

Board Office Use: Legislative File Info.	
File ID Number	16-1562
Introduction Date	6-22-2016
Enactment Number	16-1086
Enactment Date	6-22-2016



Memo

To Board of Education

From Antwan Wilson, Superintendent and Secretary, Board of Education
 By: Vernon Hal, Senior Business Officer
 Joe Dominguez, Deputy Chief, Facilities Planning and Management

Board Meeting Date June 22, 2016

Subject Agreement for Architectural Services - Op Terra Energy Services - Prop 39 Energy Operations Various School Sites Project

Action Requested Approval by the Board of Education of an Agreement for Architectural Services between the District and Op Terra Energy Services, Oakland, CA., for the latter to provide planning, analysis project prioritizing and submission of Energy Expenditure Plan for 3 to 5 years, in conjunction with the Prop 39 Energy Operations Various School Sites Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 22, 2016 and concluding no later than December 31, 2017, in an amount not-to exceed \$192,214.00.

Discussion In order to move forward with the design and implementation of energy efficiency measures at various schools, the preparation and execution of the Prop 39 Energy Expenditure Plan is needed.

LBP (Local Business Participation Percentage) 100.00%

Procurement Method Professional Services Agreement - Formal - Advertised RFP / Awarded to entity following OUSD competitive solicitation process.

Recommendation Approval by the Board of Education of an Agreement for Architectural Services between the District and Op Terra Energy Services, Oakland, CA., for the latter to provide planning, analysis project prioritizing and submission of Energy Expenditure Plan for 3 to 5 years, in conjunction with the Prop 39 Energy Operations Various School Sites Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 22, 2016 and concluding no later than December 31, 2017, in an amount not-to exceed \$192,214.00.

Fiscal Impact Fund 01, General Fund

- Attachments**
- Agreement for 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. 16-1562

Department: Facilities Planning & Management

Vendor Name: OpTerra Energy Services

Project Name: Prop 39 Energy Operations Project No.: 16117

Contract Term: Start Date: _____ End Date: _____

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$ 192,214.40

Approved by: Kenya Chatman

Is Vendor a local Oakland Business or have they met the requirements of the Local Business Policy? Yes No

Why was this Vendor selected?

In order to move forward with the design and implementation of energy efficiency measures at various schools, the preparation and execution of the Prop 39 Energy Expenditure Plan is needed.

Summarize the services this Vendor will be providing.

Project development: surveys of 17 sites, engineering analysis and the development of an Energy Expenditure Plan.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

This vendor's cost proposal is in line with similar scopes of work and proposals from other vendors.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate 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**

**Agreement for Architectural/Engineering Services
BY AND BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT
AND**

OpTerra Energy Services

This Agreement for Architectural/Engineering Services is made as of the **17th day of May 2016**, between the **Oakland Unified School District**, a California public school district ("District"), and **OpTerra Energy Services, Inc.**, a Delaware corporation ("Architect/Engineer") (individually a "Party" and collectively the "Parties"), for the following project ("Project"):

Various school sites within Oakland Unified School District.

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/Engineer**: Collectively, OpTerra Energy Services, Inc., and all Consultants to Architect/Engineer.
 - 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. Architect/Engineer 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 Architect/Engineer.
 - 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 Architect/Engineer based upon marked-up prints, drawings, and other data furnished to Architect/Engineer by

Contractor that incorporates all changes from all As-Builts, sketches, details, and clarifications.

1.1.1. **Service(s):** All labor, materials, supervision, services, tasks, and work that Architect/Engineer 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.

1.1.11. **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/Engineer

- 2.1. Architect/Engineer and/or its Consultants 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/Engineer represents that Architect/Engineer 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/Engineer.
- 2.3. Architect/Engineer shall comply with Education Code section 17302 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. Architect/Engineer shall commence Services 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. **Commencing June 22, 2016 and concluding no later than December 31, 2017.**

