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Enactment Number	12-1211
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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 April 25, 2012

Subject Independent Consultant Agreement for Professional Services - Ninyo & Moore -
Montera Seismic Retrofit AB300

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Ninyo & Moore for Testing Services on behalf of the District at Montera Seismic Retrofit AB 300 project, in an amount not-to exceed \$7,034.00. The term of this Agreement shall commence on May 31, 2012 and shall conclude no later than December 21, 2012.

Background Structural deficiencies were identified and documented in an Evaluation & Design Criteria Report prepared by ZFA Structural Engineers dated 11-21-2011. The purpose of the seismic retrofit is to meet the requirements of DSA Procedure 08-03 and through this process, seek state seismic funding under proposition 1D. An Eligibility Evaluation Report was submitted and accepted by DSA for Montera for mitigation of structural and safety hazards.

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 an Independent Consultant Agreement for Professional Services with Ninyo & Moore for Testing Services on behalf of the District at Montera Seismic Retrofit AB 300 project, in an amount not-to exceed \$7,034.00. The term of this Agreement shall commence on May 31, 2012 and shall conclude no later than December 21, 2012.

Fiscal Impact

County School Facilities Fund

Attachments

- Independent Consultant Agreement including scope of work

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES
(CONSTRUCTION RELATED)**

Montera Seismic Retrofit AB300

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **21st day of March, 2012** by and between the Oakland Unified School District, Oakland, California ("District") and **Ninyo and Moore** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

The scope of the project includes material testing, special inspections, submittal reviews, daily reports and closeout services for the Seismic Retrofit of Montera Middle School. Scope is based on the Division of State Architect (DSA) approved plans and specifications and the California Building Code (CBC) Title 24.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time:

The term of the contract commencing May 31, 2012 and concluding no later than December 21, 2012.

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:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> </u>	W-9 Form
<u> </u>	_____

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Seven thousand, thirty-four dollars and no cents (\$7,034.00).** District shall pay Consultant according to the following terms and conditions.

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District

Ninyo & Moore
Montera Seismic Retrofit AB 300
Project No.: 12102

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 services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its 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. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** 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.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, 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.
10. **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, 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.

11. **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 five (5) 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.

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 thirty (30) 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 thirty (30) 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 service 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.

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 ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to 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, the Project, or this Agreement, including without limitation the payment of all consequential damages.

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 shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

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	\$ 1,000,000
General Aggregate	\$ 1,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
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 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 agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured 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 except the Professional Liability Policy shall be written on an occurrence 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. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **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.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the 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 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **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.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.

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. Consultant 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.
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:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601
ATTN: **Tadashi Nakadegawa,**
Director of Facilities

Consultant:

Ruchil Shah
Ninyo & Moore
1956 Webster Street, Suite 400
Oakland, CA 94612

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 county in which the District's administrative 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. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 33. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of

Ninyo & Moore
Monterey Seismic Retrofit AB 300
Project No.: 12102

this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.


36. 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 properly authority and empowered to enter into this Agreement.

37. 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.

38. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

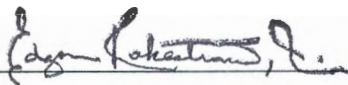
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



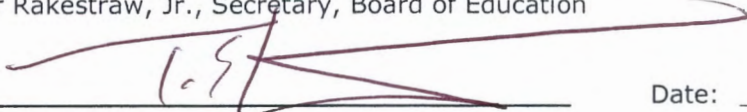
Jody London, President, Board of Education

Date: 4/26/12



Edgar Rakestraw, Jr., Secretary, Board of Education

Date: 4/26/12



Timothy White, Associate Superintendent Facilities Planning and Management

Date: _____


Ninyo & Moore



Terence K. Wang, General Manager

Date: March 26, 2012

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Ninyo & Moore
Montera Seismic Retrofit AB 300
Project No.: 12102

Date: 3-30-12

File ID Number: 12-0916
Introduction Date: 4-25-12
Enactment Number: 12-1211
Enactment Date: 4-25-12
By: JS

Information regarding Consultant:

Consultant: Ninyo & Moore

33-0269828 :

License No.: A97063

Employer Identification and/or Social Security Number

Address: 1956 Webster Street, Suite 400
Oakland, California 94612

Telephone: (510) 343-3000

Facsimile: (510) 343-3001

E-Mail: _____

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: _____

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

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: March 26, 2012

Proper Name of Consultant: Ninyo & Moore

Signature: 

Print Name: Terence K. Wang

Title: General 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 the awarding body prior to performing any Work under this Contract.)

