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Enactment Date	10-12-11



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

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

Board Meeting Date October 12, 2011

Subject Amendment No. 1, Professional Services Facilities Contract - ACC Environmental - Highland New Classroom Building Project

Action Requested Approval by the Board of Education of Amendment No. 1, Professional Services Facilities Contract with ACC Environmental for Testing Services on behalf of the District at Highland New Classroom Building Project in an amount not-to exceed \$10,255.00 increasing previous contract amount from \$9,861.00 to a not to exceed amount of \$20,116.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Background The initial Asbestos survey proved by ACC did not include roof samples to be taken from the existing RISE Main Building roof. Air Monitoring is required for the removal of hazardous materials.

Local Business Participation Percentage 100.00%

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the



planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of Amendment No. 1, Professional Services Facilities Contract with ACC Environmental for Testing Services on behalf of the District at Highland New Classroom Building Project in an amount not-to exceed \$10,255.00 increasing previous contract amount from \$9,861.00 to a not to exceed amount of \$20,116.00. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Fiscal Impact

The funding source for this project is General Obligation Bond-Measure B.

Attachments

- Professional Services Contract including scope of work

Key Code:

1269901833-6170



AMENDMENT NO. 1 TO PROFESSIONAL SERVICES CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **ACC Environmental**. OUSD entered into an Agreement with CONTRACTOR for services on October 9, 2009, and the parties agree to amend that Agreement as follows:

1. Services:	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> The scope of work has <u>changed</u> .
<p>If scope of work changed: Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. <u>Attach revised scope of work.</u></p> <p>The CONTRACTOR agrees to provide the following amended services: <u>The scope of work is to provide an Asbestos survey of the existing roofing material at the RISE Main Building. The results will be provided to the General Contractor to ensure the appropriate measures are taken for removal of the existing roofing material. Costs also accounts for the Air Monitoring if the sample testing does indicate the roof material does contain hazardous materials; also provide mold analysis from the Water Infiltration incident at the RISE building as well as provide soil analysis for the off-haul.</u></p>		
2. Terms (duration):	<input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input type="checkbox"/> The term of the contract has <u>changed</u> .
<p>If term is changed: The contract term is extended by an additional _____ (days/weeks/months), and the amended expiration date is _____, 20____.</p>		
3. Compensation:	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> The contract price has <u>changed</u> .
<p>If the compensation is changed: The contract price is amended by</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Increase of \$10,255.00 to original contract amount</p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease of \$ _____ to original contract amount</p> <p>and the new contract total is Twenty thousand, one hundred sixteen dollars and no cents (\$20,116.00)</p>		

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. **Amendment History:**

There are no previous amendments to this Agreement. This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

6. **Approval:** This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Board of Education, and the Superintendent as their designee.

OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee
 Gary Yee, President, Board of Education

10/13/11
 Date

Judy London
Edgar Rakestraw, Jr.
 Edgar Rakestraw, Jr., Secretary
 Board of Education

10/13/11
 Date
 Date

Timothy White
 Timothy White, Assistant Superintendent
 Facilities, Planning and Management

 Date

CONTRACTOR

Larry Everton
 Contractor Signature 9-13-11
 Date

LARRY EVERTON, PROJECT MANAGER
 Print Name, Title

PLANNING
 GEMENT
 DEPARTMENT
 15 8:39
 100966 SHEET
 100.CA.94601

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

!!

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

SCOPE OF WORK

Contractor Name: ACC Environmental

Billing Rate: Ten thousand, two hundred fifty-five dollars and no cents (\$10,255.00)

Description of Services to be Provided

1. Goals or Objectives

Air monitoring and materials testing.

2. Description of Services to be Provided

The scope of work is to provide an Asbestos survey of the existing roofing material at the RISE Main Building. The results will be provided to the General Contractor to ensure the appropriate measures are taken for removal of the existing roofing material. Costs also accounts for the Air Monitoring if the sample testing does indicate the roof material does contain hazardous materials; also provide mold analysis from the Water Infiltration incident at the RISE building as well as provide soil analysis for the off-haul.

3. Deliverables

Report on hazardous materials.



April 7, 2011

Mr. Kevin Newlon
Oakland Unified School District
955 High Street
Oakland, CA 94601

**RE: Asbestos Survey and Air Monitoring & Project Management
Highland Elementary School Roof
8521 A Street, Oakland, California
Proposal #62608**

Dear Mr. Newlon:

ACC Environmental Consultants, Inc., (ACC) is pleased to present this proposal to perform a limited asbestos survey and provide air monitoring & project management on the roof of Highland Elementary School.

SCOPE OF SERVICES

Task 1 - Asbestos Survey and Report

ACC shall perform a survey to determine the locations and quantities of all accessible friable and non-friable asbestos containing building materials (ACBMs) located on the roof of the referenced site.

The material sampling strategy will be in accordance with the guidelines as outlined in the EPA publication "Asbestos in Building: Simplified Sampling Scheme for Friable Surfacing Materials". At a minimum, 3 to 7 samples per homogeneous area of accessible friable material will be obtained for analysis. For non-friable materials 1 to 3 samples of each homogeneous material will be obtained and analyzed.

Samples will be delivered to a United States Environmental Protection Agency certified laboratory for analysis using Polarized Light Microscopy technique. The laboratory will be instructed not to analyze additional homogeneous material samples after a material tests positive. In the event PLM sample analysis identify any suspect materials as "trace" (less than 1% asbestos), ACC will submit those samples for PLM using NESHAPS approved point-counting analysis. PLM Point-counting will characterize the asbestos-concentration of the materials in question for appropriate waste transportation and disposal requirements.

ACC shall prepare an asbestos survey report, which will include; descriptions of ACBMs, descriptions of locations of ACBMs, and quantities of ACBMs of positive material.

Task 2 - Air Monitoring and Project Management

ACC shall provide air monitoring and project management services for the removal of asbestos containing material at the referenced site. These services include air monitoring, on-site management of contractor activities, environmental and final clearance sampling, visual inspections and project documentation.

At the completion of the project, ACC shall provide a final project documentation package. The package will include: written summary of the project, personal, environmental and clearance air monitoring results, contractor submittals, pressure differential monitoring log sheets, project notes and daily log sheets and certificates of visual inspection for each work area.

COST OF SERVICES

ACC shall be paid \$2,475.00 for performance of Task 1 and Task 2 as defined on the attached Environmental Cost Estimate #62608. This cost includes all labor, insurance, overhead, and transportation, equipment materials required to perform the work with the exception of a man-lift capable of reaching materials and/or surfaces greater than 12 feet in height.

ACC shall be paid the cost for sample analysis at a rate of \$25.00 per PLM sample and \$100.00 per TEM Sample. ACC estimates up to (15) PLM samples and (5) TEM samples will be collected of suspect asbestos-containing materials for an estimated total sampling cost of \$875.00. Samples collected in excess of the estimated number of samples indicated will be held for further client authorization.

Total for Task 1 and Task 2 is estimated at \$2,475.00. A cost breakdown is attached for your reference at the end of the proposal.

SCHEDULE OF SERVICES

ACC will proceed with the survey upon receipt of written authorization by Client. ACC understands that time is of the essence and is prepared to commence the survey for the project with twenty-four hour notice. ACC has designed the work using a team comprised of Cal/OSHA and DHS certified personnel to perform the asbestos survey work. ACC estimates the field investigation phase of the proposed services will take approximately two days. One additional mobilization to the property may be requested to confirm quantities once sampling results are received from the laboratory. ACC estimates sample analysis will take approximately three to five working days per building. Upon receipt of the final laboratory report, ACC shall finalize the survey report and deliver to Oakland Unified School District or its designated representative. One electronic copy of the report in Adobe Acrobat format will be delivered to Oakland Unified School District or its designated representative.