Article 3. Compensation and Value of Agreement

- 3.1. District shall pay Architect/Engineer for all Services contracted for under this Agreement on a time and materials basis. The total compensation paid Architect/Engineer pursuant to this Agreement may not exceed **One hundred ninety-two thousand, two hundred fourteen dollars and forty cents (\$192,214.40).**
- 3.2. Architect/Engineer 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/Engineer 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 Services shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after Architect/Engineer submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made.
- 3.4. **Expenses.** District shall not be liable to Architect/Engineer for any costs or expenses paid or incurred by Architect/Engineer 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 Architect/Engineer or its Consultants, prepares or causes to be prepared pursuant to this Agreement.
- 4.2. Architect/Engineer retains all rights to all copyrights, designs, and other intellectual property embodied in the plans, Record Drawings, specifications, estimates, and other documents that Architect/Engineer or its Consultants prepare or cause to be prepared pursuant to this Agreement.
- 4.3. Architect/Engineer shall perform the Services and prepare all documents under this Agreement with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) Technology. Architect/Engineer 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/Engineer 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/Engineer and District shall each sign a "hard" copy of reproducible documents that depict the information at the time Architect/Engineer produces the CADD information. District agrees to release Architect/Engineer from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Architect/Engineer or Consultant(s) subsequent to it being given to the District.
- 4.5. Following the termination of this Agreement, for any reason whatsoever, Architect/Engineer 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 Architect/Engineer under this Agreement.
- 4.6. In the event the District changes or uses any fully or partially completed documents without Architect/Engineer's knowledge and participation, the District agrees to release Architect/Engineer of responsibility for such changes, and shall indemnify, defend, and hold Architect/Engineer 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 Architect/Engineer is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without Architect/Engineer's full involvement, the District shall remove all title blocks and other information that might identify Architect/Engineer and Architect/Engineer's Consultants.

Article 5. Termination of Contract

- 5.1. If Architect/Engineer fails to perform Architect/Engineer's duties to the satisfaction of the District and as required by this Agreement, or if Architect/Engineer fails to fulfill in a timely and professional manner Architect/Engineer's material obligations under this Agreement, or if Architect/Engineer 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 Architect/Engineer. In the event of a termination pursuant to this subdivision, Architect/Engineer 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/Engineer's actions, errors, or omissions that caused the District to terminate this Agreement. The District may, at its discretion, provide Architect/Engineer 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/Engineer 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. Architect/Engineer 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/Engineer to the District. Architect/Engineer may invoice District and District shall pay all undisputed invoice(s) for Services performed until Architect/Engineer'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, Architect/Engineer, upon written notice from the District of such termination, shall immediately cease Services on the Project. The District shall pay Architect/Engineer 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, Architect/Engineer shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and Architect/Engineer's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of Architect/Engineer's Services. If the District suspends the Project for more than two (2) years, Architect/Engineer may terminate this Agreement by giving written notice.

Article 6. Indemnity/Architect/Engineer Liability

- 6.1. To the furthest extent permitted by California law, Architect/Engineer 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/Engineer, 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/Engineer'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 Architect/Engineer 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/Engineer, Consultants, and their employees will have only limited contact with pupils at most. Architect/Engineer 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 Architect/Engineer and shall render decisions so as to avoid unreasonable delay in the process of Architect/Engineer's Services.
- 9.2. The District shall verbally or in writing advise Architect/Engineer if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Architect/Engineer's documents. Failure to provide such notice shall not relieve Architect/Engineer of its responsibility therefore, if any.
- 9.3. Unless the District and Architect/Engineer agree that a hazardous materials consultant shall be a Consultant of Architect/Engineer, the District shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Architect/Engineer 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/Engineer. If the hazardous materials consultant is furnished by the District and not a Consultant of Architect/Engineer, the specifications shall include a note to the effect that they are included in the bid documents for the District's convenience and have not been prepared or reviewed by Architect/Engineer. 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/Engineer as may be requested and desirable for the coordination or management of work related to the Project.
- 9.5. The District shall provide to Architect/Engineer all relevant information it knows it possesses regarding the Project that Architect/Engineer 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.
- 10.1. 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/Engineer, or by its employees, even though such equipment may be furnished or loaned to Architect/Engineer by District.

Article 11. Nondiscrimination

- 11.1 Architect/Engineer 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/Engineer shall comply with any and all applicable regulations and laws governing nondiscrimination in employment.