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 certifies that it 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):

_____ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' 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 sub-consultants' 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 sub-consultants' employees is

Name: RUCHIL SHAH

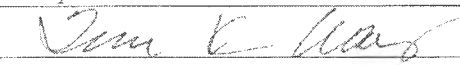
Title: PROJECT MANAGER

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

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

Date: March 26, 2012

Proper Name of Consultant: Ninyo & Moore

Signature: 

Print Name: Terence K. Wang

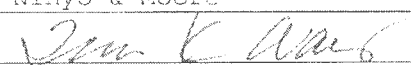
Title: General Manager

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: March 26, 2012

Proper Name of Consultant: Ninyo & Moore

Signature: 

Print Name: Terence K. Wang

Title: General Manager

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

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

(See Consultant Proposal attached)

March 12, 2012
Proposal No. P-81972

Ms. Mary Ledezma
Project Manager
OUSD Facilities Planning and Management
955 High Street
Oakland, California 94601

Subject: Respond to request for proposal to provide
Materials Testing and Special Inspection Services,
Montera Middle School Gymnasium Seismic Rehabilitation Project
5555 Ascot Drive, Oakland, California
OUSD Project # ~~07448~~ 12102 M.L.

Dear Ms. Ledezma:

In accordance with your request, Ninyo & Moore is pleased to provide this proposal to perform materials testing and special inspection services for Montera Middle School Gymnasium Seismic Rehabilitation Project. This proposal provides cost estimates based on our review of the non-approved DSA project plans, specification and DSA-103 sheet, as stipulated in the California Building Code, Title 24, and our previous experience with similar projects of this nature.

The purpose of our services will be to provide you with field and laboratory data and information in order to assess compliance with the project plans and specifications. Included in this proposal is a discussion of our understanding of the project, the scope of services we can provide, and associated fees.

PROJECT UNDERSTANDING AND PROPOSED CONSTRUCTION

It is our understanding that this project will consist of strengthening of the existing diaphragms, anchorage to precast concrete walls, a new horizontal steel truss diaphragm at the high roof and bracing, and anchoring of all non-compliant, non-structural items at the Montera Middle School Gymnasium.

SCOPE OF SERVICES

We understand the Project Inspector will coordinate our services on an as-needed basis. Based on our review of the project documents and our experience with similar projects, we anticipate our scope of services to include:

- Managing the project, including review and distribution of test data and daily field inspection reports.
- Reviewing welding procedures submitted by the contractor for compliance with the project documents.
- Performing visual inspection by our AWS/CWI-credentialed special inspector of structural steel site assembly and field welding.
- Performing pull and/or load testing by our technician of anchors/dowels.
- Preparing daily reports and test data sheets.
- Preparing Division of the State Architect (DSA) Final Verified Reports.

ASSUMPTIONS

- Our services will be scheduled and coordinated by the District's Project Inspector.
- The contractor and subcontractors will maintain a 40-hour work week during normal daytime work hours; and that weekend and overtime work has not been included in this cost proposal.
- Our services are subject to California prevailing wage law.
- It will not be necessary to sign a labor agreement with the Operating Engineers Union for this project, nor will Ninyo & Moore's technicians and inspectors need to be members of the Union.
- Site visits made by professional staff and our field technicians will be billed on a portal-to-portal basis, with a 2- hour minimum.
- Special inspection and laboratory testing for high strength bolts will not be required/performed. However, this was noted on the DSA-103 but not on the plans and/or specification. Our proposal does not include these services.
- The DSA Project Inspector will perform inspection services including:
 - Placement of reinforcing steel, formwork and embedded elements;
 - Installation of post-installed anchors.

- Since steel shop schedules are not available, we anticipate a local Bay Area fabricator will be utilized for the structural and miscellaneous steel. We have based our estimate for shop welding inspection services on this and our prior experience with similar types of projects.
- Services that are not included will be provided upon the District's written request.
- Additional laboratory testing will be provided upon request and written approval, and will be billed at the rates listed on our current fee schedule.