Additional conditions and/or exceptions to the proposed scope of services:

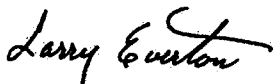
- 1) All pricing is based on normal working hours, Monday through Friday 7 AM to 5 PM. ACC is available for evening and weekend mobilizations per client needs. Emergency response, evening and weekend mobilizations will include an hourly surcharge as defined in the Terms and Conditions, on the attached fee schedule or identified above under "Cost of Services."
- 2) Costs include all labor, insurance, overhead, transportation, equipment and materials required to perform the work with the exception of a man-lift capable of reaching materials and/or surfaces greater than 12 feet in height. Equipment required to reach these surfaces will be provided by the client or designated client representatives.
- 3) Roofs higher than 15 feet with no roof access will be charged an additional fee based on necessary equipment to gain access. Additional trips to the subject property because areas are not accessible will be billed at \$85.00 per hour.
- 4) ACC is to be provided unencumbered access to all project areas. Additional trips to the subject property because areas are not accessible will be billed at \$85.00 per hour. Encumbered access or subsequent trips may delay the delivery of the final report.
- 5) ACC excludes sampling concrete and asphalt paving as suspect asbestos-containing materials. Aggregate found in these materials, if supplied from quarries located in known ultra-mafic areas may contain asbestos. It is possible that prior to recycling and/or disposal, recycling agents or landfills may require sampling of these materials to determine the presence of asbestos prior to acceptance.
- 6) This proposal does not include mold inspection, sample collection and/or analysis.

Oakland Unified School District – Highland Elementary School – Roof Survey & Air Monitoring/Project Management
Mr. Kevin Newlon
April 7, 2011

- 7) Sampling of single-ply membrane roof systems are excluded unless specifically directed to disturb the membrane by the client. Suspect Roofing materials underlying membrane systems may not be identified and should be sampled prior to disturbance.
- 8) ACC will provide temporary patching of roof sampling wounds but does not guarantee repairs and will not be responsible for and subsequent damage. ACC recommends using a qualified roofing contractor to facilitate any needed repairs to the roofing systems.

Thank you for this opportunity to provide services to Oakland Unified School District. Please contact me at (510) 638-8400 ext. 105 with any questions. If you would like for us to perform this work, please return a signed copy of this proposal to ACC.

Sincerely,
ACC ENVIRONMENTAL CONSULTANTS, INC.



Larry Everton
Senior Project Manager
Certified Asbestos Consultant (CAC #93-1215)

Approved:

By: _____
Title: _____
Date: _____
Purchase Order: _____

Initial all that applies to the approved scope of work:

- _____ Perform described asbestos survey and sampling
- _____ Perform destructive sampling (i.e. wall sampling, multi-layer floor sampling, roof sampling, etc.) Destructive sampling wounds will be covered as appropriate. Client shall be responsible for final repair of any sampling activities, including roofing repairs.

Oakland Unified School District – Highland Elementary School – Roof Survey & Air Monitoring/Project Management
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Environmental Project Cost Estimate

ACC Environmental Consultants, Inc.

Project Information

ACC Project No.: 62608 3029-229.00
 Project Name: **Roof Sampling & AM, PM
 Highland Elementary School**
 Project Location: Highland Elementary School
 8521 A Street
 Oakland, CA

Client Information

Kevin Newlon
 Oakland Unified School District
 955 High Street
 Oakland, CA 94601
 Phone: 510-879-2961
 Fax: 510-879-1860

Date Prepared: Tuesday, April 5, 2011

Scope of Work Summary

- Task 1 - Perform Roof Sampling at Highland Elementary School
- Task 2 - Provide air monitoring and project management at site.

Task Number and Description	Unit Price	Units	Quantity	Amount
Task 1 - Limited Asbestos Sampling				
Senior Project Manager/Designer	\$125.00	Hours	4	\$500.00
Technician Level II Normal Hrs.	\$85.00	Hours	4	\$340.00
Technical Writer/Editor	\$65.00	Hours	2	\$130.00
PLM (Asb. Bulk) - 24 Hours	\$25.00	Samples	15	\$375.00
			Task Sub-total:	\$1,345.00
Task 2 - Air Monitoring & Project Management				
Senior Project Manager/Designer	\$125.00	Hours	4	\$500.00
Technical Writer/Editor	\$65.00	Hours	2	\$130.00
Transmission Electron Microscopy (TEM) 24 Hour TAT	\$100.00	Samples	5	\$500.00
			Task Sub-total:	\$1,130.00
Total Environmental Consulting Services Cost:				\$2,475.00

Approved:

Name: _____
 Signature: _____
 Title: _____
 Date: _____
 PO Number: _____

All services subject to the Terms & Conditions between ACC and Client as of the date indicated above. Where no specific Terms & Conditions between ACC and Client exist, ACC's 2011 Standard Terms & Conditions apply to all services.

No. Cal. Office: 7977 Capwell Drive, Suite 100 • Oakland, California 94621 • Phone (510) 638-8400 • Fax: (510) 638-8404
 So. Cal. Office: 1055 Wilshire Blvd., Suite 1450 • Los Angeles, CA 90017 • (213) 353-1240 • Fax: (213) 353-1244



PROFESSIONAL SERVICES FACILITIES CONTRACT

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

- 1. Services: The CONTRACTOR shall provide the services as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services" or "Work").
2. Terms: CONTRACTOR shall commence work on October 15, 2009. The work shall be completed no later than December 31, 2011.
3. Compensation: OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Nine thousand, eight hundred sixty-one dollars and no cents (\$9,861.00). This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

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

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

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

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

- 4. Submittal of Documents: CONTRACTOR shall not commence the Work under this Contract until CONTRACTOR has submitted and OUSD has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- Signed Agreement
• Workers' Compensation Certification
• Insurance Certificates and Endorsements

- 5. Equipment and Materials: CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of the Agreement except: NA

3. CONTRACTOR Qualifications / Performance of Services.

- a. CONTRACTOR Qualifications. CONTRACTOR is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and regulations, as they may apply.
b. Standard of Care. CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

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

OUSD Representative:
Name: Timothy White
Site /Dept.: Facilities Planning and Management
Address: 955 High Street
Oakland, CA 94607
Phone: (510) 879-3664

CONTRACTOR:
Name: Julia Siudyla
Title: ACC Environmental Consultants
Address: 7977 Capwell Drive, Suite 100
Oakland, CA 94621
Phone: 510-638-8400

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change in address. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.

8. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
9. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all professional service contracts over the informal bidding threshold (Public Contract Code Section 20111). Contractors shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. A copy of the District's S/SL/SLRBE Policy can be obtained for the OUSD website: www.ousd.k12.ca.us
- a. For purposes of establishing a threshold for determining the application of the L/SL/SLRBE Program only, informal professional service contracts are valued at or under the current year's threshold pursuant to Public Contract Code Section 20111. (For 2009 the threshold is \$76,700, subject to change in 2010). All professional services contracts below the current threshold must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.
- b. In light of the twenty percent L/SL/SLRBE participation requirement for formally bid professional service contracts, good faith effort documentation is not necessary.
- c. Upon satisfying the twenty percent requirement, a Contractor will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. *Joint Venture and Mentor Protégé Agreements.* If a professional services contractor is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified SLBE or SLRBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval by proposal due date for professional services contracts. Joint Venture Applications and elements of a District approved Mentor Protégé relation are available upon request.
10. **Insurance:**
- 9.1 Without in any way limiting CONTRACTOR's liability under any other section of this Agreement, CONTRACTOR will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
- 9.1.1 Workers' Compensation Employers' Liability limits not less than each \$1,000,000 each accident, per disease, and aggregate. CONTRACTOR's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event CONTRACTOR is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
- 9.1.2 CONTRACTOR's right to self-insure is subject to approval by the District. As a condition to such approval, CONTRACTOR shall submit to the District evidence that CONTRACTOR maintains sufficient financial resources for said self-insurance.
- 9.1.3 Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from CONTRACTOR's or subcontractor's or sub-CONTRACTOR's operations.
- 9.1.4 Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
- 9.2 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
- 9.2.1 Name as Additional Insured District, its Directors, Officers, Employees, Agents, and Representatives.
- 9.2.2 That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- 9.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to District of cancellation, non-renewal or reduction in coverage, and certificates of all policies and endorsements shall be mailed to the following address:

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

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

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

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

9.7 District may, at its sole option, terminate this Agreement immediately, without notice to CONTRACTOR and without opportunity to cure the default, in the event of any lapse of required insurance coverage. District may, at its sole option, secure sufficient insurance coverage to replace any required insurance coverage, which has lapsed, and CONTRACTOR hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage. CONTRACTOR shall be responsible for any and all uninsured losses.