Article 12. Insurance

- 12.1. Architect/Engineer 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 Architect/Engineer, 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/Engineer's employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Architect/Engineer 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 Architect/Engineer'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	\$ 1,000,000
Aggregate	
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
General	\$ 1,000,000
Aggregate	
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

12.2. **Proof of Carriage of Insurance.** Architect/Engineer 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/Engineer'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/Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Architect/Engineer, 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 Architect/Engineer, 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/Engineer 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/Engineer specifically acknowledges that in entering this Agreement, Architect/Engineer 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 Architect/Engineer, Architect/Engineer 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/Engineer and any such assignment, transfer, delegation, or sublease without Architect/Engineer'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/Engineer's Invoices

17.1.1. If the District disapproves of any portion or amount(s) of Architect/Engineer's invoices, the District shall within thirty (30) days of receipt by the District of any of Architect/Engineer's invoices, communicate to Architect/Engineer in writing, with reasonable detail, what portion or amount of Architect/Engineer's invoices that are disapproved for payment, what portion or amount of Architect/Engineer's invoices that are approved for payment, and the basis for the District's disapproval of the disputed portion(s) or amount(s) of Architect/Engineer's invoices ("Disputed Architect/Engineer Invoice Detail").

17.1.2. If Architect/Engineer disagrees with the Disputed Architect/Engineer Invoice Detail, Architect/Engineer 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 Architect/Engineer invoices and the Disputed Architect/Engineer 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 Architect/Engineer's notice to the District with the appropriate District and Architect/Engineer 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/Engineer 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/Engineer 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/Engineer 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 Architect/Engineer performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Architect/Engineer shall be provided in a manner consistent with all applicable standards and regulations governing such Services.

19.2. Architect/Engineer understands and agrees that Architect/Engineer'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/Engineer 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/Engineer 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/Engineer for District, upon notification of such fact by District, Architect/Engineer shall promptly remit such amount due or arrange with District to have the amount due withheld from future payments to Architect/Engineer under this Agreement (again, offsetting any amounts already paid by Architect/Engineer 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/Engineer shall not be considered an employee of District. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority

determine that Architect/Engineer is an employee for any other purpose, then Architect/Engineer 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/Engineer 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/Engineer

- 20.1. Architect/Engineer warrants and certifies that Architect/Engineer, and/or its Consultants, are properly certified and licensed under the laws and regulations of the State of California to provide the professional Services that Architect/Engineer has herein agreed to perform.
- 20.2. Architect/Engineer 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/Engineer 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 Architect/Engineer 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, Architect/Engineer 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/Engineer 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/Engineer:

OpTerra Energy Services
500 12th Street #300
Oakland, CA 94607

**Attn: Kelly Fergusson
(415)-405-6673**

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, Architect/Engineer, 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 Architect/Engineer'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/Engineer's and any Consultant's premises to review and audit Architect/Engineer'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 Architect/Engineer'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 Architect/Engineer 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. Architect/Engineer shall maintain complete and accurate records for a minimum of seven (7) years and in accordance with generally accepted accounting practices in the industry. Architect/Engineer 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, Architect/Engineer shall submit exact duplicates of originals of all requested records to the District.
- 24.5. Architect/Engineer 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/Engineer shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Architect/Engineer's Project-related records and information.

Article 25. Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE). Architect/Engineer shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at www.ousd.k12.ca.us, 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/Engineer shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Architect/Engineer's failure to perform any of the Services furnished under this Agreement to the standard of care of Architect/Engineer for its Services, which shall be, at a minimum, the standard of care of architects and/or engineers 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. Architect/Engineer acknowledges that the District is a public agency that is subject to heightened curiosity by the news media and the public and that Architect/Engineer may not be apprised of all facts surrounding the Project that Architect/Engineer is working on. Accordingly, Architect/Engineer 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/Engineer 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/Engineer 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.
- 26.5. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as **Exhibit "B"** and incorporated herein by this reference. In the event of a conflict between the provisions of **Exhibit "B"** and any other provisions of this Agreement, the provisions of **Exhibit "B"** shall govern.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

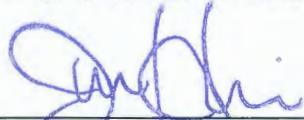
The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation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