PROPOSED ESTIMATED COST

Task	Summary of Estimated Fees for Geotechnical Observation Materials Testing and Inspection Services	Estimated Fees
1.	Structural Steel and Welding	\$2,656
2.	Load Testing Post-Installed Anchors/Dowels	\$2,528
3.	Management, Admin Support, Prepare and issue Final Report	\$1,850
	Estimated Fees	\$7,034

SEE APPENDIX "A" FOR BREAKDOWN OF FEES

Our proposed time-and-material fee estimate for construction materials testing and special inspection services associated with this project, based on the scope of services as described above, is **\$7,034 (Seven Thousand and Thirty Four Dollars)**. A detailed estimate of fees is attached. Please note that at the time our estimate was calculated, a construction schedule was not available. Should the construction schedule require a lesser or greater amount of services than that estimated herein, the cost would vary accordingly. The actual cost of our services will depend largely on the requested site visits for our services, as well as impact of weather and work stoppages, all of which are beyond our control. When possible, we will combine inspection and testing services to reduce the cost of our services.

We will provide services on an as-needed basis and will require 24 hours notice for scheduling inspection and testing visits. Construction services are billed portal-to-portal from our Oakland office.

We sincerely appreciate being a part of the OUSD project team to implement this important Facility Bond program and very much look forward to the opportunity to continue to work with you on this project.

Sincerely,
NINYO & MOORE

Ruchil R. Shah
Sr. Staff Engineer

Terence K. Wang PE, GE
Principal Engineer

RS/cab

Attachments: Appendix A – Breakdown of Estimated Fees
Schedule of Fees

Distribution: (1) Addressee (via e-mail)

APPENDIX A - BREAKDOWN OF ESTIMATED FEES MATERIALS TESTING AND SPECIAL INSPECTION SERVICES MONTERA MIDDLE SCHOOL GYMNASIUM - SEISMIC REHABILITATION						
	Site Visits	Hours Per Visit	Quantity (Hrs./ Tests)	Rate	Fee	Subtotal
STRUCTURAL STEEL						
Structural steel subs are not yet selected. Local facilities are anticipated, our services are based M-F, during normal business hours. All quantities are estimates, on						
Steel Welding Technician - Shop (Local Facility)	4	4	16	\$79	\$1,264	
Steel Welding Technician - Field	2	4	8	\$79	\$632	
Steel Ultrasonic Testing Technician - Field	2	4	8	\$95	\$760	
ESTIMATED SUBTOTAL						\$2,656
ANCHORS/DOWELS						
Perform Proof Load/Pull Testing at frequencies & values noted on plans.						
Anchor/Dowel Testing Technician	8	4	32	\$79	\$2,528	
ESTIMATED SUBTOTAL						\$2,528
MANAGEMENT, REPORTING AND ADMINISTRATION						
Project Manager/Sr. Staff Engineer - Project Management, Submittal Review, Meetings, etc.			6	\$120	\$720	
Administration - Word Processing, Misc.			2	\$65	\$130	
DSA Final Verified Reports (291& 292) by Responsible Engineer			2	\$500	\$1,000	
ESTIMATED SUBTOTAL						\$1,850
TOTAL ESTIMATED FEE FOR MATERIALS TESTING/SPECIAL INSPECTION SERVICES						\$7,034

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SCHEDULE OF FEES

HOURLY CHARGES FOR PERSONNEL

Principal Engineer/Geologist/Environmental Scientist	\$ 155
Senior Engineer/Geologist/Environmental Scientist.....	\$ 150
Senior Project Engineer/Geologist/Environmental Scientist	\$ 140
Project Engineer/Geologist/Environmental Scientist.....	\$ 133
Senior Staff Engineer/Geologist/Environmental Scientist	\$ 120
Staff Engineer/Geologist/Environmental Scientist.....	\$ 110
GIS Analyst	\$ 105
Field Operations Manager	\$ 105
Supervisory Technician	\$ 97
Nondestructive Examination Technician, UT, MT, LP	\$ 95
Senior Field/Laboratory Technician/Inspector	\$ 79
Field/Laboratory Technician	\$ 79
Concrete/Asphalt Batch Plant Inspector	\$ 79
Special Inspector (Asphalt, Concrete, Masonry, Steel, Welding, and Fireproofing).....	\$ 79
Technical Illustrator/CAD Operator.....	\$ 80
Information Specialist.....	\$ 80
Data Processing, Technical Editing, or Reproduction.....	\$ 65