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

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

11. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.
12. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
13. **Anti-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s).
14. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.
15. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from:
 - a. any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement ;
 - b. CONTRACTOR shall indemnify, defend, and hold District, its directors, officers, agents, employees and representatives harmless from and against all claims, demands and judgments of any description arising out of or alleged to have arisen out of performance or nonperformance of the services under this Agreement to the extent that such claims, demands and judgments are the result of any error, omission or negligent act of CONTRACTOR or any person employed or agent engaged by CONTRACTOR.
 - c. CONTRACTOR shall place in its sub contracting / sub-consulting agreements and cause its sub-contractors / sub-CONTRACTORS to agree to indemnities, defense and insurance obligations in the exact form and substance of those contained herein, each naming the District as an additional beneficiary or insured.
16. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the

- name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
17. **Suspension of Work:** District may, without cause, order CONTRACTOR, in writing, to suspend, delay or interrupt the Work, for such periods of time as District may determine, in its sole discretion. Suspension shall be effected by delivery to CONTRACTOR of notice of suspension specifying the extent to which performance of the Work under the Agreement is suspended, and the date upon which suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered.
 18. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
 19. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
 20. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
 21. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate the CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:
 - a. Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.
 - b. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).
 22. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
 23. **Confidentiality.** The CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
 24. **Conflict of Interest.** CONTRACTOR shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement.

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

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

OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education

Superintendent

Secretary,
Board of Education

Assistant Superintendent,
Department of Facilities Planning and Management

10/15/09
Date

10/15/09
Date

_____ Date

CONTRACTOR

[Signature]
Contractor Signature

9-17-09
Date

Julia Studyla, Project Geologist
Print Name, Title

EXHIBIT "A" Scope of Work

DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR's entire Proposal is made part of this Agreement

SCOPE OF WORK

Contractor Name: ACC Environmental Consultants

Billing Rate: Nine thousand, eight hundred and sixty-one dollars and no cents (\$9,861.00)

Description of Services to be Provided

The scope of the project is to provide environmental consulting services for the Highland New Classroom Building project. These services are to include a shallow soil characterization report which will be prepared based on the results of six borings on the site, to a depth of 12 feet. Services also include any permits necessary to collect these samples. The shallow soil characterization report will look at 17 California Assessment Manual Metals (CAM 17 Metals), Polynuclear Aromatic Hydrocarbons (PAH's), Pesticides, Polychlorinated Biphenyl's (PCBs), Total Extractable Petroleum Hydrocarbons (TEPH), and Volatile Organic Compounds (VOCs). The attached proposal is incorporated into the contract to the extent that it is subordinate to and not inconsistent with the contract terms.

Notice: This page includes two separate forms.

Directions:

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

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

Check only one of the boxes below.

<input checked="" type="checkbox"/> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.	<input type="checkbox"/> I do not employ anyone in the manner subject to the workers' compensation laws of California.
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CONTRACTOR Name: ACC Environmental Consultants

Contractor Signature:  Date: 9-17-09

Print Name and Title: Julia Sindyla, Project Geologist

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with OUSD prior to performing any Work under this Contract.)

GENERAL LIABILITY INSURANCE WAIVER REQUEST FORM

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

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

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

CONTRACTOR Name: _____

Contractor Signature: _____ Date: _____

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/30/2009

AGENCY
 ENVIRONMENTAL INS BROKERS INC
 137 SUNCAST LN., SUITE #103
 DORADO HILLS, CA 95762
 (916) 939-1080

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
 ACC ENVIRONMENTAL CONSULTANTS, INC.
 7977 CAPWELL DRIVE, SUITE 100
 OAKLAND, CA 94621

INSURER A: ENDURANCE AMERICAN SPEC. INS. 41718
 INSURER B: PROGRESSIVE INSURANCE CO. #10192
 INSURER C: OAK RIVER INS. CO. #34630
 INSURER D: OBE INS. CO. #39217
 INSURER E:

TERMS AND CONDITIONS

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 WHICH MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> POLLUTION LIAB. <input type="checkbox"/> (CLAIMS MADE) GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	ECC101003650-00 CPL RETRO: 3/20/89	10/28/08	10/28/09	EACH OCCURRENCE \$5,000,000 FIRE DAMAGE (Any one fire) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE \$5,000,000 PRODUCTS - COMPROP AGG \$5,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	02447227-5	01/13/09	01/13/10	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	2210008121-091	05/01/09	05/01/10	<input checked="" type="checkbox"/> W/C STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
OTHER PROF. LIAB. INC. IN GL ABOVE PROPERTY/EQUIP.	ECC101003650-00 PL RETRO: 3/20/89 2699500	10/28/08 12/30/08	10/28/09 12/30/09	\$5,000,000 OCCURRENCE \$5,000,000 AGGREGATE

OPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

: ALL O.U.S.D. PROJECTS / VARIOUS LOCATIONS / ALL OPERATIONS
 OAKLAND UNIFIED SCHOOL DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS
 REPRESENTATIVES HAVE BEEN NAMED AS ADDITIONAL INSURED WITH RESPECT TO THE
 GENERAL LIABILITY. WAIVER OF SUBROGATION APPLIES TO W/C COVERAGE.
 (ENDORSEMENT'S ATTACHED)

CERTIFICATE HOLDER
 OAKLAND UNIFIED SCHOOL DISTRICT
 ATTN: SUSIE BUTLER BERKELEY
 955 HIGH STREET
 OAKLAND, CA 94607

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
Matthew C Walker



An Employee Owned Company

August 21, 2009

Mr. Kevin Newlon
Oakland Unified School District
955 High Street
Oakland, California 94601

RE: Proposal for Environmental Consulting Services
Highland Elementary School, 8521 A Street, Oakland, California

Dear Mr. Newlon:

ACC Environmental Consultants, Inc., (ACC) is pleased to present you with this Proposal for Environmental Consulting Services to conduct a shallow soil characterization at the above-referenced site. Enclosed is a not-to-exceed cost estimate for consulting services and proposed tasks. You will only be billed for actual services performed and costs incurred. Enclosed please find a copy of the proposal. Please sign this copy, return one copy to ACC, and retain the original for your files.

It has been request for ACC to characterize soils for reuse or proper disposal. ACC has included methodology and recommendations that we believe will maximize the quality of the data obtained for cost effectively disposing of excess soil generated during site development.

If you have any questions about this proposal, please contact me at (510) 638-8400, extension 110, or at jstudyla@accenv.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julia Studyla', is written over a horizontal line.

Julia Studyla
Project Geologist

Enclosure

PROPOSAL FOR ENVIRONMENTAL CONSULTING SERVICES

ACC Environmental Consultants, Inc., (ACC) presents this proposal to characterize shallow soil for suspect constituents of concern at Highland Elementary School located at 8521 A Street, Oakland, California (Site) for the Oakland Unified School District (Client).

BACKGROUND

The Site is located at 8521 A Street in Oakland, California. ACC understands a new building will be constructed on the site where the playground currently exists. This will require the removal and/or disturbance of the soil in this area.

RATIONALE FOR PROPOSED SCOPE OF WORK

Excess soil will likely be generated in order to install foundation, foundation footings, and utilities. ACC will characterize the site soils for potential reuse, potential worker safety issues and meeting local landfill soil acceptance criteria.

In order to achieve the goals summarized in the Introduction and properly characterize constituents of concern in soil, ACC recommends advancing six exploratory soil borings to a maximum depth of 12 feet below ground surface (bgs) across the area to be developed. Six exploratory soil borings can be advanced in one business day using limited access or truck-mounted Geoprobe™ equipment. Site conditions will dictate the total depth of the soil borings so that soil will be adequately characterized to the estimated depth of at-grade construction and all areas of the Site are assessed.

ACC will collect three representative soil samples in each soil boring, and initially analyze one composite soil sample per boring for 17 California Assessment Manual metals (CAM 17 Metals) by EPA Method 6010, Polynuclear Aromatic Hydrocarbons (PAH) by EPA Method 8270, Pesticides by EPA Method 8081, Polychlorinated Biphenyl's (PCBs) by EPA Method 8082, Total Extractable Petroleum Hydrocarbons (TEPH) by EPA Method 8015m, Total Petroleum Hydrocarbons as Gasoline by EPA Method 8260, and Volatile Organic Compounds (VOCs) by EPA Method 8260. Soil boring locations will be finalized following utility clearance from Underground Service Alert (USA) but may be changed in the field based on subsurface observations, physical limitations, or proximity to known or suspect utilities.

