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OAKLAND UNIFIED
SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education 

From Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education
Timothy White, Deputy Chief, Facilities Planning and Management

Board Meeting Date December 12, 2018

Subject Agreement for Architectural Services - KPW Structural Engineers, Inc. - Foster Educational Leadership Complex/Lakehouse Commons Project

Action Requested Approval by the Board of Education of an Agreement for Architectural Services between the District and KPW Structural Engineers, Inc., Oakland, CA, for the latter to provide professional design services including peer review of the Lakehouse LLC Commons adjacent to the Dewey HS campus along common property line, for peer review of construction documents and ongoing monitoring, in conjunction with the Foster Educational Leadership Complex/Lakehouse Commons Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing December 13, 2018 and concluding no later than December 31, 2019, in an amount not-to exceed \$76,730.00.

Discussion Vendor will provide professional design services needed for ongoing monitoring of construction documents.

LBP (Local Business Participation Percentage) 0.00%

Recommendation Approval by the Board of Education of an Agreement for Architectural Services between the District and KPW Structural Engineers, Inc., Oakland, CA, for the latter to provide professional design services including peer review of the Lakehouse LLC Commons adjacent to the Dewey HS campus along common property line, for peer review of construction documents and ongoing monitoring, in conjunction with the Foster Educational Leadership Complex/Lakehouse Commons Project, more specifically delineated in the scope of services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing December 13, 2018 and concluding no later than December 31, 2019, in an amount not-to exceed \$76,730.00.

Fiscal Impact Fund 21, Measure J

Attachments

- Agreement Architectural Services including scope of work
- Certificate of Insurance
- Consultant Proposal



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: KPW Structural Engineers Inc Peer Review

Project Name: Foster Educational Leadership Complex **Project No.:** 15124

Contract Term: Intended Start: 12/13/2018 Intended End: 12/31/2019

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$76,730.00

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?

The RFP/Q was sent to (8) companies. (4) Companies responded. (2) Of the (4) where joint venture teams. OUSD negotiated after OUSD & DSA reviews of the RFP/Q#18-107 lead to responsive and qualified companies.

Summarize the services this Vendor will be providing.

Professional Peer review of the Lakehouse LLC Commons project adjacent to the Dewey HS campus along common property line, for peer review of design and construction documents and ongoing monitoring of shoring and underpinning of shoring system.

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

If No, please answer the following:

1) How did you determine the price is competitive?

Competitive bids and negotiations lead to a revised negotiations for fare cost acceptable to all parties.

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 \$90,200 (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**

Agreement for Architectural Services
BY AND BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND

KPW Structural Engineers, Inc. Peer Review

This Agreement for Architectural Services is made as of the **9th day of November, 2018**, between the **Oakland Unified School District**, a California public school district ("District"), and **KPW Structural Engineers, Inc.** ("Architect") (individually a "Party" and collectively the "Parties"), for the following project ("Project"):

Marcus Foster Educational /Lakehouse Commons Project, located at 1025 2nd Avenue, Oakland, CA 94606.

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Definitions

- 1.1. In addition to the definitions above, the following definitions for words and phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **Agreement:** The Agreement consists exclusively of this document and all identified exhibits attached and incorporated by reference.
 - 1.1.2. **Architect:** The architect listed in the first paragraph of this Agreement, including all Consultants to the Architect.
 - 1.1.3. **As-Built Drawings ("As-Builts"):** Any document prepared and submitted by District's contractor(s) that details on a Conforming Set, the actual construction performed during the Project, including changes necessitated by change orders.
 - 1.1.4. **Bid Set:** The plans, drawings, and specifications at the end of the Construction Documents Phase that DSA has approved and that the District can use to go out to bid for construction of the Project.
 - 1.1.5. **Conforming Set:** The plans, drawings, and specifications at the end of the Bidding Phase that incorporate all addenda, if any, issued during the Bidding Phase. The Architect shall ensure that DSA has approved all revisions to the Bid Set that are incorporated onto the Conforming Set and for which DSA approval is required.
 - 1.1.6. **Consultant(s):** Any and all consultant(s), sub-consultant(s), subcontractor(s), or agent(s) to the Architect.
 - 1.1.7. **District:** The Oakland Unified School District.
 - 1.1.8. **DSA:** The Division of the State Architect.
 - 1.1.9. **Project Budget:** The total amount indicated by the District for the entire Project plus all other costs, including design, construction, administration, financing, and all other costs.
 - 1.1.10. **Record Drawings:** A final set of drawings prepared by the Architect based upon

marked-up prints, drawings, and other data furnished to Architect by Contractor that incorporates all changes from all As-Builts, sketches, details, and clarifications.

- 1.2. **Service(s):** All labor, materials, supervision, services, tasks, and work that the Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, and that are necessary for the design and completion of the Project. **Scope of work includes professional Peer review of the Lakehouse LLC Commons project adjacent to the Dewey HS campus along common property line, for peer review of design and construction documents and ongoing monitoring of shoring and underpinning of shoring system.**

- 1.2.1. **Visually Verify:** To verify to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action.