OTHER CHARGES

Expert Witness Testimony.....	\$ 400 /hr
Concrete Coring Equipment (includes one technician)	\$ 145 /hr
PID/FID Usage.....	\$ 120 /day
Anchor load test equipment (includes technician)	\$ 89 /hr
Hand Auger Equipment	\$ 55 /day
Inclinometer Usage	\$ 32 /hr
Vapor Emission Kits.....	\$ 30 /kit
Level D Personal Protective Equipment (per person per day)	\$ 25 /p/d
Rebar Locator (Pachometer).....	\$ 22 /hr
Nuclear Density Gauge Usage	\$ 12 /hr
Field Vehicle Usage.....	\$ 10 /hr
Direct Project Expenses.....	Cost plus 15 %
Laboratory testing, geophysical equipment, and other special equipment provided upon request.	

NOTES (Field Services)

For field and laboratory technicians and special inspectors, regular hourly rates are charged during normal weekday construction hours. Overtime rates at 1.5 times the regular rates will be charged for work performed outside normal construction hours and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 24 hours. Field Technician rates are based on a 2-hour minimum. Special inspection rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours. Field personnel are charged portal to portal.

INVOICES

Invoices will be submitted monthly and are due upon receipt. A service charge of 1.0 percent per month may be charged on accounts not paid within 30 days.

TERMS AND CONDITIONS

The terms and conditions of providing our consulting services include our limitation of liability and indemnities as presented in Ninyo & Moore's Work Authorization and Agreement.

SCHEDULE OF FEES FOR LABORATORY TESTING
Laboratory Test, Test Designation, and Price Per Test