The laboratory will hold all collected soil samples in the event more comprehensive sample analysis is warranted or further delineation of potential contamination is warranted. Based on the analytical results and experience with landfill acceptance criteria, the soil samples may need to be further analyzed for constituents to satisfy landfill soil profiling requirements.

SCOPE OF SERVICES

TASK 1 - Project Coordination and Permitting

ACC will provide project coordination and prepare a site-specific health and safety plan for the proposed work. ACC will contact Underground Services Alert to locate any underground public utilities prior to performing boring and sampling activities and obtain any necessary permits. A permit from the Alameda County Public Works Agency is required for exploratory borings in Oakland.

TASK 2 - Soil Boring Investigation and Sampling

Six exploratory soil borings will be advanced with truck-mounted Geoprobe® drilling equipment from the surface to a maximum depth of 12 feet bgs. Three soil samples will be collected for analysis from each boring at a depth estimated to provide the optimum information about subsurface conditions. Upon completion, the borings will be grouted to the approximate surface and the surface will be restored with concrete/asphalt/soil to match its original condition.

Select samples will be submitted to a state-certified analytical laboratory following standard chain of custody procedures for analysis. The Client will be notified if additional samples warrant analysis.

TASK 3 - Technical Report

Upon receipt of the analytical results, ACC will prepare a summary report of findings from the boring investigation. Included with the summary report will be a scaled site plan depicting sample locations, an evaluation of sample analytical results, and pertinent discussion, conclusions, and recommendations.

COST OF SERVICES

Please see the "Environmental Cost Estimate" sheet for costs of services. This is a "Not-to-Exceed" estimate. Any additional hours for this task will be unit price and performed with the permission of the client.

SCHEDULE OF SERVICES

The exploratory soil boring permit takes 10 business days, field work requires one full business day, analytical results take 5-7 business days (5 days is normal turnaround), and the report of findings can be prepared within 10 business days of receipt of the analytical results. The estimated time from notice to proceed to final report is 21 to 25 business days. The estimated time to complete field work is one full business day. ACC assumes a truck-mounted rig can be used for this project and ACC will have full access to the site.

EXCLUSIONS

Due to the limited information available, costs associated with unusual or unforeseen circumstances, including but not limited to, unidentified conduits or other nonstandard construction features or conditions are not included in this proposal. Other costs not included are as follows:

- Costs for sample analysis related to unknown constituents.
- Remedial actions that may be required by the federal, state, or local agencies if contamination has occurred and exceeds the maximum allowable levels.
- This proposal does not include the cost for an onsite utility locating service.

In the event that these conditions or circumstances are encountered, you will be notified before ACC proceeds with any extra work. The fees specified in this proposal would be adjusted to allow for these conditions on a time and material basis.

APPROVAL

Please indicate your acceptance of this proposal by signing below and returning an executed copy to our office. This proposal is subject to the attached "General Terms and Conditions Exhibit A." **Work will commence upon receipt of an executed copy of the agreement.** Full payment is due upon submission of the letter report of findings. Any additional services requested by Client after submission of the reports will be invoiced on a Time and Materials Basis in accordance with the compensation schedule in the attached Exhibit A.

ACC looks forward to working with you on this project. Please call me if you have any questions at (510) 638-8400, ext. 110 or email me at jsiudyla@accenv.com.

Sincerely,



Julia Siudyla
Project Geologist

BY: _____

TITLE: _____

DATE: _____

Enclosures

Environmental Project Cost Estimate

ACC Environmental Consultants, Inc.

Project Information

Prospect Information

ACC Project No.: 60640

Project Name: **Shallow Soil Sampling- New Construction**

Oakland Unified School District
955 High Street
Oakland, CA 94601
Phone: (510) 836-8385
Fax:

Project Location: Highland Elementary School
8521 A Street
Oakland, CA

Proposal No. 640

Date Prepared: Monday, August 24, 2009

Task Number and Description	Unit Price	Units	Quantity	Amount
1.0 Project Coordination and Permitting				
1.1 Project Coordination				
Project Geologist	\$90.00	Each	2	\$180.00
1.2 Mark for USA				
Mileage	\$0.50	Miles	12	\$6.00
Professional Geologist	\$155.00	Hours	2	\$310.00
1.3 Obtain Drilling Permit				
Permit	\$230.00	Each	1	\$230.00
1.4 Site Safety Plan				
Site Safety Plan	\$250.00	Each	1	\$250.00
Task Sub-total:				\$976.00
2.0 Soil Boring Investigation and Sampling				
2.1 Field Investigation				
Drilling Subcontractor (Full Day)	\$3,200.00	Lump Sum	1	\$3,200.00
Miscellaneous Supplies	\$25.00	Lump Sum	1	\$25.00
Project Geologist	\$90.00	Each	10	\$900.00
2.2 Sample Analyses				
CAM 17 Metals	\$90.00	Samples	6	\$540.00
Compositing Fee	\$10.00	Lump Sum	6	\$60.00
PAHs / PNAs	\$175.00	Samples	6	\$1,050.00
Pesticides (organophosphorous)	\$80.00	Samples	6	\$480.00
Phenols (soil)	\$60.00	Each	6	\$360.00
TEPH	\$75.00	Samples	6	\$450.00
TPHg (Soil)	\$50.00	Samples	6	\$300.00
VOCs (soil)	\$80.00	Each	6	\$480.00
Task Sub-total:				\$7,845.00
3.0 Technical Report				
Administrative Support Personnel	\$60.00	Hours	1	\$60.00
CAD Draftsperson	\$65.00	Hours	2	\$130.00
Professional Geologist	\$155.00	Hours	2	\$310.00
Project Geologist	\$90.00	Each	6	\$540.00
Task Sub-total:				\$1,040.00

All services subject to the Terms & Conditions between ACC and Client as of the date indicated above. Where no specific Terms & Conditions between ACC and Client exist, ACC's 2008 Standard Terms & Conditions apply to all services.

No. Cal. Office: 7977 Capwell Drive, Suite 100 • Oakland, California 94621 • Phone (510) 638-8400 • Fax: (510) 638-8404
So. Cal. Office: 1545 Wilshire Blvd., Suite 500 • Los Angeles, CA 90017 • (213) 353-1240 • Fax: (213) 353-1244

ACC Project No.:

Oakland Unified School District

Project Name: **Shallow Soil Sampling- New Construction**

Newlon, Kevin

Date Prepared: **Monday, August 24, 2009**

Task Number and Description	Unit Price	Units	Quantity	Amount
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Subtotal Labor: \$2,680.00

Subtotal Expense: \$3,461.00

Subtotal Lab: \$3,720.00

Total Environmental Consulting Services Cost: \$9,861.00

All services subject to the Terms & Conditions between ACC and Client as of the date indicated above. Where no specific Terms & Conditions between ACC and Client exist, ACC's 2008 Standard Terms & Conditions apply to all services.

No. Cal. Office: 7977 Capwell Drive, Suite 100 • Oakland, California 94621 • Phone (510) 638-8400 • Fax: (510) 638-8404
So. Cal. Office: 1545 Wilshire Blvd., Suite 500 • Los Angeles, CA 90017 • (213) 353-1240 • Fax: (213) 353-1244

**ACC ENVIRONMENTAL CONSULTANTS, INC.
CONSULTING SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS (Exhibit A)**

Exhibit A - Page 1 of 5

February 2009

ARTICLE I. CONSULTING SERVICES

Consulting Services as used herein, refer to those services which include, where appropriate: 1) Asbestos surveys, project design and management; 2) lead-based paint surveys, project design, and management; 3) Indoor air quality and biological investigation, testing, project design and management; 4) Environmental Site Assessments (ESA), including Phase I ESAs performed in accordance with ASTM Practices E-1527-00 and E1528-00; 5) Soil and groundwater monitoring, testing and consulting; 6) Remedial project design; 7) Storage tank removal project design and management; 8) Regulatory compliance consulting; 9) General construction management and consulting; 10) Energy auditing and consulting; 11) Environmental sample collection and analysis; and 12) Software programming, distribution, support and related services.

