ventilation systems which will include visual inspection of the accessible components of the sub-slab ventilation systems and collection of vapor samples from each of the 9 ventilation risers. Vapor samples will be analyzed for VOCs by EPA Method TO-15 using a 5-day TAT. Approximately 10% duplicate samples and trip blank samples will be collected and analyzed in accordance with the QAPP.

- Preparation of Quarterly Monitoring Reports discussing the monitoring activities performed and an evaluation of the analytical results from vapor monitoring samples. Quarterly monitoring reports will include conclusions and recommendations and will be submitted to DTSC for review.
- Ninyo & Moore will review the results of the quarterly monitoring activities after a period of one year. Within 30 days following the one-year period, Ninyo & Moore will prepare and certify a One Year Review Report that summarizes the results of the monitoring activities performed at the site.
- Quarterly monitoring will be performed at times when students are not present on site, such as holidays, nights, or weekends. For cost estimating purposes, it is assumed that the sub-slab ventilation system will remain a passive system, (i.e. will not be modified to be active) and indoor air sampling or additional monitoring events beyond the quarterly monitoring will not be required within the first year of O&M Plan implementation. Following the first year of O&M Plan implementation, the monitoring frequency may be reduced based on consultation with DTSC.

Task 11 Cost – \$36,000

UNDERSTANDINGS

The conditions listed below will apply to the performance of the scope of services described herein.

- The scope of services outlined above is based upon scope of work outlined in the Draft RAW Phase II dated January 31, 2012, assumptions, and our experience on numerous proposed school sites similar to the subject site. The 30-day public review and comment period must still be performed for the Draft RAW Phase II prior to its finalization. The scope of services may increase based on requirements from DTSC to address public comments, additional analytical requirements from project landfills, confirmation sample analytical results exceeding cleanup goals, requests to analyze samples on a faster TAT, and unforeseen conditions which may be encountered in the field such as subsurface features or unexpected areas of impacts. A 20% contingency has been included in the estimated fee to cover additional activities which may be required beyond the scope of services described above.
- Laboratory analytical TATs begin from the time that the laboratory receives the samples. Soil and groundwater samples will be shipped via overnight deliver to Advanced Technology Laboratories (ATL) located in Signal Hill, California. Vapor monitoring samples will be transported via courier to McCampbell Analytical, located in Pittsburg, California.
- The estimated number of days required for various tasks of the RAW Phase II implementation is presented in the chart below. If additional time is required to complete any of these tasks due to inclement weather or unforeseen conditions which may be encountered in the field such as subsurface features or unexpected areas of impacts, Ninyo & Moore will require the authorization of additional budget to cover the additional field time required for Ninyo & Moore personnel.

SCHEDULE

A tentative schedule for RAW Phase II implementation is shown in the chart below. It is estimated that implementation of the RAW for the Stage 1 area will begin in September 2012 with demolition activities. Based on this schedule, removal activities for the Stage 1 area are expected to be completed in December 2012, and installation of the vapor barrier and sub-slab ventilation system is anticipated to be completed in March 2013. A Draft Removal Action Completion Report (RACR) for the Stage 1 area is expected to be ready for submittal to DTSC in April 2013. This schedule assumes minimal delays due to weather, however because the RAW implementation coincides with the rainy season, there is a high likelihood that delays may occur due to inclement weather. We estimate DTSC will issue a final determination on the RACR for the Stage 1 area within two months following submittal of the Draft RACR for the Stage 1 area. Partial site approval determination by DTSC on the RA completed will be requested concurrent with the submittal of the Draft RACR for the Stage 1 area.

It is estimated that implementation of the RAW for the Stage 2 area will begin in February 2014 with demolition activities. Based on this schedule, removal activities for the Stage 2 area are expected to be completed in May 2014. A Draft RACR for the Stage 2 area is expected to be ready for submittal to DTSC in June 2014. We estimate DTSC will issue a final determination on the RACR for the Stage 2 area within two months following submittal of the Draft RACR for the Stage 2 area. Partial site approval determination by DTSC on the RA completed will be requested concurrent with the submittal of the draft RACR for the Stage 2 area.

Any comments from the DTSC on the Draft RACRs will be addressed and a final RACRs will be issued. If project delays outside of our control occur which may defer the completion of these reports, OUSD will be notified.

Task	Days to Complete	Days of N&M Labor	Notes
Stage 1			
Demolition	60	20	Contractor mobilization, setting up fencing, clearing and grubbing, demolition activities, marking excavations
Excavation Oversight	30	30	Excavation, stockpiling, off hauling, backfilling (Assumes minimal weather delays)
Building Foundation Construction	60	1	Footing and grade beam installation (Assumes minimal weather delays)
Vapor Barrier and Sub-Slab Ventilation System Installation	30	30	Installation of 6-inch gravel layer, sub-slab ventilation lines and membrane (Assumes minimal weather delays)
Reporting	60 (including DTSC reviews)	30	Draft and Final RACR are submitted
Stage 2			
Demolition	30	5	Contractor mobilization, setting up fencing, clearing and grubbing, demolition activities, marking excavations
Excavation Oversight	30	30	Excavation, stockpiling, off hauling, backfilling (Assumes minimal weather delays)
Reporting	60 (including DTSC reviews)	20	Draft and Final RACR are submitted.

COMPENSATION

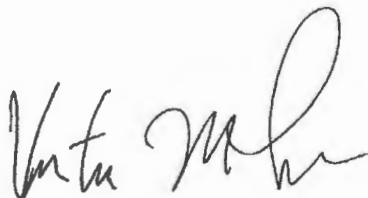
The estimated time-and-materials fee for the scope of services outlined above is **\$269,550** (Two Hundred Sixty-Nine Thousand Five Hundred Fifty Dollars) and the 20% contingency for additional activities which may be required is **\$53,900** (Fifty-Three Thousand Nine Hundred Dollars), therefore the total estimated time and materials fee is **\$323,450** (Three Hundred Twenty-Three Thousand Four Hundred Fifty Dollars). A detailed description of the costs associated with the proposed scope of services is presented in the attached Breakdown of Estimated Fees.