<u>Soils</u>	<u>Concrete</u>
Atterberg Limits, D 4318, CT 204	Cement Analysis Chemical and Physical, C 109
California Bearing Ratio (CBR), D 1883	Compression Tests, 6x12 Cylinder, C 39
Chloride and Sulfate Content, CT 417 & CT 422	Concrete Mix Design Review, Job Spec
Consolidation, D 2435, CT 219	Concrete Mix Design, per Trial Batch, 6 cylinder, ACI
Consolidation - Time Rate, D 2435, CT 219	Concrete Cores, Compression (excludes sampling), C 42
Direct Shear - Remolded, D 3080	Drying Shrinkage, C 157
Direct Shear - Undisturbed, D 3080	Flexural Test, C 78
Durability Index, CT 229	Flexural Test, C 293
Expansion Index, D 4829, UBC 18-2	Flexural Test, CT 523
Expansion Potential (Method A), D 4546	Gunite/Shotcrete, Panels, 3 cut cores per panel and test, ACI
Expansive Pressure (Method C), D 4546	Jobsite Testing Laboratory
Geofabric Tensile and Elongation Test, D 4632	Lightweight Concrete Fill, Compression, C 495
Hydraulic Conductivity, D 5084	Petrographic Analysis, C 856
Hydrometer Analysis, D 422, CT 203	Splitting Tensile Strength, C 496
Moisture, Ash, & Organic Matter of Peat/Organic Soils	
Moisture Only, D 2216, CT 226	Reinforcing and Structural Steel
Moisture and Density, D 2937	Fireproofing Density Test, UBC 7-6
Permeability, CH, D 2434, CT 220	Hardness Test, Rockwell, A-370
pH and Resistivity, CT 643	High Strength Bolt, Nut & Washer Conformance, set, A-32
Proctor Density D 1557, D 698, CT 216, &	Mechanically Spliced Reinforcing Tensile Test, ACI
AASHTO T-180 (Rock corrections add \$80)	Pre-Stress Strand (7 wire), A 416
R-value, D 2844, CT 301	Chemical Analysis, A-36, A-615
Sand Equivalent, D 2419, CT 217	Reinforcing Tensile or Bend up to No. 11, A 615 & A 706
Sieve Analysis, D 422, CT 202	No. 8 Rebar
Sieve Analysis, 200 Wash, D 1140, CT 202	No. 11 Rebar
Specific Gravity, D 854	No. 18 Rebar
Triaxial Shear, C.D, D 4767, T 297	Structural Steel Tensile Test: Up to 200,000 lbs.
Triaxial Shear, C.U., w/pore pressure, D 4767, T 2297 per pt.	(machining extra), A 370
Triaxial Shear, C.U., w/o pore pressure, D 4767, T 2297 per pt.	Welded Reinforcing Tensile Test: Up to No. 11 bars, ACI
Triaxial Shear, U.U., D 2850	Tensile Test for Fiberwrap (ASTM D-3039)
Unconfined Compression, D 2166, T 208	
Wax Density, D 1188	Asphalt Concrete
	Asphalt Mix Design, Caltrans
Roofing	Asphalt Mix Design Review, Job Spec
Built-up Roofing, cut-out samples, D 2829	Extraction, % Asphalt, including Gradation, D 2172, CT 310
Roofing Materials Analysis, D 2829	Film Stripping, CT 302
Roofing Tile Absorption, (set of 5), UBC 15-5	Hveem Stability and Unit Weight CTM or ASTM, CT 366
Roofing Tile Strength Test, (set of 5), UBC 15-5	Marshall Stability, Flow and Unit Weight, T-245
	Maximum Theoretical Unit Weight, D 2041
Masonry	Swell, CT 305
Brick Absorption, 24-hour submersion, C 67	Unit Weight sample or core, D 2726, CT 308
Brick Absorption, 5-hour boiling, C 67	
Brick Absorption, 7-day, C 67	Aggregates
Brick Compression Test, C 67	Absorption, Coarse, C 127
Brick Efflorescence, C 67	Absorption, Fine, C 128
Brick Modulus of Rupture, C 67	Clay Lumps and Friable Particles, C 142
Brick Moisture as received, C 67	Cleaness Value, CT 227
Brick Saturation Coefficient, C 67	Crushed Particles, CT 205
Concrete Block Compression Test, 8x8x16, C 140	Durability, Coarse, CT 229
Concrete Block Conformance Package, C 90	Durability, Fine, CT 229
Concrete Block Linear Shrinkage, C 426	Los Angeles Abrasion, C 131 or C 535
Concrete Block Unit Weight and Absorption, C 140	Mortar making properties of fine aggregate, C 87
Cores, Compression or Shear Bond, CA Code	Organic Impurities, C 40
Masonry Grout, 3x3x6 prism compression, UBC 21-18	Potential Reactivity of Aggregate (Chemical Method), C 289
Masonry Mortar, 2x4 cylinder compression, UBC 21-16	Sand Equivalent, CT 217
Masonry Prism, half size, compression, UBC 21-17	Sieve Analysis, Coarse Aggregate, C 136
	Sieve Analysis, Fine Aggregate (including wash), C 136
	Sodium Sulfate Soundness (per size fraction), C 88
	Specific Gravity, Coarse, C 127
	Specific Gravity, Fine, C 128

Special preparation of standard test specimens will be charged at the technician's hourly rate.

Ninyo & Moore is accredited to perform the AASHTO equivalent of many ASTM test procedures.

DESCRIPTIONS (Continued from Page 1)

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

Insurance is primary per policy form.

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

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: Montera Seismic Retrofit
AB-300/401932001. Oakland Unified
School District, its Directors,
Officers, Employees, Agents, and
Representatives.



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

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 of insurance described in Section III – Limits Of Insurance.

- 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.

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
Project Name	Montera Seismic Retrofit AB 300	Site	Montera Middle School
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	Ruchil Shah
OUSD Vendor ID #	V058012	Title	Project Manager
Street Address	1956 Webster Street, Suite 400	City	Oakland State CA Zip 94612
Telephone	510-277-6189	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 #	12102		

Term			
Date Work Will Begin	5-21-2012	Date Work Will End By (not more than 5 years from start date)	12-21-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$7,034.00
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
9299, 9399, 9499	County School Facilities Fund	2119003890	6265	\$7,034.00

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	Charles Love	Phone	510-535-7081 Fax 510-535-7082
1.	Capital Program Contract & Accounting Manager		Signature	Date Approved
				4-2-12
2.	General Counsel, Department of Facilities Planning and Management		Signature	Date Approved
				4.2.12
3.	Associate Superintendent, Facilities Planning and Management		Signature	Date Approved
				
4.	President, Board of Education		Signature	Date Approved