

| Board Office Use: Legislative File Info. | |
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| File ID Number | 17- 1238 |
| Introduction Date | 6-14-2017 |
| Enactment Number | 17-0814 |
| Enactment Date | 6/14/17 |



OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools. Thriving Students.

Memo

To Board of Education *CEM*

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

Board Meeting Date June 14, 2017

Subject Independent Consultant Agreement for Professional Services - Terraphase Engineering - Foster Central Commissary Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Terraphase Engineering, Oakland, CA, for the latter to provide materials of four (4) borings for the farm's greenhouse an tool shed buildings, in conjunction with the Foster Central Commissary Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 15, 2017 and concluding no later than May 17, 2019, in an amount not-to exceed \$18,620.00.

Discussion Geotechnical Services consulting services are needed for DSA approved projects.

LBP (Local Business Participation Percentage) 25.00%

Recommendation Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Terraphase Engineering, Oakland, CA, for the latter to provide materials of four (4) borings for the farm's greenhouse an tool shed buildings, in conjunction with the Foster Central Commissary Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 15, 2017 and concluding no later than May 17, 2019, in an amount not-to exceed \$18,620.00.

Fiscal Impact Fund 21, Measure J

Attachments

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



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

Legislative File ID No. _____

Department: Facilities Planning and Management

Vendor Name: Terraphase Engineering

Project Name: Foster Central Commissary **Project No.:** 13133

Contract Term: Intended Start: 6/15/2017 Intended End: 5/17/2019

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$18,620.00

Approved by: Tadashi Nakadegawa

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

Local Business Policy? Yes (No if Unchecked)

How was this Vendor selected?

They are the geotech consultants for the project.

Summarize the services this Vendor will be providing.

Taking four borings for the farm's green house and tool shed buildings

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

If No, please answer the following:

1) How did you determine the price is competitive?

They are the geotech consultants for the project.

2) Please check the competitive bid exception relied upon:

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

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

INDEPENDENT CONSULTANT
Less Than \$87,700

This Independent Contractor Agreement ("Agreement" or "Contract") is made as of the **4th day of May** in the year **2017**, between the **Oakland Unified School District** ("District") and **Terraphase Engineering** ("Consultant"). The District and Consultant may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

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

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

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall furnish to the District the following services, as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):

Scope of the project consists of taking four (4) borings for the farm's green house and tool shed buildings.

2. **Term.** Consultant shall commence providing Services under this Agreement on **June 15, 2017**, and will diligently perform as required or requested by District as applicable. The term for these Services shall expire on **May 17, 2019**. This Agreement may be extended upon mutual approval of both parties in writing on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

| | |
|--|---|
| <input checked="" type="checkbox"/> Signed Agreement | <input checked="" type="checkbox"/> W-9 Form |
| <input checked="" type="checkbox"/> Insurance Certificates & Endorsements | <input checked="" type="checkbox"/> Workers' Compensation Certificate |
| <input checked="" type="checkbox"/> Debarment Certification | Other: _____ |
| <input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification | |

4. **Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit "B,"** on an hourly basis and a per-item basis, as applicable, and up to a **maximum amount not-to-exceed EIGHTEEN THOUSAND, SIX HUNDRED TWENTY DOLLARS AND NO CENTS (\$18,620.00)** ("Contract Price"). District shall pay Consultant only for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Work. Expenses will not be charged on this Work above the maximum not-to-exceed amount of the Contract Price. Rates for expenses are included on the

Schedule of Fees and Charges attached hereto as **Exhibit "B"**.

6. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program:** Consultant shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at www.ousd.k12.ca.us, under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.
8. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant 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 Consultant's employees.
9. **Standard of Care.**
 - 9.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant'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. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
 - 9.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
 - 9.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
 - 9.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
10. **Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters,

Contract #11: Independent Consultant Less Than \$88,300 – OUSD – Terraphase Engineering - \$18,620.00

Revised 8/01/2016

including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

12. Termination.

- 12.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.
- 12.2. **Without Cause by Consultant.** Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 12.3.1. material violation of this Agreement by the Consultant; or
 - 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
 - 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.
- Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
- 12.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Consultant in conjunction with this Agreement. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

14. Insurance.

- 14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
- 14.1.1. **Commercial General Liability and Automobile Liability Insurance.**
Commercial General Liability Insurance and Any Auto Automobile Liability

Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

- 14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.
- 14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

| Type of Coverage | Minimum Requirement |
|---|------------------------------|
| Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate | \$ 1,000,000 \$ 2,000,000 |
| Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate | \$ 1,000,000 \$ 2,000,000 |
| Professional Liability | \$ 1,000,000 |
| Workers Compensation | Statutory Limits |
| Employer's Liability | \$ 1,000,000 |

- 14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:
- 14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 14.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 14.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.
- 14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

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

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
17. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
18. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
19. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
20. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
21. **Fingerprinting of Employees.** The Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
22. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor

to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

23. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 23.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
24. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
25. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

Oakland Unified School District
955 High Street
Oakland, CA 94601
Tel: 510-535-7038; Fax: 510-535-7082
ATTN: Tadashi Nakadegawa

Consultant
Terraphse Engineering
1404 Franklin Street
Oakland CA 94610
Tel: 510-645-1850 Fax:
ATTN: Jeff Raines

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

28. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
29. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of

the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.

30. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
31. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

Susie Butler-Berkley
Contract Analyst

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

[Signature] 6/14/17
James Harris, President, Board of Education Date

[Signature] 6/14/17
Devin Dillon, Superintendent & Secretary, Board of Education Date

[Signature]
Joe Dominguez, Deputy Chief, Facilities Planning and Management Date

APPROVED AS TO FORM:

[Signature] 5/23/17
OUSD Facilities Legal Counsel Date

CONSULTANT

[Signature] 8 MAY 17
JEFF RAINEY; PRINCIPAL Date

Information regarding Consultant:

Consultant: Terraphase Engineering Inc.

License No.: GE 2762

Address: 1404 Franklin Street, 6th Floor
Oakland, Ca 94612

Telephone: 510-645-1850 x 57

Facsimile: 510-380-6304

E-Mail: Alice.Hale@Terraphase.com

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

27-3543127 :
Employer Identification and/or
Social Security Number

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

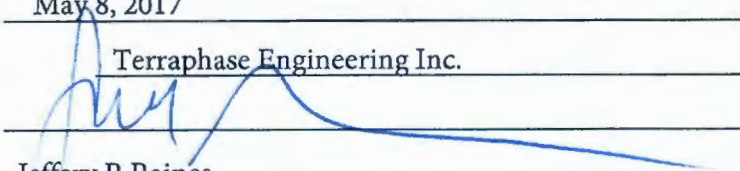
WORKERS' COMPENSATION CERTIFICATION

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:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. 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 his employees.

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

Date: May 8, 2017
Proper Name of Consultant: Terraphase Engineering Inc.
Signature: 
Print Name: Jeffery R Raines
Title: Principal Geotechnical Engineer and Vice President

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

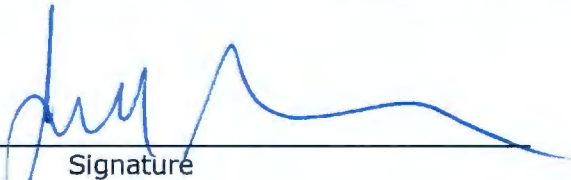
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Terraphase Engineering Inc. [Type name of Consultant] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 8th day of May 2017 for the purposes of submission of this Agreement.

By:



Signature

Jeffery R Raines

Typed or Printed Name

Principal Geotechnical Engineer and Vice President

Title

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant. Consultant has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its subcontractors' employees is

Name: _____

Title: _____

The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

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

Consultant's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.

Date: MAY 8, 2017

Proper Name of Consultant: Terraphase Engineering

Signature: 

Print Name: JEFF RAINES

Title: PRINCIPAL GEOTECHNICAL ENGINEER

EXHIBIT "A"
Scope of Services

Consultant shall perform the following Services:

[INCLUDE/ATTACH A DETAILED SCOPE OF WORK (DO NOT INCLUDE ANY TERMS FROM CONTRACTOR'S PROPOSAL)]

April 19, 2017

John Esposito
Facilities Project Manager
Oakland Unified School District
955 High Street
Oakland, CA 94601

Subject: Proposal to Provide Geotechnical Engineering Services, In Support of Construction of Out-Buildings at the Oakland Unified School District Central Kitchen, Instructional Farm, and Education Center, 2850 West Street, Oakland, California

Dear Mr. Esposito:

Terraphase Engineering Inc. (Terraphase) is pleased to present this proposal to provide geotechnical investigation and foundation design services in support of construction of out-buildings at the Oakland Unified School District Central Kitchen, Instructional Farm, and Education Center located at 2850 West Street, Oakland, California ("the Site").

