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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Growing Students.

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Timothy White, Deputy Chief, Facilities Planning and Management

Board Meeting Date December 11, 2019

Subject Award of Contract for Consulting Services - Emerson Elementary School Girls' Softball Field Project - Terraphase Engineering

Action Requested Approval by the Board of Education of Award of Contract for Consulting Services on behalf of the District to Terraphase Engineering, Oakland, California, for the latter to provide consulting services to prepare storm water training documents and inspection monitoring for the kick-off construction activities, for the **Emerson Elementary School Girls' Softball Field Project** in the amount of **\$19,947.00**, as the selected consultant, and authorizing the President and Secretary of the Board to sign the Agreement for same with said consultant with work scheduled to commence on **December 12, 2019**, and scheduled to last **September 27, 2020** pursuant to the contract. Consultant was selected based on demonstrated competence and professional qualification through RFP. (Government Code §§4529.10 et seq.)

Discussion Vendor to provide consulting services. Prepare storm water training documents and inspection monitoring for the kick-off construction activities.

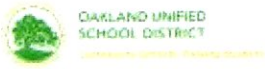
LBP (Local Business Participation Percentage) 100.00%

Recommendation Approval by the Board of Education of Award of Contract for Consulting Services on behalf of the District to Terraphase Engineering, Oakland, California, for the latter to provide consulting services to prepare storm water training documents and inspection monitoring for the kick-off construction activities, for the **Emerson Elementary School Girls' Softball Field Project** in the amount of **\$19,947.00**, as the selected consultant, and authorizing the President and Secretary of the Board to sign the Agreement for same with said consultant with work scheduled to commence on **December 12, 2019**, and scheduled to last **September 27, 2020** pursuant to the contract. Consultant was selected based on demonstrated competence and professional qualification through RFP. (Government Code §§4529.10 et seq.)

Fiscal Impact Fund 21, Measure J

Attachments

- Agreement
- Consultant Fee Schedule
- Insurance Certificate



CONTRACT JUSTIFICATION FORM

This Form Shall Be Submitted to the Board Office With Every Agenda Contract.

Legislative File ID No. 19-2364

Department: Facilities Planning and Management

Vendor Name: Terraphase Engineering

Project Name: Piedmont Finishing Kitchen

Project No.: 17117

Contract Term: Intended Start: 12-12-2019

Intended End: 9-27-2020

Annual (if annual contract) or total (if multi-year agreement) Cost: \$19,947.00

Approved by: Tadashi Nakadegawa

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

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

Though an RFP process. The proposal submitted by Terraphase Engineering was selected by the District based on scores, demonstrated competence and professional qualifications. Given the Consultant's experience with similar projects and the level of complexity of the project.

Summarize the services or supplies this contractor or vendor will be providing.

To conduct on-site Best Management Practice (DMP) and storm water awareness training at the kickoff of construction activities. To include training materials preparation, contractor and subcontractor notification, presentation and travel to the site. To perform regular inspections in accordance with the requirements of the CGP.

Was this contract competitively bid? Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. Terraphse Engineering's price was fair and reasonable compared to the prices submitted by the other responding engineers.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$92,600 or less (as of 1/1/19)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$92,600 (as of 1/1/19)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$92,600 (as of 1/1/19)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

Terraphase Engineering are an engineering firm. They are providing storm water training services to the District through the scope of their services, thus the reliance on the engineer consultant contract exception.

AGREEMENT
FOR
ENGINEERING SERVICES
BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT
AND
TERRAPHASE ENGINEERING
EMERSON ELEMENTARY SCHOOL GIRLS' SOFTBALL FIELD PROJECT
PROJECT NO. 17117

December 12, 2019

OAKLAND UNIFIED SCHOOL DISTRICT
955 High Street
Oakland, California 94601

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**AGREEMENT
FOR
ENGINEERING SERVICES**

This agreement for engineering services (“Agreement”) is between the Oakland Unified School District, a California public school district (the “District”), and Terraphase Engineering (the “Engineer”), with respect to the following recitals:

- A. District proposes to undertake the construction of improvement projects which require the services of a duly qualified and licensed engineer.
- B. Engineer represents that Engineer is licensed to provide engineering services in the State of California and is specially qualified to provide the services required by the District, including design and construction oversight of public school(s).
- C. The Parties have negotiated the terms under which Engineer will provide such services and reduce such terms to writing by this Agreement.

The Parties therefore agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Additional Services.** “Additional Services” shall mean those services in addition to the Basic Services that are provided by Engineer and authorized in writing by the District, and as further defined in Article 6 below.

1.2 **Agreement.** “Agreement” shall mean this Agreement for Engineering Services.