Article 2. **Scope, Responsibilities, and Services of Architect**

- 2.1. Architect shall provide the Services as described in **Exhibit "A,"** commencing with receipt of a written Notice to Proceed or authorization from District to perform Services requested hereunder.
- 2.2. Architect represents that the Architect has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any such interest shall be employed by Architect.
- 2.3. Architect shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

Completion of Services

- 2.4. The Architect shall commence Services on, **December 13, 2018,** under this Agreement upon receipt of a Notice to Proceed and shall prosecute the Services diligently as described in **Exhibit "A,"** so as to proceed with and complete the Services in compliance with the time as specified in the notice, if any. **Upon issuance of Notice to Proceed and/or Board Approval and concluding no later than December 31, 2019.**

Article 3. **Compensation and Value of Agreement**

- 3.1. District shall pay Architect for all Services contracted for under this Agreement on a time and materials basis. The total compensation paid Architect pursuant to this Agreement may not exceed **SEVENTY-SIX THOUSAND, SEVEN HUNDRED THIRTY NO/100 (\$76,730.00).**
- 3.2. Architect shall notify District if District requested services or reimbursables will exceed the NA Dollars (\$ 0.00) limit of this Agreement. If any work is performed by Architect without the prior written authorization of District, District shall not be obligated to pay for such work. The Parties may, by written agreement, increase the monetary limit of this Agreement.
- 3.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Architect 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.

- 3.4. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing Services for District.

Article 4. Ownership of Data

- 4.1. Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for District to use, at its discretion, all plans, including, but not limited to, Record Drawings, specifications, and estimates that the Architect or its consultants, prepares or causes to be prepared pursuant to this Agreement.
- 4.2. The Architect retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that the Architect or its consultants prepares or causes to be prepared pursuant to this Agreement.
- 4.3. The Architect shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. The Architect shall deliver to the District, on request, a "thumb" drive and/or compact disc with these documents that is compatible with AutoCAD. As to any drawings that Architect provides in a CADD file format, the District acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that the District should rely on hard copies of all documents.
- 4.4. In order to document exactly what CADD information was given to the District, Architect and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect produces the CADD information. District agrees to release Architect from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than the Architect or Consultant(s) subsequent to it being given to the District.
- 4.5. Following the termination of this Agreement, for any reason whatsoever, the Architect shall promptly deliver to the District upon written request and at no cost to the District the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word) which the District shall have the right to utilize in any way permitted by statute:
- 4.5.1. One set of the Contract Documents, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
- 4.5.2. One set of fixed image CADD files in DXF format of the drawings that are part of the Contract Documents.
- 4.5.3. One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical, and electrical), roof plan, sections, and exterior elevations of the Project.
- 4.5.4. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data, and reports prepared by the Architect under this Agreement.
- 4.6. In the event the District changes or uses any fully or partially completed documents without the Architect's knowledge and participation, the District agrees to release Architect of

responsibility for such changes, and shall indemnify, defend, and hold the Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs, and expenses including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Architect is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Architect's full involvement, the District shall remove all title blocks and other information that might identify the Architect and the Architect's consultants.

Article 5. Termination of Contract

- 5.1. If Architect fails to perform Architect's duties to the satisfaction of the District and as required by this Agreement, or if Architect fails to fulfill in a timely and professional manner Architect's material obligations under this Agreement, or if Architect shall violate any of the material terms or provisions of this Agreement, the District shall have the right to terminate this Agreement, in whole or in part, effective immediately upon the District giving written notice thereof to the Architect. In the event of a termination pursuant to this subdivision, Architect may invoice District for all Services performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Architect's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide the Architect time to cure its default or breach.
- 5.2. District shall have the right in its sole discretion to terminate this Agreement for its own convenience. In the event of a termination for convenience, Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the District's notice of termination.
- 5.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 5.4. The Architect has the right to terminate this Agreement if the District does not fulfill its material obligations under this Agreement. Such termination shall be effective after receipt of written notice from Architect to the District. Architect may invoice District and District shall pay all undisputed invoice(s) for Services performed until the Architect's notice of termination.
- 5.5. If, at any time in the progress of the Design of the Project, the governing board of the District determines that the Project should be terminated, the Architect, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay the Architect only the costs associated with the Services provided since the last invoice that has been paid and up to the notice of termination.
- 5.6. If the District suspends the Project for more than one hundred twenty (120) consecutive days, the Architect shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Architect's Services. If the District suspends the Project for more than two (2) years, the Architect may terminate this Agreement by giving written notice.