ARTICLE II. ADDITIONAL SERVICES

Client may request that ACC perform consulting services in addition to those services specified in "SCOPE OF SERVICES" of the proposed consulting services to which these terms and conditions are attached and of which these terms and conditions form a part (which agreement, together with all exhibits incorporated therein, including these terms and conditions, shall be referred to collectively as the "Agreement"). If ACC agrees to perform such services, such additional services will be performed on a time and materials basis and invoiced, in addition to the fixed fee or cost ceiling amount set forth in the Agreement, in accordance with the compensation schedules set forth within the Proposal, Scope of Services, Cost Estimate, or attached Fee Schedule.

II.1 Labor Cost - Labor cost shall be the total number of hours worked on the project by each employee times the employee's hourly rate as indicated on the attached Proposal, Scope of Services, Cost Estimate, or Fee Schedule.

Rates will apply between the hours of 6:00 AM and 8:00 PM Monday through Friday. Night hours on weekdays, Monday through Thursday, shall be charged at 125% of the day base rates or as indicated. Weekend hours, between 8:00 PM Friday and 6:00 AM Monday, shall be charged at 150% of the base rates quoted or as indicated. Minimum charge for Technicians shall be four (4) hours per day. All rates stated herein will remain in effect through January 31, 2010. Comparable rates, reflecting prevailing industry standards, will be annually re-negotiated if the contract period is extended past January 31, 2010.

II.2 Direct Costs - Unless otherwise stated, direct non-salary costs shall be actual costs plus 15% service charge covering overhead and profit on all such actual costs which shall include but not be limited to the following:

II.2.a. Services directly applicable to the work, such as special legal and accounting expenses, computer time or rental and programming costs, laboratory charges and similar costs not applicable to general overhead.

II.2.b. Identifiable reproduction costs applicable to the work such as drawings, photocopying, printing, binding and similar costs.

II.2.c. Identifiable communication expenses such as long distance telephone, telegraph, facsimile and delivery charges and postage other than for general correspondence.

II.2.d. Living and travel expenses of employees when away from home office on business directly connected with the work.

II.2.e. Transportation expenses for local travel directly connected with the work, including automobile mileage reimbursement at actual rates not to exceed \$0.50 per mile, bridge tolls, parking fees and related expenses.

II.2.f. Direct materials and supplies acquired for or consumed solely for the work under this Agreement and not normally provided as part of overhead.

II.3. Subcontracted Services ACC may engage subcontractors to perform services that are typically performed by subcontractors and that comprise a portion of the Work. If ACC seeks to engage a subcontractor to perform services not typically performed by a subcontractor, ACC shall obtain the written approval of Client to engage such subcontractor. Subcontracted services and outside consultant costs shall be costs plus 15% service charge covering overhead and profit.

Client acknowledges any stop in the Work ordered by Client or delay caused by Client or Client's agents, representatives or contractors in providing necessary data, or by any change to project plans or in the laws governing procedures as they exist on the date of this Agreement may require additional services, changes in the schedule of services, and/or changes in the fee. Client shall notify ACC in writing of any changes to the project plans. Following (a) written notification to ACC of changes to the project plans; (b) any changes in the laws governing procedures; or (c) the accumulation of more than ten (10) working days of delays or stops in Work, ACC shall identify, and shall notify Client in writing of, any additional services required, changes in the schedule of services, and/or added fee required, as a result of those changes, work stoppage or delay. If Client does not notify ACC in writing of any objections it has to the performance of additional services, changes to the schedule or additional fees identified in such written notification within ten (10) days of Client's receipt of the notification, Client shall be deemed to have accepted the changes in the Work and the schedule and any additional fees described in the notification. If Client objects to any changes in the Work, the schedule or to additional fees proposed in the notification, ACC may suspend its performance of the Work until ACC and the Client agree on additional services, changes to the schedule and any additional fees.

The services specified in the "SCOPE OF SERVICES", together with any additional services that ACC agrees to perform shall be referred to collectively in these general terms and conditions as "Work."

ARTICLE III. PAYMENT

ACC shall invoice Client monthly and following the completion of the Work. Invoices are due and payable upon receipt. In the event that any payment of an invoice is not received by ACC within thirty (30) days after client's receipt of the invoice, Client shall pay to ACC an additional charge of 1% of the invoice amount per month or the maximum amount permitted by law, whichever is less, accruing from the date of the invoice. This charge is intended to cover, at least in part, the additional costs imposed on ACC by overdue accounts. In the event that an invoice is not paid within thirty (30) days of Client's receipt of the invoice, ACC shall have the right to suspend its performance of the Work and withhold any unreleased reports until all outstanding invoices are paid in full. In the event that ACC is required to report to any environmental regulatory agency or any other government agency with respect to its performance of the Work, ACC also reserves the right to notify this agency that it is suspending its performance of the Work and withholding all unreleased reports due to non-payment of its invoices. There shall be added to all charges due under the Agreement amounts equal to any applicable sales or use taxes now or hereafter imposed under the authority of a federal, state or local taxing jurisdiction.

Client's obligations pursuant to this Article shall survive termination of the Agreement.

ARTICLE IV. PERIOD AND SCOPE OF AGREEMENT

The Agreement shall become effective on the date noted in the first paragraph of the Agreement, and except as provided in Articles XVIII and XX below, shall continue until completion of the Work.

ACC ENVIRONMENTAL CONSULTANTS, INC.
CONSULTING SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS (Exhibit A)

Exhibit A - Page 2 of 5
February, 2009

ARTICLE V. PREPARATION OF DOCUMENTS

Any reports, specifications, and other documents prepared by ACC shall be prepared in accordance with standards deemed reasonable by general industry standards. ACC shall not be responsible for the content, format, errors or omissions in any such documents unless such content, format, errors or omissions result from ACC's willful misconduct or gross negligence. ACC shall not be liable for costs or damages to Client or to third parties caused by delay or termination of any project due to judicial or administrative action, with respect to any documents prepared by ACC, regardless of the basis of such action. ACC shall not be liable for costs or damages caused by errors or omissions of any government agency or agencies in specifying the content or methodology of documents prepared by ACC.

ARTICLE VI. STANDARD OF CARE

ACC shall perform the Work in a manner consistent with the level of standards of care and skill ordinarily exercised by professionals performing comparable services under comparable circumstances at the time ACC's services are performed. Client recognizes that those standards may subsequently change because of modifications in the state of practice and acknowledges that ACC shall not be required to foresee or perform in accordance with such standards. No express or implied warranty or guarantee is included in or intended by the Agreement. No statements contained in any report, opinion, document or otherwise, whether prepared prior to, at the same time as, or subsequent to the Agreement constitute any warranty or guarantee by ACC as to the Work.

In the performance of Phase I Environmental Site Assessments ("Phase I ESA"), ACC shall conduct the investigation in conformance to industry standards and current professional practice and will be limited to visual observation of surface conditions at the site, interviews with public agency personnel and knowledgeable persons, and a review of readily available reports and literature. The likelihood of hazardous substance contamination resulting from past and current known uses of the site and immediately adjacent properties will be the focus of the Phase I ESA investigation. As a result, certain conditions may not be identified in the report. These include contaminant plumes below the ground surface from a remote source; contamination incurred following the site reconnaissance by ACC; levels of contamination that are below current regulatory standards but exceed possible future standards; and naturally occurring chemical, biological or other toxics in the surface or subsurface environment.

It is possible that materials currently existing, or that may exist in the future, at the site may be considered hazardous. Regulatory evaluation criteria are constantly changing, and concentrations of contaminants presently considered low may, in the future, fall under more stringent regulatory standards that require remediation. Judgments and opinions expressed by ACC, which are based on our understanding and interpretation of current regulatory standards, should not be construed as legal opinions.