Our understanding of the project is that the out-buildings consist of a 42 feet by 23 feet greenhouse/tool shed and an 8 foot by 8 foot outdoor kitchen with an associated trellis structure. The buildings are to be constructed in accordance with the 2016 California Building Code (2016 CBC).

Our proposed scope of work includes:

- **Field Work**
 - Permitting (Alameda County Drilling Permit); and
 - Performing a subsurface investigation using hollow stem augers (HSA).
- **Analysis and Report**
 - Performing geotechnical analyses for the Site; and
 - Preparation of a geotechnical design report which satisfies the requirements of the California Geological Survey (CGS) Note 48.

Task 1: Geotechnical Investigation and Underground Utility Survey

Our proposed geotechnical investigation will use HSA borings to investigate the subsurface at the Site. The subsurface exploration program will satisfy each of the applicable requirements of the CGS Note 48 (Checklist for the Review of Engineering Geology and Seismology Reports for California Public Schools, Hospitals, and Essential Services Buildings), including ground rupture, liquefaction potential, and 2016 CBC seismic design parameters. CGS requires that there be one boring for every 5,000 square feet of building footprint with a minimum of two borings per building. Given that each proposed building footprint is less than 5,000 square feet, Terraphase will install two borings within the footprint of each

building (total of 4 borings). One boring will be advanced to 50 feet below the ground surface (bgs) and one hand auger borings will be advanced to 5 to 8 feet bgs within the footprint of each building. The borings will be logged in the field by a Terraphase geologist, who will examine the continuous samples as they are extracted from the hole, using visual classification in general accordance with the Unified Soil Classification System.

Prior to performing the work, Terraphase will obtain a boring permit from Alameda County, will mark the pavement and obtain an Underground Service Alert ticket.

Task 2: Data Analysis and Report

Terraphase will update the geotechnical engineering report prepared for the main building at the Central Commissary (Terraphase 2014) to include the out-buildings. The report will be prepared to satisfy the requirements of the California Geological Survey (CGS) Note 48. Based on Terraphase's existing site knowledge, we anticipate providing the recommendation for spread footings and drilled pier foundations.

Costs

A detailed cost estimate is attached (Table 1). Terraphase will complete this work on a time-and-materials basis. Terraphase will not exceed this authorization without prior written approval of the client. The estimated cost for the work is \$18,620.

Schedule

We are prepared to begin work as soon as we receive your written notice to proceed using our existing contract with the District. Permitting and scheduling the driller will require a week to 10 days depending on the driller's availability.. A draft report will be ready for your review three weeks after completing the field work. The total duration from notice to proceed through preparation of the draft report is estimated to be 30 working days.

Assumptions

Our cost estimate is based on the following assumptions:

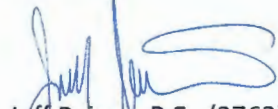
- Access to the Site will be provided by the Oakland Unified School District (OUSD).
- One day of hollow stem auger drilling will be required.
- Soil will be free from visible contamination / building debris and will not require chemical analysis for disposal.
- Soil cuttings will be stockpiled on site, covered with a tarpaulin which will be weighed down with sand bags. We can dispose of the soil for you, however, it will be more cost effective for the District if the grading contractor manages the spoil onsite.
- Our costs are based on 110 feet of total boring depth.

- We are prepared to proceed under our existing agreement with the District.

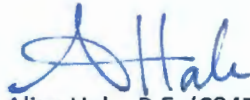
Closing

Thank you for the opportunity to provide OUSD with this proposal. If you have any questions, please call Jeff Raines, at (510) 645-1850 x32 or Alice Hale, at (510) 645-1850 x57.