We trust that this proposal satisfies your current requirements and assure you that Ninyo & Moore will be responsive to your needs.

Sincerely,
NINYO & MOORE



Cem R. Atabek
Project Environmental Engineer



Kris M. Larson, PG
Principal Environmental Geologist

CRA/KML/csj

Attachment: Table 1 - Breakdown of Estimated Fees

TABLE 1 - BREAKDOWN OF ESTIMATED FEE

TASK 1 - PROJECT COORDINATION			
Principal Engineer/Geologist/Environmental Scientist	20 hours @	\$ 155.00 /hour	\$ 3,100.00
Senior Engineer/Geologist/Environmental Scientist	25 hours @	\$ 150.00 /hour	\$ 3,750.00
Project Engineer/Geologist/Environmental Scientist	75 hours @	\$ 133.00 /hour	\$ 9,975.00
Senior Staff Engineer/Geologist/Environmental Scientist	25 hours @	\$ 120.00 /hour	\$ 3,000.00
Subtotal			\$ 19,825.00

TASK 2 - PUBLIC PARTICIPATION ACTIVITES			
Project Engineer/Geologist/Environmental Scientist	24 hours @	\$ 133.00 /hour	\$ 3,192.00
Senior Staff Engineer/Geologist/Environmental Scientist	8 hours @	\$ 120.00 /hour	\$ 960.00
Subtotal			\$ 4,152.00

TASK 3 - SOIL GAS PROBE ABANDONMENT			
Senior Staff Engineer/Geologist/Environmental Scientist	16 hours @	\$ 120.00 /hour	\$ 1,920.00
Field Vehicle Usage	2 days @	\$ 30.00 /day	\$ 60.00
Drilling Subcontractor	2 days @	\$ 1,000.00 /day	\$ 2,000.00
Drilling Permit	2 each @	\$ 345.00 /each	\$ 690.00
Subtotal			\$ 4,670.00

TASK 4 - DEMOLITION MONITORING			
Project Engineer/Geologist/Environmental Scientist	20 hours @	\$ 133.00 /hour	\$ 2,660.00
Senior Staff Engineer/Geologist/Environmental Scientist	200 hours @	\$ 120.00 /hour	\$ 24,000.00
Field Vehicle Usage	25 days @	\$ 30.00 /day	\$ 750.00
Subtotal			\$ 27,410.00

TASK 5 - LIMITED STEP-OUT SOIL AND GROUNDWATER SAMPLING			
Senior Staff Engineer/Geologist/Environmental Scientist	8 hours @	\$ 120.00 /hour	\$ 960.00
Drilling Subcontractor	1 day @	\$ 2,300.00 /day	\$ 2,300.00
Drilling Permit	1 each @	\$ 345.00 /each	\$ 345.00
<i>Field Equipment</i>			
Sampling Supplies	1 day @	\$ 25.00 /day	\$ 25.00
Field Vehicle Usage	1 day @	\$ 30.00 /day	\$ 30.00
PID Meter Use	1 day @	\$ 125.00 /day	\$ 125.00
Water Meter/Peristaltic Pump Use	1 day @	\$ 50.00 /day	\$ 50.00
Encore Samplers	24 each @	\$ 10.00 /each	\$ 240.00
<i>Laboratory Costs - 24 hour TAT</i>			
TPHd & TPHmo USEPA Test Method 8015M (6 samples, 2 duplicates, 1 blank)	9 tests @	\$ 76.00 /test	\$ 684.00
TPHg USEPA Test Method 8015M (6 samples, 2 duplicates)	8 tests @	\$ 40.00 /test	\$ 320.00
VOCs USEPA Test Method 8015M (6 samples, 2 duplicates, 1 trip)	9 tests @	\$ 130.00 /test	\$ 1,170.00
Subtotal			\$ 6,249.00

TABLE 1 - BREAKDOWN OF ESTIMATED FEE

TASK 6 - EXCAVATION OVERSIGHT				
Project Engineer/Geologist/Environmental Scientist	48 hours	@ \$	133.00 /hour	\$ 6,384.00
Senior Staff Engineer/Geologist/Environmental Scientist	480 hours	@ \$	120.00 /hour	\$ 57,600.00
<i>Field Equipment</i>				
Sampling Supplies	60 days	@ \$	25.00 /day	\$ 1,500.00
Field Vehicle Usage	60 days	@ \$	30.00 /day	\$ 1,800.00
PID Meter Use	15 days	@ \$	125.00 /day	\$ 1,875.00
Disposable Plastic Sample Scoops	160 each	@ \$	1.50 /each	\$ 240.00
Encore Samplers	96 each	@ \$	10.00 /each	\$ 960.00
Subtotal				\$ 70,359.00