Article 6. Indemnity/Architect Liability

- 6.1. To the furthest extent permitted by California law, Architect shall defend, indemnify, and

hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("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, to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants 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. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

Article 7. Mandatory Mediation for Claims

- 7.1. The Parties hereto agree prior to commencing any legal action relating to any Claim, as defined herein, to submit the Claim to a mandatory good-faith mediation process ("Mediation"). The Parties' expectations are that if the Claim is made by a third party (e.g., a contractor), that the third party will be a participant in that Mediation. The Parties agree that any statute of limitations applicable to any Claim shall be tolled for the period from the date a Party requests Mediation through the tenth (10th) day after termination of the Mediation, unless otherwise agreed to by the Parties.
- 7.2. Except as set forth below, the Parties agree to refrain from filing, maintaining, or prosecuting any action related to the Claim during the pendency of the Mediation provided that the Mediation must commence within thirty (30) days after a Party makes written demand to the other for Mediation.
- 7.3. The Parties shall participate in a minimum of one full-day mediation session before the Mediation may be declared unsuccessful and terminated by either Party. The Mediation shall be conducted in accordance with such rules as the Parties agree upon, or in the absence of agreement, in accordance with the Commercial Mediation Rules of JAMS/Endispute. Evidence of anything said, any admissions made, or any documents prepared in the course of the Mediation shall not be admissible in evidence or subject to discovery in any court action pursuant to Evidence Code Section 1152.5.
- 7.4. The Parties shall mutually agree to the selection of a mediator who is an attorney that is experienced in public works construction claims. If the Parties are unable to agree upon a mediator, then the mediator shall be appointed by JAMS/Endispute.
- 7.5. The Mediation shall take place at a location within twenty (20) miles of the District's administrative office. The mediator's fees and administrative fees, if any, shall be split equally between the Parties, but, unless otherwise agreed to in writing, each Party shall bear its own attorney's fees.
- 7.6. If any Party commences a legal action without first attempting to resolve the Claim as required by this Article, that Party shall be in breach of this Agreement and shall not be entitled to recover attorney's fees that might have otherwise been recoverable.
- 7.7. This mandatory mediation process shall only apply to Claims pursuant to the Architect Indemnity provision herein and shall not apply to any disputes to be resolved pursuant to the Alternative Dispute Resolution provisions herein.

Article 8. Fingerprinting

Pursuant to Education Code section 45125.2, District has determined on the basis of scope of Services in this Agreement of this Project, that Architect, Consultants, and their employees will have only limited contact with pupils at most. Architect shall promptly notify District in writing of any facts or circumstances which might reasonably lead District to determine that contact will be more than limited as defined by Education Code section 45125.1(d).

Article 9. Responsibilities of the District

- 9.1. The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid unreasonable delay in the process of the Architect's Services.
- 9.2. The District shall verbally or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's documents. Failure to provide such notice shall not relieve Architect of its responsibility therefore, if any.
- 9.3. Unless the District and the Architect agree that a hazardous materials consultant shall be a Consultant of the Architect, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect and deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Architect. If the hazardous materials consultant is furnished by the District and not a consultant of the Architect, the specifications shall include a note to the effect that they are included in the Architect's bid documents for the District's convenience and have not been prepared or reviewed by the Architect. The note shall also direct questions about the specifications to its preparer.
- 9.4. District personnel and/or its designated representatives shall coordinate with Architect as may be requested and desirable for the coordination or management of work related to the Project.
- 9.5. The District shall provide to the Architect all relevant information it knows it possesses regarding the Project that the Architect needs to perform its Services. The District shall provide this information and its decisions required under this Agreement in a timely manner and to avoid unreasonable delay in the Project.

Article 10. Liability of District

- 10.1. Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided for 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.
- 10.2. District shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Architect, or by its employees, even though such equipment may be furnished or loaned to Architect by District.

Article 11. Nondiscrimination

- 11.1. Architect agrees that no discrimination shall be made in the employment of persons under this Agreement because of the 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 of such person.
- 11.2. Architect shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 12. Insurance

- 12.1. The Architect shall procure and maintain at all times it performs any portion of Services the following insurance with minimum limits equal to the amount indicated below.
 - 12.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Architect, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from or in connection with the performance of any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)
 - 12.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of Architect's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Architect 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.
 - 12.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Architect'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	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 12.2. **Proof of Carriage of Insurance.** The Architect 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:

- 12.2.1. 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."
- 12.2.2. 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.
- 12.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, 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 Architect's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 12.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

- 12.3. **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.

Article 13. Covenant Against Contingent Fees

Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration, or to recover, the full amount of such compensation, fee, commission, percentage fee, gift, or contingency.

Article 14. Entire Agreement/Modification

This Agreement, including the Exhibits incorporated by reference into this Agreement, supersedes all previous contracts and constitutes the entire understanding of the Parties hereto. Architect shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Architect specifically acknowledges that in entering this Agreement, Architect relies solely upon the provisions contained in this Agreement and no others.

Article 15. Non-Assignment of Agreement

In as much as this Agreement is intended to secure the specialized Services of the Architect, Architect may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of District and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. Likewise, District may not assign, transfer, delegate, or sublet any interest therein without the prior written consent of Architect and any such assignment, transfer, delegation, or sublease

without Architect's prior written consent shall be considered null and void.