Sincerely,



Jeff Raines, P.E., (2762), G.E. (2762)
Principal Geotechnical Engineer



Alice Hale, P.E. (C84714)
Associate

Attachment: Table 1 – Time and Materials Cost Estimate

Table 1 - Project Budget Table Time and Materials Cost Estimate
 Outbuilding Geotechnical Investigation and Report
 Oakland Unified School District
 Central Kitchen, Instructional Farm, and Education Center, Oakland, California

| Category | Units | Standard Rate | Discounted Rate | Task 1: Additional Boring | | Task 2: Revised Report | | TOTALS | |
|--|-------|---------------|-----------------|---------------------------|----------------|------------------------|-----------------|----------|-----------------|
| | | | | Quantity | Cost | Quantity | Cost | Quantity | Cost |
| Labor | | | | | | | | | |
| Principal | hour | \$224.00 | \$ 201.60 | 2 | \$403 | 20 | \$4,032 | 22 | \$4,435 |
| Associate Scientist/Engineer | hour | \$193.00 | \$ 173.70 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Senior Professional | hour | \$180.00 | \$ 162.00 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Professional Scientist/Engineer | hour | \$165.00 | \$ 148.50 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Senior Staff | hour | \$144.00 | \$ 129.60 | 12 | \$1,555 | 8 | \$1,037 | 20 | \$2,592 |
| Staff II | hour | \$125.00 | \$ 112.50 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Staff I | hour | \$104.00 | \$ 93.60 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| CADD Operator | hour | \$128.00 | \$ 115.20 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Editor 1 | hour | \$80.00 | \$ 72.00 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Administrator | hour | \$80.00 | \$ 72.00 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Technician II | hour | \$112.00 | \$ 100.80 | 0 | \$0 | 0 | \$0 | 0 | \$0 |
| Technician I | hour | \$72.00 | \$ 64.80 | 3 | \$194 | 0 | \$0 | 3 | \$194 |
| Total Terraphase Labor | | | | | \$2,153 | | \$5,069 | | \$7,222 |
| Direct Costs | | | | | | | | | |
| Equipment | | | | | | | | | |
| Truck (Daily) | Daily | \$125.00 | \$ 125.00 | 1.5 | \$188 | | \$0 | 1.5 | \$188 |
| Misc Field Supplies | Week | \$100.00 | \$ 100.00 | 2 | \$200 | 0 | \$0 | 2 | \$200 |
| Total Equipment | | | | | \$388 | | \$0 | | \$388 |
| Subcontractor, Laboratory and Permitting Expenses | | | | | | | | | |
| Drilling Contractor | EA | \$ 4,600 | \$ 4,600 | 1 | \$4,600 | 0 | \$0 | 1 | \$4,600 |
| Permit | LS | \$ 265.00 | \$ 265.00 | 1 | \$265 | | \$0 | 1 | \$265 |
| Private Utility Locator | hr | \$ 145.00 | \$ 145.00 | 3.5 | \$508 | | \$0 | 3.5 | \$508 |
| Total Subcontractor Costs | | | | | \$5,373 | | \$0 | | \$5,373 |
| Other Direct Costs | | | | | | | | | |
| Field iPad | day | \$ 30.00 | \$ 30.00 | 1 | \$30 | 0 | \$0 | 1 | \$30 |
| Total Other Direct Costs | | | | | \$30 | | \$0 | | \$30 |
| Direct Cost Handling | | 10% | 10.0% | | \$540 | | \$0 | | \$579 |
| Total Direct Cost | | | | | \$6,330 | | \$5,069 | | \$6,369 |
| Project Totals (rounded to nearest tenth) | | | | | \$8,480 | | \$10,140 | | \$18,620 |

CPT-1



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

[INCLUDE/ATTACH CONSULTANT'S RATE SCHEDULE (DO NOT INCLUDE ANY TERMS FROM CONTRACTOR'S PROPOSAL)]



2017 Standard Schedule of Charges with 10% Discount/10% ODC

| Labor Classification | Standard Hourly Rate | Hourly Rate with 10% Discount |
|-------------------------------------|----------------------|-------------------------------|
| Principal Engineer/Scientist | \$224 | \$201.60 |
| Senior Associate Engineer/Scientist | \$207 | \$186.30 |
| Associate Engineer/Scientist | \$193 | \$173.70 |
| Senior Project Engineer/Scientist | \$180 | \$162.00 |
| Project Engineer/Scientist | \$165 | \$148.50 |
| Senior Staff Engineer/Scientist | \$144 | \$129.60 |
| Staff 2 Engineer/Scientist | \$125 | \$112.50 |
| Staff 1 Engineer/Scientist | \$104 | \$93.60 |
| Technician 2 | \$112 | \$100.80 |
| Technician 1 | \$72 | \$64.80 |
| Administrator | \$80 | \$72.00 |

Labor Charges

All time will be recorded and charged to nearest 0.1 hour. Expert testimony at trials, hearings and depositions will be billed at 150% of the standard hourly rate. For each day when testimony is provided, a minimum of 8 hours will be billed. Preparatory time will be billed at standard rates.