Unless otherwise noted in the proposal or scope of work, the following conditions apply to all Work:

- 1) ACC shall not be responsible for identifying asbestos-containing materials, lead-paint, biological growth, or other contaminant, environmental concern or hazard concealed behind walls, under or above surface finishes, behind or below furnishings and fixtures, or areas otherwise inaccessible during any investigation or other related work on the project. Written direction shall be provided by the Client to ACC to perform intrusive and/or destructive sampling on specific building systems. Intrusive and/or destructive sampling will be performed if the subject area(s) are unoccupied at the time of the survey and performing destructive/intrusive sampling does not create unsafe conditions. ACC will temporarily cover or patch sampling wounds on Thermal Systems Insulation (TSI) and roofing. It is the Client's responsibility to provide final repair to all sampling wounds, including roofing systems.
- 2) All pricing is based on normal working hours, Monday through Friday 7 AM to 5 PM. ACC is available for evening and weekend mobilizations per client needs at additional costs. Emergency response, evening and weekend mobilizations will include an hourly surcharge as defined in the Terms and Conditions, on the attached fee schedule, or identified above under "Cost of Services."
- 3) Costs include all labor, insurance, overhead, transportation, equipment and materials required to perform the work with the exception of a man-lift capable of reaching materials and/or surfaces greater than 12 feet in height. Equipment required to reach these surfaces will be provided by the client or designated client representatives.
- 4) Roofs higher than 15 feet with no preexisting roof access will be charged an additional fee based on necessary equipment to gain access. Additional trips to the subject property because areas are not accessible will be billed at designated hourly rates.
- 5) ACC is to be provided unencumbered access to all project areas. Additional trips to the subject property because areas are not accessible will be billed at designated hourly rates. Encumbered access or subsequent trips may delay the delivery of the final report.
- 6) ACC excludes sampling concrete and asphalt paving as suspect asbestos-containing materials. Aggregate found in these materials, if supplied from quarries located in known ultra-mafic areas may contain asbestos. It is possible that prior to recycling and/or disposal, recycling agents or landfills may require sampling of these materials to determine the presence of asbestos prior to acceptance. Sampling of these materials, at additional cost, will be conducted upon request by Client.
- 7) ACC excludes characterization of soils in areas on known ultramafic rock (where naturally occurring asbestos may be found in soils). ACC can conduct a geologic evaluation and subsequent sampling to determine the presence of naturally occurring asbestos at additional costs if requested. The project area is located within a known ultramafic rock area and provisions should be made to address regulatory requirements for any planned excavation and grading as part of the project.
- 8) Sampling of single-ply membrane roof systems are excluded unless specifically directed to disturb the membrane roofing system by Client. Suspect Roofing materials underlying membrane systems may not be identified and should be sampled prior to disturbance.
- 9) ACC will provide temporary patching of roof sampling wounds but does not guarantee repairs and will not be responsible for and subsequent damage. ACC recommends using a qualified roofing contractor to facilitate any needed repairs to the roofing systems.
- 10) Laboratories quantify asbestos concentrations by calibrated visual estimation using standard PLM methodology, with detection of asbestos is material/matrix dependent. Detection of trace asbestos (<1%) may not be reliable or reproducible by PLM and percentage of asbestos weight can not be determined with standard PLM methodology. Confirmation of asbestos concentrations within complex matrices (i.e. plaster, gypsum wallboard/taping/joint compounds, stucco, resilient flooring, roofing) or when asbestos concentrations are 1% or less may warrant additional analysis by PLM point counting, gravimetric reduction or Transmission Electron Microscopy for proper characterization of asbestos-containing materials and/or waste-stream analysis.

**ACC ENVIRONMENTAL CONSULTANTS, INC.
CONSULTING SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS (Exhibit A)**

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February, 2009

ARTICLE VII. LIMITATION OF REMEDY

Notwithstanding anything to the contrary in this Agreement, the total cumulative liability of ACC shall not exceed the available proceeds with respect to such liability under insurance coverage carried by ACC. Client shall indemnify, defend and hold harmless ACC for any liability in excess of such insurance coverage. This Article shall survive termination of the Agreement.

ARTICLE VIII. ACCESS TO PROPERTY

Client recognizes that performance of duties hereunder will require that employees, consultants, agents and/or subcontractors of ACC be on, in and about the project site. Client grants to ACC and warrants (if the project site is not owned by Client) that permission has been granted for a right of entry from time to time for ACC, its employees, consultants, agents and subcontractors, on the project site for the purposes of performing the Work.

ARTICLE IX. HAZARDOUS OR UNSAFE CONDITIONS

Client has fully informed ACC of the type, quantity, and location of any hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions which may affect the Project which Client knows to exist. If Client hereafter becomes aware of any such information, Client shall immediately inform ACC. The discovery of unanticipated hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions constitutes a Changed Condition which may justify a revision to Services. If ACC takes emergency measures to protect the health and safety of ACC Parties and/or the public or to prevent undue harm to the environment, the Fee shall be appropriately adjusted to compensate ACC for the cost of such emergency measures.

ACC shall not be responsible for the health and safety of any persons other than ACC Parties, nor shall it have any responsibility for the operations, procedures or practices of persons or entities other than ACC Parties. This Article shall survive termination of the Agreement.

ARTICLE X. UNDERGROUND UTILITIES

Client shall designate to ACC the location of all subsurface utility lines and other subsurface man-made objects, including but not limited to pipes, tanks, cables, etc. (in this Agreement collectively called "underground utilities") within the boundaries of the job site. ACC will conduct at Client's expense such additional research as in ACC's professional opinion is appropriate to attempt to verify the location of any underground utilities at the job site, but Client shall remain responsible for the accurate designation of their location and shall indemnify, defend and hold ACC harmless from any liability for injury or loss arising from damage to any inaccurately located underground utilities. Client warrants the accuracy of any information supplied by it to ACC, acknowledges that ACC may not verify the accuracy of such information and agrees that ACC is entitled to rely upon any information supplied by Client.

ACC shall not be liable for any damage or injury resulting from damage to subterranean or unexposed structures or elements (including but not limited to pipes, wires, cables, tanks) that are not called to ACC's attention and correctly shown on any plans furnished to ACC by Client, even if such damage or injury results from Work performed by ACC. This Article shall survive termination of the Agreement.

ARTICLE XI. REPORTING AND DISPOSAL REQUIREMENTS

Nothing contained in this Agreement shall be construed or interpreted as requiring ACC to assume the status of an owner, operator, generator, person who arranges for disposal, transporting, storing, treatment or disposal facility as those terms appear within any federal or state statute governing the treatment, storage, and disposal of hazardous substances or wastes. Client shall be solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies of the existence of any hazardous, toxic or dangerous materials located on or in the Project Site(s), or discovered during the performance of this Agreement. Client shall be responsible for making and paying for all necessary arrangements to lawfully store, treat, recycle, dispose of or otherwise handle hazardous or toxic substances or wastes, including, but not limited to, samples and cuttings, to be handled in connections with the Project. ACC may, in its sole discretion, agree to make such arrangements on behalf of Client, as Client's agent. This Article shall survive termination of the Agreement.

ARTICLE XII. DOCUMENTATION, SAMPLES AND CUTTINGS

ACC shall not be obligated to retain project related reports, notes, submittals, or other documentation (including final documentation) as ACC deems necessary for no longer than five (5) years after the issuance of any final survey report, specifications, and/or project documentation. ACC shall not be obligated to notify Client prior to any discharge of said documentation.

ACC shall not be obligated to preserve such soil, rock, water, air and/or other samples obtained from the Project Site(s) as ACC deems necessary for no longer than forty five (45) days after the issuance of any document that includes the date of sample collection. ACC shall not be obligated to notify Client prior to any discharge of said samples.

This Article shall survive termination of the Agreement.

ARTICLE XIII. CHANGED CONDITIONS

If, during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by ACC at the commencement of this Agreement, and which materially affect ACC's ability to perform the Services or which would materially increase the costs to ACC of performing the Services, then ACC shall notify Client in writing of the newly discovered conditions or circumstances, and Client and ACC shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within 30 days after notice, ACC may terminate this Agreement and be compensated as set forth under Article XX.

ARTICLE XIV. CONFIDENTIALITY

To the extent that (a) data and information which are submitted to ACC by Client to enable ACC to perform the Work and (b) data and information obtained by ACC in performing the Work are designated by Client in writing as containing information that is confidential or proprietary to Client, such data and information shall be considered as confidential and shall not be disclosed by ACC to any third party without the written consent of Client within five (5) years from the earlier of (a) the date of completion of the Work; and (b) termination of the Agreement. Notwithstanding the foregoing, ACC shall not be required to keep confidential any data or information that (a) are or become publicly available through means other than by disclosure of ACC; (b) are independently developed by ACC without the use of any data provided by or gathered from Client; (c) are rightfully obtained from third parties; or (d) that must be made public for ACC to comply with applicable laws, rules or regulation. Client acknowledges and agrees that ACC may provide data and information that it receives from Client to federal, state or local environmental regulatory agencies or other governmental agencies, if ACC is required by applicable laws, rules or regulations to provide such data and information. This Article shall survive termination of the Agreement.