1.3 **Basic Services.** Engineer’s Basic Services consist of the services as defined in Article 5 and *Exhibit C*.

1.4 **Contract Documents.** “Contract Documents” shall mean those documents which are required for the actual construction of the Project, including but not limited to the Agreement between District and Contractor, complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.

1.5 **Contractor.** “Contractor” shall mean one or more contractors ultimately selected to perform work on the Project or any replacement.

1.6 **District.** “District” shall mean Oakland Unified School District, and its governing board members, employees, agents and authorized representatives.

1.7 **Engineer.** “Engineer” shall mean Terraphase Engineering, and its officers, shareholders, owners, partners, employees, agents and authorized representatives.

1.8 **Project.** “Project” shall mean the work of improvement described in Article 3 and the construction thereof, including the Engineer's services thereon, as described in this Agreement.

1.9 **Project Construction Cost.** “Project Construction Cost” shall mean the estimate of total construction costs to the District as initially submitted by the Engineer under this Agreement and accepted by the District, as subsequently revised by changes to the Project Construction Cost under Article 5 of this Agreement, and as subsequently revised at the time the District enters a construction contract to equal the construction contract amount.

1.10 **Wrongful Acts or Omissions.** “Wrongful Acts or Omissions” shall mean Engineer’s acts or omissions in breach of this Agreement, the applicable standard of care, or law.

ARTICLE 2 RETENTION OF ENGINEER; STANDARD OF CARE

2.1 District retains Engineer to perform, and Engineer agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the engineering services specified in this Agreement and related incidental services. The Engineer agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Engineer under and required by this Agreement shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by engineers in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). Engineer shall be responsible for the completeness and accuracy of its plans and specifications.

ARTICLE 3 DESCRIPTION OF PROJECT

3.1 The Project concerning which such engineering services shall be provided is described as:

To provide consulting services for Emerson Elementary School Girls’ Softball Field at 4803 Lawton Avenue, Oakland, California. Terraphase Engineering will conduct on-site Best Management Practice (BMP) and storm water awareness training at the kickoff of construction activities. To include training materials preparation, contractor and subcontractor notification, presentation and travel to the site. Terraphase Engineering will perform regular inspections in accordance with the requirements of the CGP. See attached Scope of Work as described in Exhibit A.

The project is not intended to be split into multiple prime contracts.

ARTICLE 4 COMPENSATION

4.1 Basic Services. For the Basic Services satisfactorily performed under this Agreement, Engineer shall be compensated according to its hourly rate schedule (Section 4.8, below). Engineer's total compensation for its Basic Services shall not exceed **NINETEEN THOUSAND, NINE HUNDRED FORTY-SEVEN DOLLARS NO/100(\$19,947.00)**, which is Engineer's estimate of the maximum total cost of its Basic Services on the Project, based on its October 21, 2019, fee estimate. However, Engineer will not be compensated for any Basic Services required as a result of Wrongful Acts or Omissions. Engineer acknowledges that the not-to-exceed amount for Basic Services, above, includes contingency compensation in the event that more time and costs than originally anticipated may be necessary to complete the Basic Services.

4.2 Additional Services. Engineer may invoice separately for Additional Services if provided by Engineer under Article 6. However, Engineer will not be compensated for any Additional Services required as a result of Wrongful Acts or Omissions.

4.3 Reimbursable Expenses

4.3.1 Reimbursable Expenses are those actual out-of-pocket expenses directly incurred as a result of Engineer's performance of Basic or Additional Services under this Agreement. Engineer may not charge a mark-up on Reimbursable Expenses. Reimbursable Expenses are limited to these expenses related to the Project: Fax, reproduction expense (excluding such expense for reproductions for office use by Engineer and its consultants), postage, messenger, transportation, living expenses in connection with out-of-town travel, long distance communications, expense of renderings, models and mock-ups requested by District, expense of publishing under Section 5.6.5, expense of data processing and photographic production techniques when used in connection with Additional Services, and, if authorized in advance by the District, expense of overtime work requiring higher than regular rates. Reimbursable Expenses do not include indirect costs, such as general overhead (for example, home office overhead [including technology hardware and software] or insurance premiums), for which Engineer must pay out of its compensation for services under Section 4.1, above; nor do they include expenses incurred in connection with Basic or Additional Services that result from Wrongful Acts or Omissions.

4.3.2 Engineer shall be reimbursed by District for its Reimbursable Expenses on the Project. Engineer's total reimbursement for Reimbursable Expenses shall not exceed \$2,500, which is Engineer's estimate of the maximum total cost of Reimbursable Expenses on the Project.