Susie Butler-Berkley
Contract Analyst

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

ACCEPTED AND AGREED on the date indicated below:

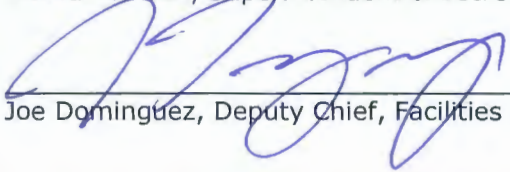
OAKLAND UNIFIED SCHOOL DISTRICT



James Harris, President, Board of Education 6/23/16
Date

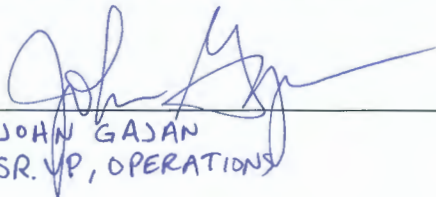


Antwan Wilson, Superintendent & Secretary, Board of Education 6/23/16
Date



Joe Dominguez, Deputy Chief, Facilities Planning and Management 6-15-16
Date

OPTERRA ENERGY SERVICES, INC.




By: JOAN GASAN 6-2-16
Date
Its: SR. VP, OPERATIONS

APPROVED AS TO FORM:



OUSD Facilities Legal Counsel 6-9-16
Date

File ID Number: 16-1562
Introduction Date: 6-22-16
Enactment Number: 16-1086
Enactment Date: 6-22-16
By: 

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

I am aware of and hereby certify that neither _____ [Type name of Architect/Engineer] 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 Architect/Engineer 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/Engineer on the ___ day of _____ 2016 for the purposes of submission of this Agreement.

By: _____
Signature

Typed or Printed Name

Title

EXHIBIT "A"
SCOPE OF SERVICES

The provisions of Architect/Engineer's Fee Proposal, dated 19 April 2016, to the extent directly related to the Proposition 39 survey, analysis, and Expenditure Plan (Phase 1), are a part of this Agreement. No other provisions of Architect/Engineer's Fee Proposal are included in this Agreement.



Fee Proposal for Prop 39 Services | April 19, 2016

To: Kenya Chatman
 Project Manager
 OUSD Facilities Planning & Management
kenya.chatman@ousd.org

Re: Fee Proposal for Prop 39 Professional Services

Per our discussion, below please find OpTerra Energy Service's proposed fees for the Proposition 39 California Clean Energy Jobs Act project. OpTerra contacts for this fee proposal:

- * Kelly Fergusson, Ph 415-405-6673; Email: kfergusson@opterraenergy.com

OpTerra is excited about this opportunity to work with the Oakland Unified School District and we look forward to a successful project and relationship.

Proposed Professional Service Fees

The OpTerra fee structure is organized and negotiated considering four separate service classifications. The fee categories suggested and proposed for this project include;

- 1) Prop 39 survey, analysis and Energy Expenditure Plan (EEP)
 - * Prop 39 site surveys, engineering analysis and Expenditure Plan development based on .14\$/ft²
- 2) Design Development, Design, DSA Approvals and Preparation of Bid Packages
- 3) Construction Administration
- 4) Reimbursables (such as printing, copying, photographs, renderings, etc.)

Phase 1

Total fee for Phase 1 Project development – Energy Expenditure Plan	\$192,214.40
--	---------------------

Phase 1 fees will include all services required for preparation and execution of the Prop 39 Expenditure Plan. The following 8 steps illustrate OpTerra's approach to achieving the District's energy project evaluation and Proposition 39 funding.

1. Step 1: Utility Data Gathering
2. Step 2: Energy Analysis and Facility Benchmarking
3. Step 3: Energy Project Prioritization Consideration
4. Step 4: Sequencing of Facility Improvements
5. Step 5: Eligible Energy Measure Identification
6. Step 6: Cost-Effectiveness Determination Savings-to-Investment Ratio
7. Step 7: Complete and Submit Oakland USD's Energy Expenditure Plan
8. Step 8: Annual and Final Energy Reports

OpTerra will provide Steps 1, 2 and 3 above for all District sites. It is estimated that Steps 4 thru 8 will be provided for approximately 1.5 MM sq. ft. of the District sites evaluated.