TASK 7 - STOCKPILE AND CONFIRMATION SAMPLE LABORATORY ANALYSIS				
<i>Shallow Soil Stockpile Samples - 3-Day TAT</i>				
Title 22 Metals USEPA Test Method 6010B	8 tests	@ \$	74.00 /test	\$ 592.00
Lead USEPA Test Method 6010B	20 tests	@ \$	21.00 /test	\$ 420.00
Soluble Lead (STLC) USEPA WET Method	28 tests	@ \$	65.00 /test	\$ 1,820.00
Soluble Lead (TCLP) USEPA WET Method	28 tests	@ \$	65.00 /test	\$ 1,820.00
<i>Deeper Soil Stockpile Samples - 2-Day TAT</i>				
Title 22 Metals USEPA Test Method 6010B	5 tests	@ \$	90.00 /test	\$ 450.00
TPHg USEPA Test Method 8015M	5 tests	@ \$	35.00 /test	\$ 175.00
TPHd & TPHmo USEPA Test Method 8015M	5 tests	@ \$	66.00 /test	\$ 330.00
VOCs USEPA Test Method 8015M	5 tests	@ \$	113.00 /test	\$ 565.00
<i>Potentially Clean Soil Stockpile Samples - 2-Day TAT</i>				
Title 22 Metals USEPA Test Method 6010B	10 tests	@ \$	90.00 /test	\$ 900.00
TPHg USEPA Test Method 8015M	10 tests	@ \$	35.00 /test	\$ 350.00
TPHd & TPHmo USEPA Test Method 8015M	10 tests	@ \$	66.00 /test	\$ 660.00
VOCs USEPA Test Method 8015M	10 tests	@ \$	113.00 /test	\$ 1,130.00
PAHs USEPA Test Method 8270	10 tests	@ \$	145.00 /test	\$ 1,450.00
<i>Confirmation Samples - 2-Day TAT</i>				
Organochlorine Pesticides USEPA Test Method 8081A (57 samples, 6 duplicates)	63 tests	@ \$	81.00 /test	\$ 5,103.00
Lead USEPA Test Method 6010B (139 samples, 14 duplicates)	153 tests	@ \$	23.00 /test	\$ 3,519.00
Arsenic USEPA Test Method 6010B (76 samples, 8 duplicates)	84 tests	@ \$	23.00 /test	\$ 1,932.00
PAHs USEPA Test Method 8270 (14 samples, 2 duplicate)	16 tests	@ \$	145.00 /test	\$ 2,320.00
TPHg USEPA Test Method 8015M (14 samples, 2 duplicates)	16 tests	@ \$	35.00 /test	\$ 560.00
TPHd & TPHmo USEPA Test Method 8015M (14 samples, 2 duplicates)	16 tests	@ \$	66.00 /test	\$ 1,056.00
VOCs USEPA Test Method 8015M (14 samples, 2 duplicates, 3 trip)	19 tests	@ \$	113.00 /test	\$ 2,147.00
Subtotal				\$ 27,299.00

TASK 8 - DATA COMPILATION AND ANALYSIS				
Project Engineer/Geologist/Environmental Scientist	60 hours	@ \$	133.00 /hour	\$ 7,980.00
Subtotal				\$ 7,980.00

TASK 9 - VAPOR BARRIER AND SUB-SLAB VENTILATION SYSTEM INSTALLATION OVERSIGHT				
Project Engineer/Geologist/Environmental Scientist	24 hours	@ \$	133.00 /hour	\$ 3,192.00
Senior Staff Engineer/Geologist/Environmental Scientist	240 hours	@ \$	120.00 /hour	\$ 28,800.00
Field Vehicle Usage	30 days	@ \$	30.00 /day	\$ 900.00
Subtotal				\$ 32,892.00

TABLE 1 - BREAKDOWN OF ESTIMATED FEE

TASK 10 - REMOVAL ACTION COMPLETION REPORTS				
Principal Engineer/Geologist/Environmental Scientist	20 hours	@	\$ 155.00 /hour	\$ 3,100.00
Senior Engineer/Geologist/Environmental Scientist	30 hours	@	\$ 150.00 /hour	\$ 4,500.00
Project Engineer/Geologist/Environmental Scientist	120 hours	@	\$ 133.00 /hour	\$ 15,960.00
Senior Staff Engineer/Geologist/Environmental Scientist	40 hours	@	\$ 120.00 /hour	\$ 4,800.00
Technical Illustrator/CAD Operator	30 hours	@	\$ 80.00 /hour	\$ 2,400.00
Data Processing, Technical Editing, or Reproduction	30 hours	@	\$ 65.00 /hour	\$ 1,950.00
Subtotal				\$ 32,710.00

TASK 11 - O&M PLAN IMPLEMENTATION				
Principal Engineer/Geologist/Environmental Scientist	10 hours	@	\$ 155.00 /hour	\$ 1,550.00
Senior Engineer/Geologist/Environmental Scientist	15 hours	@	\$ 150.00 /hour	\$ 2,250.00
Project Engineer/Geologist/Environmental Scientist	50 hours	@	\$ 133.00 /hour	\$ 6,650.00
Senior Staff Engineer/Geologist/Environmental Scientist	100 hours	@	\$ 120.00 /hour	\$ 12,000.00
Technical Illustrator/CAD Operator	10 hours	@	\$ 80.00 /hour	\$ 800.00
Data Processing, Technical Editing, or Reproduction	20 hours	@	\$ 65.00 /hour	\$ 1,300.00
<i>Field Equipment</i>				
Sampling Supplies	8 days	@	\$ 25.00 /day	\$ 200.00
Field Vehicle Usage	8 days	@	\$ 30.00 /day	\$ 240.00
<i>Laboratory Costs - 5 day TAT</i>				
VOCs USEPA Test Method TO-15 (36 samples, 4 duplicates, 4 trip)	44 tests	@	\$ 250.00 /test	\$ 11,000.00
Subtotal				\$ 35,990.00

TOTAL ESTIMATED FEE	\$ 269,536.00
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20 % CONTINGENCY	\$ 53,907.20
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TOTAL ESTIMATED FEE INCLUDING 20% CONTINGENCY	\$ 323,443.20
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AMENDMENT TO INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

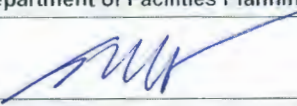
Project Information			
Project Name	La Escuelita Educational Center	Site	La Escuelita
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including 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	Ninyo & Moore	Agency's Contact	Cem Atabek				
OUSD Vendor ID #	V058012	Title	Project Manager				
Street Address	1956 Webster Street, Suite 400	City	Oakland	State	CA	Zip	94612
Telephone	510-633-5640	Policy Expires	10-3-2012				
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	07047						