Article 16. Law/Venue

- 16.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.
- 16.2. The county in which the District administration office is located shall be the venue for any action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Article 17. Alternative Dispute Resolution

17.1. Architect's Invoices

- 17.1.1. If the District disapproves of any portion or amount(s) of the Architect's invoices, the District shall within thirty (30) days of receipt by the District of any of the Architect's invoices, communicate to the Architect in writing, with reasonable detail, what portion or amount of the Architect's invoices that are disapproved for payment, what portion or amount of the Architect's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of the Architect's invoices ("Disputed Architect Invoice Detail").
- 17.1.2. If the Architect disagrees with the Disputed Architect Invoice Detail, the Architect shall communicate to the District in writing, and request to meet and confer in good faith with respect to any such disapproved portion or amount of the Architect invoices and the Disputed Architect Invoice Detail to determine if the dispute can be resolved. Such meet and confer communications shall include, but are not limited to, face-to-face meetings within thirty (30) days of the Architect's notice to the District with the appropriate District and Architect personnel as appropriate and necessary.
- 17.1.3. If the Parties cannot resolve the matter during this meet and confer process, the Parties shall handle the matter as a dispute as indicated herein.
- 17.2. Disputes between the parties arising out of this Agreement shall be resolved by the following processes:
 - 17.2.1. **Negotiation.** The parties shall first attempt in good faith to resolve any controversy or dispute arising out of or relating to this Agreement by negotiation. The Parties' meet and confer process for any Disputed Architect Invoice Detail shall satisfy this negotiation requirement.
 - 17.2.2. **Mediation.** Within thirty (30) days, but no earlier than fifteen (15) days, following the earlier of receipt of notice by one party by the other party of a demand for mediation, the parties shall submit the dispute to non-binding mediation administered by the AAA (or other agreed upon rules) under its construction industry mediation rules, unless waived by mutual stipulation of both parties.
 - 17.2.3. **Litigation.** Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be litigated in the California Superior Court in the county in which the Project that is the subject of this Agreement is located.

- 17.3. Architect shall neither rescind nor stop the progress of its work pending the outcome of any dispute under this Agreement.

Article 18. Severability

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Article 19. Employment Status

- 19.1. Architect shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow District to exercise discretion or control over the professional manner in which the Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect shall be provided in a manner consistent with all applicable standards and regulations governing such Services.
- 19.2. Architect understands and agrees that the Architect's personnel are not and will not be eligible for membership in or any benefits from any District group plan for hospital, surgical, or medical insurance or for membership in any District retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a District employee.
- 19.3. Should District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Department, or both, determine that Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Architect which can be applied against this liability). District shall then forward those amounts to the relevant taxing authority.
- 19.4. Should a relevant taxing authority determine a liability for past services performed by Architect for District, upon notification of such fact by District, Architect shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect under this Agreement (again, offsetting any amounts already paid by Architect which can be applied as a credit against such liability).
- 19.5. A determination of employment status pursuant to the preceding paragraphs of this Article shall be solely for the purposes of the particular tax in question and, for all other purposes of this Agreement, Architect shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Architect is an employee for any other purpose, then Architect agrees to a reduction in District's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of District under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Architect was not an employee.
- 19.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 20. Warranty and Certification of Architect

- 20.1. Architect warrants and certifies that the Architect is properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.
- 20.2. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services of this Agreement.
- 20.3. Architect warrants and certifies that it is aware of the provisions of the California Labor Code that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). Since the Architect is performing Services as part of an applicable "public works" or "maintenance" project, and since the total compensation may be One Thousand Dollars (\$1,000) or more, the Architect agrees to fully comply with and to require its Consultant(s) to fully comply with all applicable Prevailing Wage Laws.

Article 21. Cost Disclosure - Documents And Written Reports

Architect shall be responsible for compliance with California Government Code section 7550, if the total cost of the Contract is over Five Thousand Dollars (\$5,000).

Article 22. Notices & Communications

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601

**Attn: Tadashi Nakadegawa
(510)-535-7038**

Architect:

KPW Structural Engineers, Inc. Peer
Review

55 Harrison Street, Suite 550
Oakland, CA 94607

**Attn: Lynn Deutschbauer
(510) -208-3300**

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

Article 23. Disabled Veteran Business Enterprise Participation

Pursuant to section 17076.11 of the Education Code, the District has a participation goal for disabled veteran business enterprises ("DVBEs") of at least three percent (3%), per year, of funds expended each year by the District on projects that use funds allocated by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act (the "Act"). This Project may use funds allocated under the Act. Therefore, to the extent feasible and pertaining to future hirings, the Architect, before it executes this Agreement, shall provide to the District certification of compliance with the procedures for implementation of DVBE contracting goals, appropriate documentation identifying the amount paid to DVBEs in conjunction with the contract, and documentation demonstrating the Architect's good faith efforts to meet these goals.