**ACC ENVIRONMENTAL CONSULTANTS, INC.
CONSULTING SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS (Exhibit A)**

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February, 2009

ARTICLE XV. RIGHTS IN DATA

Following ACC's request for such data or information, Client shall deliver to ACC in a timely manner all data and information in Client's possession that are required for ACC's performance of the Work.

Provided that ACC has been fully paid for its services, Client shall have the right to use all original written material including reports, specifications, drawings, blueprints, working notes, photographs, graphical representations and other documentation prepared for the Client pursuant to the Agreement (the "Materials"), but only for the purpose expressly contemplated in the Agreement. Client shall not use the Materials for other projects, for additions to the subject project, or for portions of the project following the termination of the Agreement, except by permission granted by ACC in a written agreement that provides for the payment of a fee that is mutually agreed on. Client may not alter, update or revise any of the Materials without ACC's written authorization. Client agrees to indemnify, defend and hold ACC harmless against any claims arising from any third parties' use of or reliance on the Materials that is not expressly authorized in the Agreement. This Article shall survive termination of the Agreement.

ARTICLE XVI. PERSONNEL SUPPLIED BY ACC

ACC will select and allocate personnel to perform the Work, including its employees, consultants, subcontractors and other personnel which ACC may from time to time deem suitable. ACC will, however, make reasonable efforts consistent with sound business practice to honor Client's specific requests for assignment of personnel.

ARTICLE XVII. EXCUSABLE DELAY

ACC shall not be responsible for any delay in performing or completing the Work due to fires, strikes, labor disputes, war, civil commotion, delays in transportation, delays in receipt of requested information, delays in reviews of reports or data, shortages of labor or material, untimely illness, death or disability of employees, legal action of third parties, changes in laws or regulations, or other causes or events beyond the reasonable control of ACC. Any such event that is beyond the reasonable control of ACC shall justify the suspension of delivery of services and shall extend the time of performance to such extent as may be necessary to enable ACC to perform the Work with reasonable diligence after the event that caused the delay ceases to prevent ACC from performing the Work. In addition, ACC may be entitled to an equitable adjustment in its fees following such delay. This Article shall survive termination of the Agreement.

ARTICLE XVIII. DEFAULTS

Client shall be considered to be in default under the Agreement if Client (a) fails to pay any sum to be paid hereunder or fails to fulfill any other obligation or perform any other duty and such failure continues for five (5) days after written notice thereof is given to Client, or (b) ceases doing business as a going concern or is named as the bankrupt party under any proceedings under the Bankruptcy Act or other insolvency laws (voluntary or involuntary), unless, solely in the case of any involuntary insolvency proceeding, such proceeding is dismissed, within thirty (30) days of its filing. If the Client is in default, ACC shall have the right to terminate the Agreement.

No right or remedy conferred on ACC under this Article shall be exclusive of any other right or remedy of ACC of whatever kind. No failure by ACC to insist upon the strict performance of any terms hereof or to exercise any right of remedy following a default by Client and no acceptance of full or partial payments due during the continuance of any such default, shall constitute a waiver of any of ACC's rights with respect to such default.

ARTICLE XIX. INDEMNIFICATION

Client shall indemnify, defend, and save harmless the ACC Parties, from any claim, suit, liability, damage, injury, expense, including attorney's fees, or other loss (collectively called "Loss") arising out of (a) breach of this Agreement by Client, (b) Client's willful misconduct or negligence in connection with the performance of this Agreement, (c) any actual or potential environmental pollution or contamination, including, without limitation, any actual or threatened release of toxic or hazardous materials; or (d) any action taken by ACC Parties as Client's Agent under the section entitled Reporting and Disposal Requirements.

Subject to the provisions of Article VII, ACC shall indemnify, defend and save harmless, Client, from any Loss arising out of (a) breach of this Agreement by ACC Parties or (b) willful misconduct or negligence by ACC Parties in connection with the performance of the Services under this Agreement.

Allocation of Loss between Client and ACC Parties shall be on a comparative fault basis. In no event shall any party be liable for consequential damages. Client's indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Client under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

This Article shall survive termination of the Agreement.

ARTICLE XX. TERMINATION

Either party may terminate the Agreement at any time by giving to the other party thirty (30) days written notice of such termination. Following any termination of the Agreement, Client shall pay ACC on a time and materials basis for all services performed and for all expenses incurred prior to the effective date of said termination, in accordance with Article II. If the Agreement is terminated for a reason other than a breach by ACC of its obligations under the Agreement, ACC shall be paid for services performed and costs incurred to the termination notice date, including direct costs incurred, as outlined in Article II, plus an additional amount not to exceed ten percent (10%) of charges incurred to the termination notice date to compensate ACC for services to bring the work to an orderly completion and to prepare project files and documentation, plus any additional direct costs incurred by ACC, including but not limited to cancellation fees or charges of third parties. ACC will use reasonable efforts to minimize such additional charges.

ARTICLE XXI. NO THIRD PARTY RIGHTS

The parties recognize and acknowledge that the services rendered by ACC under the Agreement are for the sole benefit of Client and are not intended to benefit any third party, including but not limited to contractors, subcontractors, consultants, tenants and other occupants of the project site or any successor owners of the project site.

ARTICLE XXII. ARBITRATION

At the sole election of ACC, any dispute or claim in law or equity arising out of this Agreement ("Claim") shall be adjudicated either by submitting the Claim to a small claims court with jurisdiction over this Agreement, or by submitting the Claim to the California Superior Court located in the County of Alameda, or by submitting the Claim to neutral binding arbitration before a single arbitrator in San Francisco appointed by the American Arbitration Association ("AAA"). Any arbitration administered by the AAA shall be conducted in accordance with the then prevailing Arbitration Rules of the American Arbitration Association governing construction disputes. Judgment upon the award rendered by the arbitrator(s) may be entered in any court

**ACC ENVIRONMENTAL CONSULTANTS, INC.
CONSULTING SERVICES AGREEMENT GENERAL TERMS AND CONDITIONS (Exhibit A)**

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February, 2009

having jurisdiction thereof. The parties shall have the right to discovery in accordance with Code of Civil procedures section 1283.05. This Article shall survive termination of the Agreement.

ARTICLE XXIII. GENERAL PROVISIONS

XXIII.1 Assignment. The Agreement may not be assigned by either party, either voluntarily or by operation of law without prior written consent of the other party.

XXIII.2. Successors. The Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns.

XXIII.3. Governing Law. The Agreement and performance hereunder shall be governed by the laws of the State of California.

XXIII.4. Modifications. Any change or modification hereof and any terms and conditions of any purchase order or other instrument issued by Client in connection with the Agreement or the service to be rendered hereunder, which are in addition to or in conflict with the provisions of the Agreement will not be binding upon ACC without ACC's written consent thereto.

XXIII.5. Severability. If any provision hereof shall be invalid or unenforceable either in its entirety or by virtue of its scope or application to given circumstances, such provision shall be deemed modified to the extent necessary to render the same valid, or as not applicable to given circumstances, or be excised from the Agreement, as the situation may require and the Agreement shall be construed and enforced as if such provision had been included herein as so modified in scope or application, or had not been included herein, as the case may be, it being the intention of the parties that had they known of such invalidity or enforceability at the time of entering the Agreement, they would nevertheless have agreed on the terms contained herein, either excluding such provisions, or including such provisions only to the maximum scope and application permitted by law, as the case may be, but the remaining provisions hereof shall be given effect in accordance with intent hereof.

XXIII.6. Enforcement and Arbitration. In the event that any legal action or arbitration proceeding is commenced by either party against the other party to enforce this Agreement or with respect to any breach of this Agreement or to enforce an arbitration proceeding or any legal action to enforce an arbitration award, the prevailing party shall be entitled to recover from the unsuccessful party such sum as the court or arbitrator may award as reasonable attorney's fees.