Term			
Date Work Will Begin	5-7-2009	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-31-2013

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$512,193.20
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$323,443.20
Other Expenses		Requisition Number	

Budget Information				
<small>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</small>				
Resource #	Funding Source	Org Key	Object Code	Amount
9299, 9399, 9499	County School Facilities Fund 35	1219003835	6170	\$323,443.20

Approval and Routing (in order of approval steps)				
<small>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.</small>				
	Division Head	Charles Love	Phone	510-535-7081
			Fax	510-535-7082
1.	Capital Program Contract & Accounting Manager		Signature	Date Approved
				3-12-12
2.	General Counsel, Department of Facilities Planning and Management		Signature	Date Approved
				3.12.12
3.	Associate Superintendent, Facilities Planning and Management		Signature	Date Approved
				
4.	President, Board of Education		Signature	Date Approved

Board Office Use: Legislative File Info.	
File ID Number	11-2460
Committee	Facilities
Introduction Date	9-20-2011
Enactment Number	11-2108
Enactment Date	9/27/11



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Assistant Superintendent, Facilities Planning and Management

Board Meeting Date September 27, 2011

Subject Amendment No. 3, Professional Services Facilities Contract - Ninyo & Moore-Downtown Educational Complex Project

Action Requested Approval by the Board of Education of Amendment No. 3, Professional Services Facilities Contract with Ninyo & Moore for Testing Services on behalf of the District at Downtown Educational Complex, in an amount not-to exceed \$13,000.00 increasing previous contract amount from \$175,750.00 to a not to exceed amount of \$188,750.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background Per DTSC, additional soil gas sampling is required due to potential changes in existing conditions.

Local Business Participation Percentage 100.00%

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,



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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 Amendment No. 3, Professional Services Facilities Contract with Ninyo & Moore for Testing Services on behalf of the District at Downtown Educational Complex, in an amount not-to exceed \$13,000.00 increasing previous contract amount from \$175,750.00 to a not to exceed amount of \$188,750.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

The funding source for this project is County School Facilities Fund.

Attachments

- Professional Services Contract including scope of work

Key Code:

1219003835-6170



AMENDMENT NO. 3 TO PROFESSIONAL SERVICES CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Ninyo & Moore**. OUSD entered into an Agreement with CONTRACTOR for services on **May 9, 2009**, 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>.
<p>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></p> <p>The CONTRACTOR agrees to provide the following amended services: <u>The scope of the project is to prepare a Technical Memorandum for Additional Soil Gas Monitoring, perform soil gas activities, and prepare a brief Soil Gas Monitoring Report for Phase 2 portion of the Downtown Project. This area encompasses Harper Building, Auto Shop and the northern portion of the La Escuelita Area.</u></p>		
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> .
<p>If term is changed: The contract term is extended by an additional _____ (days/weeks/months), and the amended expiration date is _____, 20____.</p>		
3. Compensation:	<input checked="" type="checkbox"/> The contract price is <u>unchanged</u>.	<input type="checkbox"/> The contract price has <u>changed</u> .
<p>If the compensation is changed: The contract price is amended by</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Increase of \$13,000.00 to original contract amount</p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease of \$ _____ to original contract amount</p> <p>and the new contract total is <u>One hundred eighty-eight thousand, seven hundred fifty dollars and no cents (\$188,750.00)</u></p>		

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)
1	8-11-2010	Provide step-out sampling and a removal action work plan for Phase II portion of the Downtown project site located at 314 E. 10 th Street, 110-3 rd Avenue and 1029-4 th Avenue. Scope to include project coordination, boring marking/utility clearance, sampling of soil, soil gas and groundwater, lab analysis and data compilation, preparation of an SSI Addendum Report, preparation of RAW for the Phase II area and preparation of distribution of public participation documents	\$49,450.00
2	6-22-11	Revising the end date from June 23 2011 thru June 23, 2012	\$0.00
			\$

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
 1500 STREET
 OAKLAND, CA 94601
 AUG 25 A 8:33
 PLANNING AND MANAGEMENT DEPARTMENT

OAKLAND UNIFIED SCHOOL DISTRICT

[Signature]
Jody London
President, Board of Education

9/29/11
Date

[Signature]
Edgar Rakestraw, Jr., Secretary
Board of Education

9/29/11
Date

[Signature]
Timothy White, Assistant Superintendent
Facilities, Planning and Management

Date

CONTRACTOR

[Signature]
Contractor Signature

8/23/11
Date

Kristopher M. Larson, Principal
Print Name, Title
Geologist

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR's entire Proposal is not made part of this Agreement.

SCOPE OF WORK

Contractor Name: [Contractor Name]

Billing Rate: _____

Description of Services to be Provided

_____ will provide a maximum of _____ hours of services at a rate of \$ _____ per hour for a total not to exceed \$ _____.

1. **Goals or Objectives**
Additional testing
2. **Description of Services to be Provided**
The scope of the project is to prepare a Technical Memorandum for Additional Soil Gas Monitoring, perform soil gas activities, and prepare a brief Soil Gas Monitoring Report for Phase 2 portion of the Downtown Project. This area encompasses Harper Building, Auto Shop and the northern portion of the La Escuelita Area.
3. **Deliverables**
Technical Memorandum

Board Office Use	Legislative File Info
File ID Number	11-1419
Committee	Facilities
Introduction Date	6-14-2011
Enactment Number	11-1261
Enactment Date	6-22-11



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Tony Smith, Ed.D., Superintendent
Timothy White, Assistant Superintendent, Facilities Planning and Management

Board Meeting Date June 22, 2011

Subject Amendment No. 2, Professional Services Facilities Contract - Ninyo & Moore - Downtown Educational Complex Project

Action Requested Approval by the Board of Education of Amendment No. 2, Professional Services Facilities Contract with Ninyo & Moore for Testing Services on behalf of the District at Downtown Educational Complex revising the end date from June 23, 2011 to June 23, 2012. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background Per the Phase I Environmental Assessment, there were some hazardous materials identified at several areas of the project site, including the Auto Shop and Harper Building.