Article 24. District's Right to Audit

- 24.1. District retains the right to review and audit, and the reasonable right of access to Architect's and any Consultant's premises to review and audit the Architect's compliance with the provisions of this Agreement ("District's Right"). The District's Right includes the right to inspect, photocopy, and to retain copies, outside of the Architect's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the District in its sole discretion. The District shall keep this information confidential, as allowed by applicable law.
- 24.2. The District's Right includes the right to examine any and all books, records, documents, and any other evidence of procedures and practices that the District determines are necessary to discover and verify that the Architect is in compliance with all requirements of this Agreement.
- 24.3. If there is a claim for additional compensation or for Extra Services, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred or anticipated to be incurred.
- 24.4. The Architect shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. The Architect shall make available to the District for review and audit all Project related accounting records and documents and any other financial data. Upon District's request, the Architect shall submit exact duplicates of originals of all requested records to the District.
- 24.5. The Architect shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all Consultants.
- 24.6. Architect shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect's Project-related records and information.

Article 25. Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE). Architect shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at www.ousd.org, under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

Article 26. Other Provisions

- 26.1. Neither the District's review of, approval of, nor payment for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, and Architect shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect's failure to perform any of the Services furnished under this Agreement to the standard of care of the Architect for its Services, which shall be, at a minimum, the standard of care of architects performing similar work for California school districts in or around the same geographic area of the District.
- 26.2. Each Party warrants that it has had the opportunity to consult counsel and understands the

terms of this Agreement and the consequences of executing it. In addition, each party acknowledges that the drafting of this Agreement was the product of negotiation, that no party is the author of this Agreement, and that this Agreement shall not be construed against any party as the drafter of the Agreement.

- 26.3. The Architect acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that the Architect may not be apprised of all facts surrounding the Project that Architect is working on. Accordingly, Architect shall promptly refer all inquiries from the news media or public concerning this Agreement or its performance under the Agreement to the District, and Architect shall not make any statements or disclose any documents to the media or the public relating to the performance under this Agreement or the effects caused thereby. If Architect receives a complaint from a citizen or member of the public concerning the performance or effects of this Agreement, it shall promptly inform the District of that complaint. In its sole discretion, the District shall determine the appropriate response to the complaint.
- 26.4. **Exhibit "A"** and all Certificates attached hereto are hereby incorporated by this reference and made a part of this Agreement.

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>



Tadashi Nakadegawa
Director, Facilities Planning and Management

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Eng

12/13/18

Aimee Eng, President, Board of Education

Date

Kyla Johnson-Trammell

12/13/18

Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education

Date

Timothy White

Timothy White, Deputy Chief,
Facilities Planning and Management

Date

ARCHITECT

John Westphal

11/9/18

By: John Westphal
Its:

Date

APPROVED AS TO FORM:

Debra Debra

11/19/18

OUSD Facilities Legal Counsel


Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

I am aware of and hereby certify that neither **KPW Structural Engineers, Inc. Peer Review** 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 Architect 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 Architect on the 9th day of November 2018 for the purposes of submission of this Agreement.

By: 

Signature
John Westphal

Typed or Printed Name
Principal

Title

EXHIBIT "A"
SCOPE OF SERVICES

Architect's entire Proposal as described is part of this Agreement.

See attached Proposal.

f

November 7, 2018

Tadashi Nakadegawa, Director
Department of Facilities, Planning & Management
Oakland Unified School District

Project: Structural Services for 3rd Party Peer Review of the Urbancore/Lakehouse Development of the Adjacent Property - Underpinning and Shoring for the Lakehouse Project
Oakland, CA
KPW Proposal No. 18P384

Subject: Fee proposal to provide structural engineering services

Dear Tadashi:

We are pleased to provide you with this fee proposal for the subject project. Our fee proposal is in response to RFQ/P #18-107 dated July 19, 2018, Amendments 1 and 2, and subsequent 10/30/18 negotiation meeting among OUSD, Engeo, KPW, and Lakehouse Commons LLC teams. As stated in Part A of the RFQ/P, "Basic Services," the Design Engineering Consultant Services includes four items. We are providing a description of our understanding of the scope of services, deliverables, schedule, and fee for each item of the Basic Services. Following these item descriptions is a summary of the Fee for Structural Engineering Services, which has been revised per the 10/30/18 negotiation meeting.

Basic Services

Item 1: Peer Review of Underpinning and Shoring of the Adjacent Lakehouse Property Development

As described in Part B of the RFQ/P, "General Statement of Work," we understand that there are three elements in the Structural Engineer Design Consultant's peer review base scope of services, as follows:

A. Project Start-up / Program Validation / Peer Review of Concept Design

Description: This phase includes a variety of tasks, including participation in meetings with the District and meetings with DSA; gathering and review of relevant site data, including utility information and geotechnical findings, for use in assessing the proposed underpinning and shoring designs; peer review of the underpinning and shoring designs; peer review of site survey recommendations, including documentation of existing building and site conditions, procedures for monitoring these conditions before and during construction, and input on the allowable limits of these parameters (such as deflections); providing a report summarizing peer review comments, including feedback based on meeting with the District; presentation of peer review comments and discussions with the District.

Deliverable: Peer Review Report that: (1) documents peer review comments on the underpinning and shoring concept design and the proposed procedures for monitoring; (2) provides a site plan describing the recommended design concept improvements; and (3) flags any elements of the underpinning and shoring design that could cause damage to any parts on the OUSD property.