Fee Proposal for Prop 39 Services | April 19, 2016



Phase 2 & Phase 3

The fee basis for Phases 2 and 3 will be based primarily on:

- a. The complexity of architectural and engineering services and types of systems to ultimately be provided.

In addition, the following criteria will be considered:

- b. Time schedule for furnishing services and possible changes that may affect the costs.
- c. Additional studies, programs, and other professional input requested by the District.
- d. District's procedure and timing for review and approval of the proposed recommendations/designs.
- e. Costs of administration, including records to be maintained and preserved.
- f. Any additional third parties or agencies required to be consulted or furnished plans, specifications, reports, and similar documents.

Our typical fee structure for Prop 39 project development includes the following:

- * Hourly fees for design/ DSA approval - not to exceed 8 -12% of total construction cost, and
- * Hourly fee for construction administration- not to exceed 1- 3% of total construction cost.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Agreement Boilerplate)

1. The following definitions are deleted from Section 1.1, and the related defined terms are deleted from the Agreement wherever they may appear: As-Built Drawings ("As-Builts"); Bid Set; Conforming Set; Project Budget; Record Drawings; and Visually Verify.

2. The definition of Service(s) in Section 1.1 is deleted and replaced with the following:

Service(s): All services, tasks, and work that Architect/Engineer and/or its Consultants are required to perform pursuant to this Agreement.

3. The following sentence is added at the end of Section 2.2: "Notwithstanding the foregoing, the Parties agree that the District may elect, in its sole discretion, to enter into a future energy services contract with Architect/Engineer to construct the Project."

4. Sections 4.3 through 4.5 of the Agreement are deleted in their entirety from the Agreement.

5. The phrase "including without limitation the payment of all consequential damages" is deleted from Section 6.1 of the Agreement.

6. Section 10.1 of the Agreement is deleted and replaced with the following:

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 either Party be liable to the other, 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.

7. The Parties agree that it shall not be a violation of Article 13 of the Agreement for Architect/Engineer to employ or retain a non-employee consultant, not being paid on a contingent basis, to solicit or secure this Agreement.

8. Section 17.2.3 of the Agreement is deleted and replaced with the following:

Judicial Reference. Disputes arising from this Agreement that cannot be settled through negotiation or mediation (after those processes have been exhausted) shall be resolved exclusively by judicial reference in accordance with the provisions of Section 638 et seq. of the Code of Civil Procedure.

9. A new Section 26.6 of the Agreement is added as follows:

The Parties acknowledge and agree that Architect/Engineer cannot give legal advice to District regarding compliance with California Public Resources Code §26235(c). District should consult its own legal counsel. District warrants and represents to Architect/Engineer that the process for entering into this Agreement with Architect/Engineer, and performing District's obligations hereunder, complies with the requirements of California Public Resources Code §26235(c) and District's own procurement regulations and procedures.



CERTIFICATE OF LIABILITY INSURANCE

12/31/2016

DATE (MM/DD/YYYY)

5/31/2016

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 Lockton Insurance Brokers, LLC 19800 MacArthur Blvd., Suite 1250 CA License #0F15767 Irvine 92612 949-252-4400	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Continental Casualty Company</td> <td>20443</td> </tr> <tr> <td>INSURER B : Philadelphia Indemnity Insurance Company</td> <td>18058</td> </tr> <tr> <td>INSURER C : The Ohio Casualty Insurance Company</td> <td>24074</td> </tr> <tr> <td>INSURER D : Crum & Forster Specialty Insurance Co</td> <td>44520</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Continental Casualty Company	20443	INSURER B : Philadelphia Indemnity Insurance Company	18058	INSURER C : The Ohio Casualty Insurance Company	24074	INSURER D : Crum & Forster Specialty Insurance Co	44520	INSURER E :		INSURER F :
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INSURER D : Crum & Forster Specialty Insurance Co	44520														
INSURER E :															
INSURER F :															
INSURED 1385213 OpTerra Energy Services, Inc. 150 E. Colorado Blvd., Ste. 360 Pasadena CA 91105															