Local Business Participation Percentage 100.00%

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



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

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 Amendment No. 2, Professional Services Facilities Contract with Ninyo & Moore for Testing Services on behalf of the District at Downtown Educational Complex revising the end date from June 23, 2011 to June 23, 2012. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

The funding source for this project is Fund 35.

Attachments

- Professional Services Contract including scope of work

Key Code:

1219003825-6170



AMENDMENT NO. 2 TO PROFESSIONAL SERVICES CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Ninyo & Moore**. OUSD entered into an Agreement with CONTRACTOR for services on **May 1, 2010**, and the parties agree to amend that Agreement as follows:

1.	Services: <input checked="" type="checkbox"/> The scope of work is <u>unchanged</u> . <input 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: _____ _____ _____	
2.	Terms (duration): <input type="checkbox"/> The term of the contract is <u>unchanged</u> . <input checked="" type="checkbox"/> The term of the contract has <u>changed</u> . If term is changed : The contract term is extended by an additional 1 year (days/weeks/months) , and the amended expiration date is June 23, 2012 .
3.	Compensation: <input checked="" type="checkbox"/> The contract price is <u>unchanged</u> . <input type="checkbox"/> The contract price has <u>changed</u> . If the compensation is changed : The contract price is amended by <input type="checkbox"/> Increase of \$ _____ to original contract amount <input type="checkbox"/> Decrease of \$ _____ to original contract amount and the new contract total is _____ dollars (\$ _____)

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)
1	8-11-2010	The scope of the project is to provide step-out sampling and a removal action work plan for Phase II portion of the Downtown project site, located on 314 E. 10 th Street, 110-3 rd Avenue and 1029-4 th Avenue. Scope to include project coordination, boring marking/utility clearance, sampling of soil, soil gas and groundwater, lab analysis and data compilation, preparation of an SSI Addendum Report, preparation of RAW for the Phase II area and preparation of distribution of public participation documents.	\$49,450.00

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

[Signature]
 Gary Yee, President, Board of Education Date 6/23/11

[Signature]
 Edgar Rakestraw, Jr., Secretary
 Board of Education Date 6/23/11

[Signature]
 Timothy White, Assistant Superintendent
 Facilities, Planning and Management Date _____

CONTRACTOR

[Signature] Date 5/25/11
 Contractor Signature

Kris Larson, Principal Geologist
 Print Name, Title

2012 MAY 26 8:59 AM

FACILITIES PLANNING AND MANAGEMENT

Legislative File

File ID Number: 11-1419
 Introduction: 6-14-11
 Enactment Number: 11-1261
 Enactment Date: 6-22-11

Contract No. _____

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR's entire Proposal is not made part of this Agreement.

SCOPE OF WORK

Contractor Name: Ninyo & Moore

Billing Rate: Zero increase (\$0.00)

Description of Services to be Provided

- 1. Goals or Objectives**
Extend the date
- 2. Description of Services to be Provided**
No change in services
- 3. Deliverables**
Environmental Assessment

Saya Nhim

From: Cem Atabek [catabek@ninyoandmoore.com]
Sent: Thursday, April 28, 2011 3:17 PM
To: Saya Nhim
Subject: Agreement Expiration
Follow Up Flag: Follow up
Flag Status: Red

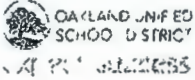
Hi Saya, I noticed that our Amendment No. 1, dated May 1, 2010, for the Agreement dated May 1, 2009, for preparation of the RAW for the DEC Phase II is going to expire on June 23, 2011. We have not performed most of the scope under this contract, so I just wanted to make sure we could extend this contract before it expires. We will be starting preparation of the RAW for Phase II as soon as we finish up with the Phase I area. Thanks

-Cem

Cem R. Atabek
Project Engineer
Ninyo & Moore
Geotechnical & Environmental Sciences Consultants
1956 Webster Street, Suite 400
Oakland, California 94612
(510) 633-5640 (x5202)
(510) 633-5646 (Fax)
catabek@ninyoandmoore.com

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OAKLAND UNIFIED SCHOOL DISTRICT PROFESSIONAL SERVICES CONTRACT ROUTING FORM

Project Information			
Project Name	Downtown Educational Complex	Site	Downtown Educational Complex
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	Ninyo & Moore	Agency's Contact	Cem Atabek
OUSD Vendor ID #	V058012	Title	Project Manager
Street Address	1956 Webster Street, Suite 400	City	Oakland
Telephone	510-633-5640	State	CA
		Zip	94612
		Policy Expires	10-3-2011
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
OUSD Project #	07047		

Term			
Date Work Will Begin	6-23-2011	Date Work Will End By (not more than 5 years from start date)	6-23-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$175,750.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$ 0.00
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.				
Fund #	Resource Name	Org Key	Object Code	Amount
3535	County School Facilities Fund	1219003835	6170	\$0.00
				\$

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.			
1.	Division Head Charles Love	Phone 510-879-8389	Fax 510-879-3673
	Capital Program Contracts & Accounting Manager		
	Signature	Date Approved	5-31-11
2.	General Counsel, Department of Facilities Planning and Management		
	Signature	Date Approved	6-1-11
3.	Assistant Superintendent, Facilities Planning and Management		
	Signature	Date Approved	
4.	President, Board of Education		
	Signature	Date Approved	