Schedule: Based on the construction schedule discussed at the 10/30/18 meeting, we are assuming that the peer review work will commence in mid-December 2018 and will be completed in mid-February 2019. This schedule will allow the Urbancore team to incorporate the peer review comments and update their design if required, and maintain their plan to commence excavation and shoring in mid-April 2019.

Fee: Lump Sum, as summarized in the Fee for Structural Engineering Services and as detailed in the Structural Fee Matrix.

B. Construction Administration

Description: In this phase, the Structural Engineer Design Consultant will provide peer review for the full scope of construction administration services, including peer review of all of the underpinning and shoring designer's shop drawing and submittal reviews and peer review of all the underpinning and shoring designer's RFI responses; and provide comments based on these reviews; attendance in weekly construction meetings; review construction administration logs of submittals and RFIs and take appropriate action as needed; review deflection reports and take appropriate action as needed; attend a punch list site walk.

Deliverable: Weekly Report of construction administration phase peer review comments and recommended corrective actions, if any.

Schedule: We understand that excavation and shoring are scheduled to commence in mid-April 2019 and to be completed in May 2019. CA peer review work will follow this approximately 15-week construction schedule. We assume that deflection monitoring will be required for an additional 12 weeks until construction of the Lakehouse foundation system and underground parking are complete, and the shoring is no longer required.

Fee: Time and materials, not-to-exceed, as summarized in the Fee for Structural Engineering Services and as detailed in the Structural Fee Worksheet.

Item 2: Document Acquisition and Information Disclosure to the District

Description: In providing the services listed under Item 1 above, the Structural Engineer Design Consultant will use all due care and diligence to access all necessary documents to perform the Peer Review work and to alert the District to any impacts that information from these documents may have on the District property. The fees shown for the base scope of services for Item 1 include consideration of the Item 2 requirements; no additional fee specific to Item 2 is proposed.

Deliverable: Not applicable

Schedule: Not applicable

Fee: Rolled into Item 1 fee.

Item 3: Repairs to OUSD property

We understand that, if the shoring/underpinning activities at the adjacent property cause damage to OUSD property, these damages will need to be repaired. We understand that should damage to any OUSD property occur, the District will expect the Design Consultant to provide design(s) to repair the damages; the designs shall meet the District Standards. If needed, this work would be provided as an additional service to the base fee noted below, based on labor expended using our hourly rates per the attached schedule of rates.

Deliverable: Construction Documents for DSA Submittal and Approval, as required.

Schedule: TBD, as required.

Fee: Time and materials per the attached Hourly Rates Schedule, as required.

Item 4: Mandatory Assistance

We understand that should a third-party dispute or litigation, or both, arise as a result of the Design Consultant's peer review work, the District will expect the Design Consultant to assist the District in resolving the dispute or litigation. We propose to provide this support on an as-needed basis, and as an additional service to the base, fee noted below, based on labor expended using our hourly rates per the attached schedule of rates.

Deliverable: Reports and statements in support of the District, as needed

Schedule: TBD, as required.

Fee: Time and materials per the attached Hourly Rates Schedule, as required.

Fee for Structural Engineering Services

We propose to provide the Item 1 services on a Lump Sum Basis, for the fee of **\$76,730**.

Please see the attached Structural Fee Worksheet for the Item 1 Base Scope of Services, which includes a detailed schedule of the Structural Engineering team members and hourly billing rates, proposed tasks, estimated hours and cost per task, contingency per task, and total Lump Sum fee.

Items 3 and 4 are not included in the base scope of services Lump Sum fee. They would be provided as additional services on a time and materials basis as needed.

We will bill you on a monthly basis. These invoices will include charges for percentage completion of basic structural services, and expended labor and expenses for authorized additional services and for reimbursable travel, reproduction and courier costs.

Thank you for providing us with the opportunity to present our fee proposal. Please call us if you have any questions. We are very enthusiastic about the opportunity to work with you on this project and look forward to hearing from you soon.

Very truly yours,

KPW Structural Engineers, Inc.



Lynn Deutschbauer, SE 5075
Associate

Attachments: Structural Fee Worksheet
Hourly Rates Schedule



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/9/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates P.O. Box 12675 Oakland, CA 94604-2675 License #0020739	CONTACT NAME: Doris A. Chambers PHONE (A/C, No. Ext): 510-465-3090 E-MAIL ADDRESS: dchambers@dealeyrenton.com	FAX (A/C, No): 510-452-2193
	INSURER(S) AFFORDING COVERAGE	
INSURED KPW Structural Engineers, Inc. 55 Harrison Street, Suite 550 Oakland, CA 94607	INSURER A : Sentinel Insurance Co. LTD INSURER B : Berkley Insurance Company INSURER C : Hartford Accident & Indemnity INSURER D : INSURER E : INSURER F :	
	NAIC # 11000 32603 22357	

COVERAGES

CERTIFICATE NUMBER: 1163092697

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	57SBABG7659	7/16/2018	7/16/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y	Y	57SBABG7659	7/16/2018	7/16/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	57SBABG7659	7/16/2018	7/16/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	57WECGF9980	8/20/2018	8/20/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liability Claims Made			AEC902173804	7/16/2018	7/16/2019	\$5,000,000 \$5,000,000 Per Claim Annual Aggregate

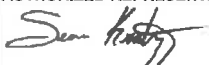
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

General Liability policy excludes claims arising out of the performance of professional services.