XXIII.67 Limitations on Actions. The Client, by executing the Agreement, limits the period in which it may bring an action against ACC, its affiliates, and their respective directors, officers, employees, agents and subcontractors to one (1) year after the earliest of (a) the date of ACC's final invoice with respect to the Work; (b) the date on which the Client records a Notice of Completion with respect to the subject project, pursuant to Section 3093 of the California Civil Code; (c) when there is actual completion of the subject project, pursuant to Section 3086 of the California Civil Code; and (d) in the event Client or ACC terminate the Agreement, the date of such termination. In any case, where the Client fails to give written notice to ACC within a reasonable time, not to exceed sixty (60) calendar days, from the discovery of any loss, damage or defect giving rise to a claim, the Client shall be time-barred from bringing such claim against ACC. This section shall survive termination of the Agreement.

XXIII.8. Notices. Except as provided elsewhere in the Agreement, all notices or other communications to either party by the other as may be required by the Agreement shall be deemed given when made in writing and (a) delivered in person by a courier service or (b) three days after its deposit in the United States Post Office, certified mail, return receipt requested. The notices shall be addressed to the signatories to the Agreement at the addresses set forth in the Agreement. Either party may change its address for notice or person to receive notice by written notice of such change to the other party.

XXIII.9. Independent Contractor Status. In performing Services under this Agreement, ACC shall operate as, and have the status of, an independent contractor and shall not act as or be an employee of Client.



An Employee Owned Company

2009 Annual Fee Schedule

(Valid through January 31, 2010)

Cost of labor services shall be as follows:

<i>Labor Classification</i>	<i>Base Hourly Rate</i>
Expert Witness / Testimony	\$ 255.00
Principal	\$ 175.00
Certified Industrial Hygienist	\$ 175.00
Professional Engineer	\$ 175.00
Computer Programmer	\$ 175.00
Professional Geologist	\$ 175.00
Senior Project Manager/Designer	\$ 125.00
Trainer	\$ 110.00
Project Manager	\$ 100.00
Database Manager	\$ 90.00
Staff Geologist	\$ 95.00
Staff Hygienist / Technician, Level II	\$ 85.00
<i>(Overtime and/or Nights as defined below)</i>	\$ 106.25
<i>(Double-time and/or Weekends as defined below)</i>	\$ 127.50
Staff Hygienist / Technician, Level I	\$ 77.25
<i>(Overtime and/or Nights as defined below)</i>	\$ 96.50
<i>(Double-time and/or Weekends as defined below)</i>	\$ 115.75
CAD Draftsperson	\$ 65.00
Project Assistant	\$ 65.00
Technical Writer/Editor	\$ 65.00
Administrative Support Personnel	\$ 60.00
Data Entry Clerk	\$ 60.00

These rates will apply between the hours of 6:00 AM and 8:00 PM Monday through Friday. Overtime (hours in excess of 8 and up to 12 in one working shift) and/or night hours (weekdays, Monday through Thursday 6:00 PM to 6:00 AM) shall be charged at 125% of the base rates above or as indicated under Technician I/II classifications. Double-time (hours in excess of 12 in one working shift) and/or Weekend hours (between 6:00 PM Friday and 6:00 AM Monday) shall be charged at 150% of the base rates quoted above or as indicated under Technician I/II classifications. In the event that the client requests ACC to respond to an emergency situation (i.e. asbestos spill, etc.) and ACC staff are pre-assigned to an existing project, the emergency response may be billed at 125% to compensate for overtime rates or 150% to compensate for double-time rates. Minimum charge for Technicians shall be four (4) hours per day. All rates stated herein will remain in effect through January 31, 2010. Comparable rates, reflecting prevailing industry standards, will be annually re-negotiated if the contract period is extended past January 31, 2010.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
6/29/2011

PRODUCER
ISU INS. SERV.-BC ENV. BROKERAGE
1037 SUNCAST LANE, SUITE 103
EL DORADO HILLS, CA 95762
(916) 939-1080

INSURED
ACC ENVIRONMENTAL CONSULTANTS, INC.

7977 CAPWELL DRIVE, SUITE 100
OAKLAND, CA 94621

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: **ENDURANCE AMERICAN SPEC. INS. 41718**
INSURER B: **PROGRESSIVE INSURANCE CO. #10192**
INSURER C: **OAK RIVER INS. CO. #34630**
INSURER D: **OBE INS. CO. #39217**
INSURER E:

COVERAGES

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

ISR TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	ECC101003650-02 CPL RETRO: 3/20/89	10/28/10	10/28/11	EACH OCCURRENCE \$5,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 50,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> POLLUTION LIAB.				PERSONAL & ADV INJURY \$5,000,000
	(CLAIMS MADE)				GENERAL AGGREGATE \$5,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG \$5,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
B	AUTOMOBILE LIABILITY	02447227-7	01/13/11	01/13/12	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY AGG \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input type="checkbox"/> RETENTION \$				\$
					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	2200059003-111	05/01/11	05/01/12	<input checked="" type="checkbox"/> W/C STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT \$1,000,000				
	E.L. DISEASE - EA EMPLOYEE \$1,000,000				
	E.L. DISEASE - POLICY LIMIT \$1,000,000				
A	OTHER PROF. LIAB. INC. IN GL ABOVE	ECC101003650-02 PL RETRO: 3/20/89	10/28/10	10/28/11	\$5,000,000 OCCURRENCE
					\$5,000,000 AGGREGATE
D	PROPERTY/EQUIP.	2751132	12/30/10	12/30/11	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RE: HIGHLAND - NEW CLASSROOM BUILDING PROJECT / 8521 A ST., OAKLAND, CA.
OAKLAND UNIFIED SCHOOL DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HAVE BEEN NAMED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY. WAIVER OF SUBROGATION APPLIES TO W/C COVERAGE.
(BLANKET ENDORSEMENT'S ATTACHED)

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
OAKLAND UNIFIED SCHOOL DISTRICT ATTN: SUSIE BERKLEY 955 HIGH STREET OAKLAND, CA 94607		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
		AUTHORIZED REPRESENTATIVE <i>Matthew C Walker</i>



ACC Environmental Consultants, Inc., Ecologic Systems dba
Endorsement Number: 5

Automatic Additional Insured – Owners, Lessees or Contractors

This endorsement, effective 10/28/2010 attaches to and forms a part of Policy Number ECC101003650-02. This endorsement changes the Policy. Please read it carefully.

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART**

SCHEDULE

Name of Person or Organization:

Any person(s) or organization(s) whom the *Named Insured* agrees, in a written contract, to name as an additional insured. However, this status exists only for the project specified in that contract.

The person or organization shown in this Schedule is included as an insured, but only with respect to that person's or organization's vicarious liability arising out of your ongoing operations performed for that insured.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA
BLANKET BASIS**

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 the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be 2.00 % of the total policy premium otherwise due on such remuneration.

The minimum premium for this endorsement is \$ 350.00

Schedule**Person or Organization****Job Description**

ALL ORGANIZATIONS FOR WHOM THE WAIVER OF SUBROGATION IS
ISSUED

ALL CALIFORNIA OPERATIONS

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 05/01/2011

Policy No. 2200059003-111

Endorsement No. 1

Insured ACC ENVIRONMENTAL CONSULTANTS, INC.

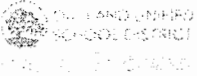
Premium \$

Insurance Company

Countersigned by

Oak River Insurance Company

M. Wallace



PROFESSIONAL SERVICES CONTRACT ROUTING FORM

Project Information			
Project Name	Highland New Classroom Building	Site	Highland Elementary School
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information			
Contractor Name	ACC Environmental	Agency's Contact	Larry Everton
OUSD Vendor ID #	V057331	Title	Project Manager
Street Address	7977 Capwell Drive	City	Oakland State CA Zip 94621
Telephone	510-638-8400	Policy Expires	10-28-2011
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
OUSD Project #	06009		

Term			
Date Work Will Begin	11-15-2009	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-31-2011

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$20,116.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$10,255.00
Other Expenses		Requisition Number	

Budget Information				
If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.				
Fund #	Resource Name	Org Key	Object Code	Amount
2122	GO Bond - Measure B	1269901833	6170	\$10,255.00
				\$

Approval and Routing (In order of approval steps)						
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.						
1.	Division Head	Charles Love	Phone	510-879-8389	Fax	510-879-3673
	Capital Program Contract & Accounting Manager					
	Signature		Date Approved	9-15-11		
2.	General Counsel, Department of Facilities Planning and Management					
	Signature		Date Approved	9-19-11		
3.	Assistant Superintendent, Facilities Planning and Management					
	Signature		Date Approved			
4.	President, Board of Education					
	Signature		Date Approved			