Board Office Use: Legislative File Info.	
File ID Number	10-1859
Committee	Facilities
Production Date	8-3-2010
Contract Number	10-1436
Contract Date	8-11-10



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To: Board of Education
 From: Tony Smith, Ed.D., Superintendent
 Timothy White, Assistant Superintendent, Facilities Planning and Management
 Board Meeting Date: August 11, 2010
 Subject: Amendment No. 1 - Ninyo & Moore - Downtown Educational Complex Project

Action Requested Approval by Board of Education of Amendment No. 1 with Ninyo & Moore for Additional Environmental Assessment Services on behalf of the District for the Downtown Educational Complex Project, increasing the contract by a not to exceed amount of \$49,450.00, increasing previous contract amount from \$126,300.00 to a not to exceed amount of \$175,750.00 and revising the end date from May 1, 2010 to June 23, 2011. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background Per the Phase I Environmental Assessment, there were some hazardous materials identified at several areas of the site, including the Auto Shop and Harper Building.

Local Business Participation Percentage 100.00%

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,



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SCHOOL DISTRICT

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 Board of Education of Amendment No. 1 with Ninyo and Moore for Additional Environmental Assessment Services on behalf of the District for the Downtown Educational Complex Project, increasing the contract by a not to exceed amount of \$49,450.00, increasing previous contract amount from \$126,300.00 to a not to exceed amount of \$175,750.00 and revising the end date from May 1, 2010 to June 23, 2011. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

The funding source for this project is County School Facilities Fund.

Attachments

- Professional Services Contract including scope of work

Fiscal Code:

1219003835-6262



AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Ninyo and Moore**. OUSD entered into an Agreement with CONTRACTOR for services on **May 1, 2009** 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> .
<p>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></p> <p>The CONTRACTOR agrees to provide the following amended services: <u>The scope of the project is to provide step-out sampling and a removal action work plan for Phase II portion of the Downtown project site, located on 314 E. 10th Street, 110-3rd Avenue and 1029-4th Avenue. Scope to include project coordination, boring marking/utility clearance, sampling of soil, soil gas and groundwater, lab analysis and data compilation, preparation of an SSI Addendum Report, preparation of RAW for the Phase II area and preparation of distribution of public participation documents.</u></p>		
2. Terms (duration):	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> The term of the contract has <u>changed</u> .
<p>If term is changed: The contract term is extended by an additional One years and 1 month (days/weeks/months), and the amended expiration date is June 23, 2011.</p>		
3. Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p>If the compensation is changed: The contract price is amended by</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Increase of \$49,450.00 to original contract amount</p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease of \$ _____ to original contract amount</p> <p>and the new contract total is One hundred seventy-five thousand, seven hundred fifty dollars (\$175,750.00)</p>		

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.

<p>OAKLAND UNIFIED SCHOOL DISTRICT</p> <p><i>[Signature]</i> Date <u>8/12/10</u></p> <p>Gary Yee, President, Board of Education</p> <p><i>[Signature]</i> Date <u>8/12/10</u></p> <p>Edgar Rakestraw, Jr., Secretary Board of Education</p> <p><i>[Signature]</i> Date _____</p> <p>Timothy White, Assistant Superintendent Facilities, Planning and Management</p>	<p>CONTRACTOR</p> <p><i>[Signature]</i> Date <u>6/21/10</u></p> <p>Contractor Signature</p> <p><i>[Signature]</i> Date _____</p> <p>Christopher M. Larson, P.G. Principal Geologist</p>	<p style="text-align: right;"> <i>[Signature]</i> Date _____ Principal Geologist </p>
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LEGISLATIVE FILE

File ID No. 10-1859

Introduction Date 8-3-10

Enactment No. 10-1436

Enactment Date 8-11-10

O. No. _____

Board Office Use: Legislative File Info.	
File ID Number	09-1969
Committee	Facilities
Introduction Date	6-16-09
Enactment Number	09-1528
Enactment Date	6-24-09



OAKLAND UNIFIED
SCHOOL DISTRICT

every student. every classroom. every day.

Memo

To Board of Education

From Roberta Mayor, Superintendent
Timothy White, Assistant Superintendent, Facilities Planning and Management

Board Meeting Date June 24, 2009

Subject Professional Services Contract - Ninyo & Moore (contractor)
- Downtown Educational Complex project.

Action Requested Approval of professional services contract between Oakland Unified School District and Ninyo & Moore Services at Downtown Educational Complex project, in an amount not to exceed \$ 126,300.00. The term of this Agreement shall commence on May 1, 2009 an shall conclude no later than May 1, 2010.

Background
A one paragraph explanation of why the consultant's services are needed.

Per the Phase 1 Environmental Assessment, there were some hazardous materials identified at several areas of the site, including the Auto Shop and Harper Building. Per the assessment, it is recommended that OUSD perform a PEA with DTSC oversight.

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



OAKLAND UNIFIED
SCHOOL DISTRICT

every student. every classroom. every day.

implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval of professional services contract between Oakland Unified School District and Ninyo & Moore. Services at Downtown Educational Complex project, in an amount not to exceed \$ 126,300.00. The term of this Agreement shall commence on May 1, 2009 an shall conclude no later than May 1, 2010.

Fiscal Impact

The funding source for this project is Fund 36

Attachments

- Professional Services Contract including scope of work



**OAKLAND UNIFIED
SCHOOL DISTRICT**

PROFESSIONAL SERVICES FACILITIES CONTRACT

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

1. **Services:** The CONTRACTOR shall provide the services as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services" or "Work").
2. **Terms:** CONTRACTOR shall commence work on May 1, 2009. The work shall be completed no later than May 1, 2010.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed One hundred twenty-six thousand, three hundred dollars and no cents Dollars (\$ 126,300.00). This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

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

OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: NA

Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD.