Umbrella policy is a follow-form to underlying General Liability/Hired&Non-Owned Auto Liability/Employers Liability.

REF: Marcus Foster Educational /Lakehouse Commons Project, located at 1025 2nd Avenue, Oakland, CA 94606. - GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified School District and the State and their agents, representatives, employees, trustees, officers, and volunteers are named as Additional Insured as respects General Liability and Auto Liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation. 30 Day Notice of Cancellation.

CERTIFICATE HOLDER**CANCELLATION** 30 Day NOC/10 Day for NonPay of Prem

Oakland Unified School District Attn: Tadashi Nakadegawa 955 High Street Oakland CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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EXCERPTS FROM: Hartford Form SS 00 08 04 05

BUSINESS LIABILITY COVERAGE FORM

C. WHO IS AN INSURED

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit. A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury, "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products- completed operations hazard, but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to: "Bodily injury, "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including: inspection, or engineering

E.5. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

E.7.b.(7).(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

E.8.b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

EXCERPT FROM Hartford Form SS 04 38 06 01

HIRED AUTO AND NON-OWNED AUTO

B. With respect to the operation of a "non-owned auto", WHO IS AN INSURED is replaced by the following: The following are "insureds":

- d. Anyone liable for the conduct of an "insured", but only to the extent of that liability.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WORKERS' COMPENSATION BROAD FORM ENDORSEMENT
EXTENDED OPTIONS**

Policy Number: 57 WEC GF9980

Endorsement Number:

Effective Date: 08/20/18

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: KPW STRUCTURAL ENGINEERS, INC.

55 HARRISON ST STE 550
OAKLAND CA 94607

Section I of this endorsement expands coverage provided under WC 00 00 00.

Section II of this endorsement provides additional coverage usually only provided by endorsement.

Section III of this endorsement is a Schedule of Covered States.

You may use the index to locate these coverage features quickly:

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SECTION I

PARTS ONE and TWO

1. WE WILL ALSO PAY

D. We Will Also Pay of Part One (WORKERS' COMPENSATION INSURANCE); and

E. We Will Also Pay of Part Two (EMPLOYERS' LIABILITY INSURANCE) is replaced by the following:

We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, **INCLUDING** loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this law; and
5. expenses we incur.

PART THREE

2. How This Insurance Applies

Paragraph 4. of A. How This Insurance Applies of Part 3 (Other States Insurance) is replaced by the following:

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within **sixty** days.

PART SIX

3. Transfer Of Your Rights and Duties

C. Transfer Of Your Rights and Duties of Part 6 (Conditions) is replaced by the following:

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within **sixty** days after your death, we will cover your legal representative as insured.

4. Liberalization

If we adopt a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this policy. It will apply when the change becomes effective in your state.

SECTION II

VOLUNTARY COMPENSATION ANDEMPLOYERS' LIABILITY COVERAGE

5. Voluntary Compensation Insurance

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by any officer or employee not subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page.
2. The bodily injury must arise out of and in the course of employment or incidental to work in a state shown in Item 3.A. of the Information Page.

3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen, or otherwise legal resident, and legally employed, in the United States or Canada and temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of the

officer's or employee's employment. The officer's or employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay an amount equal to the benefits that would be required of you as if you and your employees were subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page. We will pay those amounts to the persons who would be entitled to them under the law.

C. Exclusion

This insurance does not cover:

1. any obligation imposed by workers' compensation or occupational disease law or any similar law.
2. bodily injury intentionally caused or aggravated by you.
3. officers or employees who have elected not to be subject to the state workers' compensation law.
4. partners or sole proprietors not covered under the Standard Sole Proprietors, Partners, Officers and Others Coverage Endorsement.

D. Before We Pay

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it.

If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

F. Employers' Liability Insurance

Part Two (Employers' Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment was shown in Item 3.A. of the Information Page.

This provision 5. does not apply in New Jersey or Wisconsin.

EMPLOYERS' LIABILITY STOP GAP COVERAGE

6. Employers' Liability Stop Gap Coverage

- A. This coverage only applies in Montana, North Dakota, Ohio, Washington, West Virginia and Wyoming.
- B. Part One (Workers' Compensation Insurance) does not apply to work in states shown in Paragraph A above.
- C. Part Two (Employers' Liability Insurance) applies in the states, shown in Paragraph A., as though they were shown in Item 3.A. of the Information Page.
- D. Part Two, Section C. Exclusions is changed by adding these exclusions.