Expenses

Subcontractor fees and other direct costs, such as air travel, project supplies and rental equipment, etc. will be itemized and billed at our cost plus a ten percent handling charge (standard handling charge is fifteen percent). Vehicle mileage when itemized is billed at the standard government rate in effect at the time of travel (www.gsa.gov/mileage).

Payment

Payment is to be mailed to Terraphase Engineering Inc., 1404 Franklin Street, Suite 600, Oakland CA 94612 and is due within 30 days of receipt of invoice. A service charge of 1.5% per month or the allowable legal rate may be charged on amounts that are past due for more than 30 days.

**EXCERPTS FROM CA 0001 (1013)
HARTFORD BUSINESS AUTO COVERAGE**

Insured: Terraphase Engineering, Inc.

Policy Number: 57UECFM0438

Policy Effective Date: 10/04/2016

Additional Insured:

Oakland Unified School District and the State and their representatives, employees, trustees, officers and volunteers.

Additional Insured: SECTION II – COVERED AUTO LIABILITY COVERAGE

A.1. WHO IS AN INSURED: The following are “insureds”

c. Anyone liable for the conduct of an “insured”...but only to the extent of that liability.

Primary Insurance: SECTION IV – BUSINESS AUTO CONDITIONS

B. General Conditions - 5. Other Insurance

a. For any covered “auto” you own, this Coverage Form provides primary insurance.

For any covered “auto” you don’t own, the insurance provide by this Coverage Form is excess over any other collectible insurance.

c. Regardless of the provisions of paragraph a. above, this Coverage Form’s Covered Auto Liability Coverage is primary for any liability assumed under an “insured contract”.

Cross Liability Clause: SECTION V – DEFINITIONS

G. “Insured” means any person or organization qualifying as an insured in the Who is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or “suit” is brought.

**EXCERPTS FROM HA9916 (0312)
HARTFORD COMMERCIAL AUTOMOBILE BROAD
FORM ENDORSEMENT**

15. WAIVER OF SUBROGATION – We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

| | | | |
|---------------------|---------------------------|-------------|-----|
| Project Name | Foster Central Commissary | Site | 184 |
|---------------------|---------------------------|-------------|-----|

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 | Terraphase Engineering, Inc. | Agency's Contact | Peter Zawislanski | | | | |
| OUSD Vendor ID # | New Vendor | Title | Project Manager | | | | |
| Street Address | 1404 Franklin Street, Suite 600 | City | Oakland | State | CA | Zip | 94612 |
| Telephone | 510-645-1858 | Policy Expires | 10-4-2013 | | | | |
| 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 # | 13133 | | | | | | |

Term

| | | | |
|-----------------------------|-----------|---|-----------|
| Date Work Will Begin | 6-15-2017 | Date Work Will End By (not more than 5 years from start date) | 5-17-2019 |
|-----------------------------|-----------|---|-----------|

Compensation

| | | | |
|--------------------------------------|----|-------------------------------------|--------------|
| Total Contract Amount | \$ | Total Contract Not To Exceed | \$ 18,620.00 |
| Pay Rate Per Hour (if Hourly) | \$ | If Amendment, Changed Amount | \$ |
| Other Expenses | | Requisition Number | |

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

| Resource # | Funding Source | Org Key | Object Code | Amount |
|------------|--------------------|------------|-------------|-------------|
| 9450 | Fund 21, Measure J | 1849905892 | 6170 | \$18,620.00 |

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.

| | | | | | |
|----|--|----------------------|--------------|------------|--------------|
| | Division Head | Phone | 510-535-7038 | Fax | 510-535-7082 |
| | Director, Facilities Planning & Management | | | | |
| 1. | Signature | Date Approved | 5/17/2017 | | |
| | General Counsel, Department of Facilities Planning and Management | | | | |
| 2. | Signature | Date Approved | 5/23/2017 | | |
| | Deputy Chief, Facilities Planning and Management | | | | |
| 3. | Signature | Date Approved | | | |
| | Senior Business Office, Board of Education | | | | |
| 4. | Signature | Date Approved | | | |
| | President, Board of Education | | | | |
| 5. | Signature | Date Approved | | | |