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

4. **Submittal of Documents:** CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
 - Signed Agreement
 - Workers' Compensation Certification
 - Insurance Certificates and Endorsements
5. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of the Agreement except: NA
6. **CONTRACTOR Qualifications / Performance of Services.**
 - a. **CONTRACTOR Qualifications.** CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.
 - b. **Standard of Care.** CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

7. **Notices/Invoicing:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

<p>OUSD Representative:</p> <p>Name: <u>Timothy White</u></p> <p>Site /Dept.: <u>Facilities Planning and Management</u></p> <p>Address: <u>955 High Street</u> <u>Oakland, CA 947801</u></p> <p>Phone: <u>(510)879-3664</u></p>	<p>CONTRACTOR:</p> <p>Name: <u>Kris Larson</u></p> <p>Title: <u>Project Manager</u></p> <p>Address: <u>1956 Webster Street, Suite 400</u> <u>Oakland, CA 94612</u></p> <p>Phone: <u>510-833-5640</u></p>
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Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.

Professional Services Contract

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

9. **Insurance:**

9.1 Without in any way limiting Consultant's liability under any other section of this Agreement, Consultant will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

9.1.1 Workers' Compensation Employers' Liability limits not less than each \$1,000,000 each accident, per disease, and aggregate. Consultant's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

9.1.2 Consultant's right to self-insure is subject to approval by the District. As a condition to such approval, Consultant shall submit to the District evidence that consultant maintains sufficient financial resources for said self-insurance.

9.1.3 Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant's or subcontractor's or sub-consultant's operations.

9.1.4 Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

9.1.5 Professional Liability Insurance with limits not less than \$1,000,000.00 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

9.2 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

9.2.1 Name as Additional Insured District, its Directors, Officers, Employees, Agents, and Representatives.

9.2.2 That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

9.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to District of cancellation, non-renewal or reduction in coverage, and certificates of all policies and endorsements shall be mailed to the following address:

Timothy E. White, Assistant Superintendent
Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, California 94601

9.4 Insurance shall be provided by an admitted California Insurance company with a current Best's Key Rating of A minus (A-) or better. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

9.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

9.6 Certificates of insurance evidencing all coverages above shall be furnished to District before commencing any operations under this Agreement, with complete copies of policies promptly upon District request. Approval of the insurance by District shall not relieve or decrease the liability of Consultant hereunder.

9.7 District may, at its sole option, terminate this Agreement immediately, without notice to Consultant and without opportunity to cure the default, in the event of any lapse of required insurance coverage. District may, at its sole option, secure sufficient insurance

Professional Services Contract

coverage to replace any required insurance coverage, which has lapsed, and Consultant hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage. Consultant shall be responsible for any and all uninsured losses.

9.8 If Consultant is an association, joint venture or partnership, the association, joint venture or partnership shall be insured by any one of the following methods:

9.8.1 Separate insurance policies issued with the association, joint venture or partnership as named insured; All insurance policies required by this Agreement of one of the participants to include the association, joint venture or partnership as named insured; The association, joint venture or partnership must be a named insured on all of the policies required by this Agreement.

10. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.
11. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
12. **Anti-Discrimination.** It is the policy of OUSD 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 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s).
13. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.
14. **Indemnification:** Consultant shall indemnify, defend, and hold District, its directors, officers, agents, employees and representatives harmless from and against all claims, demands and judgments of any description arising out of or alleged to have arisen out of performance or nonperformance of this Agreement to the extent that such claims, demands and judgments are the result of any error, omission or negligent act of Consultant or any person employed or agent engaged by Consultant.
 - 14.7 Specifically regarding professional negligent errors or omissions, the Consultant shall indemnify, defend, and hold harmless District, its directors, officers, agents, employees, and representatives from and against any and all demands, claims, loss, liability costs and damages (whether in contract, tort or strict liability) incurred by District, or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses) incurred by District, or any other person, to the proportionate extent that it is alleged to have arisen out of or arises out of or is in connection with the professional negligent errors or omissions of the Consultant in the performance of this contract. The indemnity and save harmless agreements expressed in this Section 8 shall not apply to the extent that doing so violates the provisions of Section 2782 of the California Civil Code.
 - 14.3 Consultant shall place in its sub-consulting agreements and cause its sub-consultants to agree to indemnities and insurance obligations in the exact form and substance of those contained herein, each naming the District as an additional beneficiary or insured.
15. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
16. **Suspension of Work:** District may, without cause, order Consultant, in writing, to suspend, delay or interrupt the Work, for such periods of time as District may determine, in its sole discretion. Suspension shall be effected by delivery to Consultant of notice of suspension specifying the extent to which performance of the Work under the Agreement is suspended, and the date upon which suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered.
17. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
18. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.

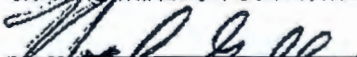
Professional Services Contract

19. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
20. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate the CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:
 - a. Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - b. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
21. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
22. **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. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
23. **Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement.

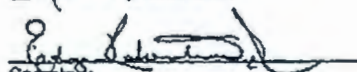
CONTRACTOR affirms to the best of his/her/his knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement,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

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 et seq. and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement, which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD of this information.
24. **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.
26. **Litigation:** If any litigation is initiated to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. This Agreement shall be performed in Oakland, CA and is governed by the laws of the State of California.
26. **Approval:** This Agreement is not effective and no payment shall be made to CONTRACTOR until it is approved. Approval requires signature by the State Administrator, the Board of Education, and/or the Interim Superintendent as their designee.
27. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
28. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
28. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

OAKLAND UNIFIED SCHOOL DISTRICT


 President, Board of Education
 Interim Superintendent

6/25/09
Date


Secretary,
Board of Education

6/25/09
Date


Assistant Superintendent,
Department of Facilities Planning and Management

Date

CONTRACTOR


Contractor Signature

6/2/09
Date

Kris Larson
Print Name, Title Project Manager

File ID Number: 09-1969
Introduction Date: 6-16-09
Enactment Number: 09-1528
Enactment Date: 6-24-09
By: SL

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

Directions

This page includes a template to assist with creation of a basic scope of work. If you complete this contract electronically some of the fields in this template will fill-in automatically. Use of this template is not required. If you choose not to use this template please ensure that your scope of work addresses all of the areas identified in the template.