This insurance does not cover;

5. bodily injury intentionally caused or aggravated by you or in Ohio bodily injury resulting from an act which is determined by an Ohio court of law to have been committed by you with the belief that an injury is substantially certain to occur. However, the cost of defending such claims or suits in Ohio is covered.
13. bodily injury sustained by any member of the flying crew of any aircraft.
14. any claim for bodily injury with respect to which you are deprived of any defense or defenses or are otherwise subject to penalty because of default in premium under the provisions of the workers' compensation law or laws of a state shown in Paragraph A.
- E. This insurance applies to damages for which you are liable under West Virginia Code Annot. S 23-4-2.

EXTENDED OPTIONS

1. Employers' Liability Insurance

Item 3.B. of the Information Page is replaced by the following:

B. Employers' Liability Insurance:

1. Part Two of the policy applies to work in each state listed in Item 3.A.

The Limits of Liability under Part Two are the higher of:

**Bodily Injury
by Accident** \$500,000 Each Accident

**Bodily Injury
by Disease** \$500,000 Policy Limit

**Bodily Injury
by Disease** \$500,000 Each Employee

OR

2. The amount shown in the Information Page.

This provision 1 of EXTENDED OPTIONS does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from \$500,000 to \$1,000,000 in California.

2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

3. Waiver of Our Right To Recover From Others

A. We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

B. This provision 3. does not apply in the states of Pennsylvania and Utah.

4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

A. How This Reimbursement Applies

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.

4. liability for any consequence, whether direct or indirect, of war, invasion, act of Foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No endorsement now or subsequently attached to this policy shall be construed as overriding or waiving this limitation unless specific reference is made thereto.

D. Before We Pay

Before we reimburse you for the benefits to the persons entitled to them, you must have them:

1. release you and us, in writing, of all responsibility for the injury or death,
2. transfer to us their right to recover from others who may be responsible for their injury or death,
3. cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits paid fail to do these things, our duty to reimburse ends at once. If they claim damages from us for the injury or death, our duty to reimburse ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we reimbursed. We will pay the balance to the persons entitled to it. If persons entitled to the benefits make a recovery from others, they must repay us for the amounts that we have reimbursed you.

F. Reimbursement for Actual Loss Sustained

This endorsement provides only for reimbursement for the loss you actually sustain. In order for you to recover loss or expenses under this reimbursement you must:

1. actually sustain and pay the loss or expense in money after trial, or
2. secure our consent for the payment of the loss or expense.

G. Repatriation

Our reimbursement includes the additional expenses of repatriation to the United States

of America necessarily incurred as a direct result of bodily injury.

Our reimbursement shall be limited as follows:

1. to the amount by which such expenses exceed the normal cost of returning the officer or employee if in good health, or
2. in the event of death, to the amount by which such expenses exceed the normal cost of returning the officer or employee if alive and in good health.

In no event shall our reimbursement exceed the bodily injury by accident limit shown in Item 3.B. of the Information Page as respects any one such officer or employee whether dead or alive.

H. Endemic Disease

The word "disease" includes any endemic diseases.

The coverage applies as if endemic diseases were included in the provisions of the workers' compensation law.

5. Longshore and Harbor Workers' Compensation Act Coverage

General Section C. Workers' Compensation Law is replaced by the following:

C. Workers' Compensation Law

Workers' Compensation Law means the workers or workers' compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workers' compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers' Liability Insurance), C. Exclusions, exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.

This coverage does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.

SECTION III

1. SCHEDULE OF COVERED STATES

A. This endorsement only applies in the states listed in this Schedule of Covered States.

B. If a state, shown in Item 3.A. of the Information Page, approves this endorsement after the effective date of this policy, this endorsement will apply to this policy. The coverage will apply in the new state on the effective date of the state approval

C. Schedule of Covered States:

CA

Countersigned by _____ Authorized Representative



Department of Facilities Planning and Management

ROUTING FORM

Project Information

Project Name	Foster Educational Leadership Complex	Site	210
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Basic Directions

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

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000
	<input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider

Contractor Information

Contractor Name	KPW Structural Engineers Inc Peer Revie	Agency's Contact	Lynn Deutschbauer
OUSD Vendor ID #	002436	Vendor Title:	KPW Structural Engineers
Address	55 Harrison Street, Suite #550 Oakland, CA 95607	Telephone	5102083300
		Policy Expires:	
Contractor History	Previously been an OUSD contractor?	<input checked="" type="checkbox"/> Yes	Worked as an OUSD employee? <input type="checkbox"/> Yes
OUSD Project #	15124		

Term

Date Work Will Begin	12/13/2018	Date Work Will End By (not more than 5 years from start date)	12/31/2019
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Compensation

Total Contract Amount		Total Contract Not To Exceed	\$76,730.00
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	Amount
9036/9667	Fund 40	400-9036-0-9667-8500-6274-310-9180-9003-9999-99999	6274	\$76,730.00

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
1.	Director, Department of Facilities Planning and Management				
	Signature		Date Approved	11/17/18	
2.	General Counsel, Department of Facilities Planning and Management				
	Signature		Date Approved	11/19/18	
3.	Deputy Chief, Department of Facilities Planning and Management				
	Signature		Date Approved		
4.	Senior Business Officer, Board of Education				
	Signature		Date Approved		
5.	President, Board of Education				
	Signature		Date Approved		