COVERAGES OPTEN32 **CERTIFICATE NUMBER:** 14082653 **REVISION NUMBER:** XXXXXXXX

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 <input checked="" type="checkbox"/> Deductible: \$0 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	4027212393	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y	N	PHPK1438105	12/31/2015	12/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX Comp./Coll Ded. \$ 1,000
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	N	N	4027212443	12/31/2015	12/31/2016	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$ XXXXXXXX
A	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/A	4025726568 (AOS) 5093303038 (CA)	12/31/2015 12/31/2015	12/31/2016 12/31/2016	<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
C D	2nd Layer Excess Prof/Poll Liability Ded:\$25K	N	N	ECO1655786240 PKC102790	12/31/2015 5/1/2015	12/31/2016 12/31/2016	Limit: \$7M-occ./Agg. Ea. Occ. \$10,000,000 Agg. \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 District and the State and their agents, representatives, employees, trustees, officers, and volunteers are Additional Insured(s) as per the attached endorsement or policy language. Insurance provided to Additional Insured(s) is primary and non-contributory as per the attached endorsements or policy language.

CERTIFICATE HOLDER

14082653
 Oakland Unified School District
 955 High Street
 Oakland CA 94601

CANCELLATION See Attachments

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

© 1988-2014 ACORD CORPORATION. All rights reserved.

2. We will not provide the additional insured any broader coverage or any higher limit of insurance than:

- a. The maximum permitted by law;
- b. Required by the "written contract";
- c. Described in **B.1.** above; or
- d. Afforded to you under this policy,

whichever is less.

3. Notwithstanding anything to the contrary in Condition **4. Other Insurance** (Section **IV**), this insurance is excess of all other insurance available to the additional insured whether on a primary, excess, contingent or any other basis. But if required by the "written contract" to be primary and non-contributory, this insurance will be primary and noncontributory relative to insurance on which the additional insured is a Named Insured.

4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:

- a. Acts or omissions of the additional insured, or of anyone, other than you, acting on the additional insured's behalf.
- b. The rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities; or
- c. Any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this Coverage Part.

C. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

1. The **Duties In The Event of Occurrence, Offense, Claim or Suit** condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement will as soon as practicable:

- (1) Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
- (2) Except as provided in Paragraph **B.3** of this endorsement, agree to make available any other insurance the additional insured has for a loss we cover under this Coverage Part;

Policy Number: 4027212393

Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

- H.** The coverage extended to any additional insured by this endorsement is limited to, and subject to all terms, conditions, and exclusions of the Coverage Part to which this endorsement is attached.

In addition, coverage shall not exceed the terms and conditions that are required by the terms of the written agreement to add any "insured," or to procure insurance.

- I.** The following additional exclusions apply:

The insurance afforded to any person or organization as an "insured" under this endorsement does not apply to "loss":

1. Which occurs prior to the date your contract is effective with such person or organization;
2. Arising out of the sole negligence of any person or organization that would not be an "insured" except for this endorsement; or
3. Which occurs after you returned the leased or rented "auto" to the lessor or the policy period ends, whichever occurs first.



AGREEMENT FOR ARCHITECTURAL SERVICES ROUTING FORM

Project Information			
Project Name	Prop 39 Energy Operations	Site	Various Sites
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	Op Terra Energy Services	Agency's Contact	Kelly Fergusson				
OUSD Vendor ID #	V070230	Title	Architect of Record				
Street Address	500 12 th St Suite 300	City	Oakland	State	CA	Zip	94607
Telephone	415-405-6673	Policy Expires					
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 #	16117						

Term			
Date Work Will Begin	6-22-2016	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-31-2017

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$192,214.40
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9230	Fund 01, General Fund	9189120801	6252	\$192,214.40

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
1.	Division Head	Phone	510-535-7038	Fax 510-535-7082
	Director, Facilities Planning and Management			
2.	Signature	Date Approved	6/7/16	
	General Counsel, Department of Facilities Planning and Management			
3.	Signature	Date Approved	6-9-16	
	Deputy Chief, Facilities Planning and Management			
4.	Signature	Date Approved	6-15-16	
	Senior Business Officer, Board of Education			
5.	Signature	Date Approved		
	President, Board of Education			