CONTRACTOR's entire Proposal is not made part of this Agreement. [IF A CONTRACTOR 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.]

SCOPE OF WORK

Contractor Name: Ninyo & Moore

Billing Rate: One hundred twenty-six thousand, three hundred dollars and no cents

Description of Services to be Provided

Please provide a one or two paragraph description of the services the contractor will provide. Be specific.

The scope of the project is to provide a Preliminary Environmental Assessment (PEA) report for the Downtown site. Services includes: work with DTSC who will be overseeing the entire process meeting with DTSC, defining the scope, sampling of soil, gas and groundwater, laboratory analysis, a Human Health Screening Evaluation (HHSE), and an Ecological Screening Evaluation.

Notice: This page includes two separate forms.

Directions:

Consultant Type	Directions
Contractors with employees	<ul style="list-style-type: none"> ✓ Complete Workers' Compensation Certification below ✓ Attach proof of general liability and workers' compensation insurance
Contractors with no employees	<ul style="list-style-type: none"> ✓ Complete Workers' Compensation Certification below ✓ Either attach proof of general liability insurance or, if eligible, complete request for waiver below.

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

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.

Check only one of the boxes below.

<input checked="" type="checkbox"/> 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.	<input type="checkbox"/> I do not employ anyone in the manner subject to the workers' compensation laws of California.
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CONTRACTOR Name: Niryo & Moore

Contractor Signature:  Date: 6/2/09

Print Name and Title: Kris Larson Project Manager

(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 OUSD prior to performing any Work under this Contract.)

GENERAL LIABILITY INSURANCE WAIVER REQUEST FORM

The following conditions must be satisfied in order to qualify for a waiver of Oakland Unified School District's requirement of general liability insurance requirement:

1. Contract is for less than \$15,000
2. Good history with the District. If the contractor has worked with OUSD in the past they received a good evaluation and there were no prior complaints, problems or injuries from prior contracts.

I request a waiver of the general liability insurance requirement. I certify that I meet the above criteria.

CONTRACTOR Name: _____

Contractor Signature: _____ Date: _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) 01/17/12
PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090 Christine Silan	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.	
INSURERS AFFORDING COVERAGE		
INSURED Ninyo & Moore Geotechnical & Environmental Sciences Consultants 1956 Webster Street, Suite 400 Oakland, CA 94612	INSURER A: Travelers Property Casualty Co of Am INSURER B: American Automobile Ins. Co. INSURER C: Alterra Excess & Surplus Insurance C 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	6308986R247	10/03/11	10/03/12	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$300,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$10,000
	<input checked="" type="checkbox"/> Contractual				PERSONAL & ADV INJURY \$1,000,000
	<input checked="" type="checkbox"/> OCP				GENERAL AGGREGATE \$2,000,000
	GENL AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG \$2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				
A	AUTOMOBILE LIABILITY	8108986R247	10/03/11	10/03/12	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
A	EXCESS LIABILITY	CUP8986R247	10/03/11	10/03/12	EACH OCCURRENCE \$9,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$9,000,000
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input type="checkbox"/> RETENTION \$				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WZP80993464	05/01/11	05/01/12	<input checked="" type="checkbox"/> W/C STATU-TORY LIMITS <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	OTHER Professional & Contractor's Pollution Liab.	MAX7PL0000243	10/03/11	10/03/12	\$5,000,000 per Claim
					\$5,000,000 Annl Aggr.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
GENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.

REF: OUSD - La Escuelita Downtown Project.
 (See Attached Descriptions)

2012 MAR - 9
 FACILITIES PLANNING AND MANAGEMENT

CERTIFICATE HOLDER Oakland Unified School District Attn: Susle Butler-Berkley 955 High Street Oakland, CA 94601	ADDITIONAL INSURED; INSURER LETTER: CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

COMMERCIAL GENERAL LIABILITY Insurance is primary and non-contributory per policy form wording.

Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULED ADDITIONAL INSURED - WRITTEN CONTRACT (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S): Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

PROJECT/LOCATION OF COVERED OPERATIONS: All Operations of the Named Insured.

PROVISIONS

of insurance described in Section III –
Limits Of Insurance.

1. The following is added to **SECTION II - WHO IS AN INSURED:**

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury" and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insured provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance" This endorsement shall not increase the limits

- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.

- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to that additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance provided to the additional insured shown in the Schedule above is excess over any valid and collectible "other

COMMERCIAL GENERAL LIABILITY

insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is add to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Duties Of An Additional Insured

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
 - i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:

- i. Immediately record the specifics of the claim or "suit" and the date received; and
- ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement with the person or organization shown in the Schedule above, under which you are required to include that person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" needs to be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement forms a part of Policy No. WZP80993464

Issued to: Ninyo & Moore Geotechnical &

By: American Automobile Ins. Co.

Premium (if any) TBD

We have a 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 2-5% of the California workers compensation premium otherwise due on such remuneration.

Schedule

Person or Organization	Job Description
Oakland Unified School District Attn: Susie Butler-Berkley 955 High Street Oakland, CA 94601	REF: OUSD - La Escuelita Downtown Project. Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.