4.4 For services satisfactorily performed, payment for Basic Services, Additional Services, and Reimbursable Expenses shall be made on a monthly basis after receipt and approval by the District of the Engineer's properly documented and submitted invoices. To be "properly documented and submitted," an invoice shall be timely, be accompanied by all necessary documentation, list all activities performed, and for each activity performed list the person performing it and the person's rate of compensation. Engineer's invoice shall be submitted within ten (10) days of the end of the monthly billing period. Invoices, receipts and other documentation to establish the validity of all

Reimbursable Expenses shall be a prerequisite to District payment of such expenses. If District disputes a portion of a properly submitted invoice, it shall notify Engineer of the dispute and, upon Engineer's request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Engineer shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Engineer shall continue to provide all services required by this Agreement and law until the end of the Project, even if District and Engineer cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Engineer otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

4.5 The Engineer's compensation shall be paid notwithstanding a Contractor-caused delay in completion of the project or reduction of final construction cost by reason of penalties, liquidated damages, or other amounts withheld from the Contractor. However, District may withhold from payments to Engineer to the extent that (i) Basic and Additional Services remain to be performed, including but not limited to those required for project closeout and payments to Contractor, and (ii) Wrongful Acts or Omissions caused District to incur damages, losses, liabilities or costs, including but not limited to withholding any amounts for which Engineer is responsible under Section 5.7.20. If the total amount invoiced by Engineer reaches the not-to-exceed Basic Services amount before Engineer's Basic Services under this Agreement are complete, Engineer must complete the Basic Services without submitting additional invoices, or receiving additional payment, for Basic Services.

4.6 Should District cancel the Project under section 12.1 of this Agreement at any time during the performance of this Agreement, Engineer shall, upon notice of such cancellation, immediately cease all work under this Agreement. In such event, Engineer's total fee for all services performed shall be computed as set forth in Section 12.1.

4.7 District has the right to audit Engineer's records and files regarding, or relating to, any of the work performed by Engineer for District on this Project during or after the Project. Engineer shall keep complete records showing all hours worked and all costs and charges applicable to its work under this Agreement. Engineer will be responsible for Engineer's consultants keeping similar records. District shall be given reasonable access to Engineer's Project related records and files for audit purposes within ten (10) days of receipt of District's request. Engineer shall keep and maintain those records and files for ten (10) years.

4.8 Engineer's hourly rate schedule for its services is attached as *Exhibit A*.

4.9 Engineer shall not accept compensation or other benefits from other persons related to the Project, including payments from manufacturers of construction materials that are specified in the design.

ARTICLE 5
BASIC SERVICES TO BE RENDERED BY ENGINEER

5.1 General

5.1.1 Engineer's Basic Services consist of the investigation, design, and construction oversight services normally required to perform the tasks, work, and services described in *Exhibit C*. The District shall have the right to add or delete from the Engineer's scope of services as it may determine is necessary for the best interests of the Project and/or the District. Engineer shall expeditiously and diligently perform all of its work and obligations under this Agreement. Engineer may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District under Section 4.4, above. The Engineer acknowledges that its priority is to complete the Project and the Engineer's services, and that any payment disputes with the District under Section 4.4, if not resolved during the Project, must wait for resolution after the Project.

5.1.2 The Engineer shall review the estimate described more fully below at each phase of Engineer's services, also as defined below. If such estimates are in excess of the Project budget, the Engineer shall revise the type or quality of construction to come within the budgeted limit.

5.1.3 Whenever the Engineer's services include the presentation to the District of Project Construction Cost, the Engineer shall include a reasonable amount for contingency costs arising from, among other things, higher bids than anticipated, future increase in construction costs, and change orders based on unforeseen site conditions.

5.1.4 The Engineer shall notify the District if there are any indicated adjustments in previously provided Project Construction Cost arising from market fluctuations or approved changes in scope or requirements based upon a mutually agreed upon index.

5.1.5 At the District's request, the Engineer and Engineer's consultants shall cooperate with District and the District's consultants in verifying that Engineer's plans, specifications, studies, drawings, estimates or other documents relating to the Project are constructible and otherwise comply with the Contract Documents. If there are project meetings during the design and construction phases, Engineer shall attend those meetings.

5.1.6 The Engineer shall investigate existing conditions of facilities and thoroughly account for, and list in the construction documents, any pertinent conditions of such facilities, all in a manner that satisfies the standard of care and level of performance required by this Agreement. Engineer's investigation required by this provision shall be limited to non-destructive evaluation.

5.1.7 Engineer shall provide a minimum of full-time employees before construction commences, and full-time employees after construction commences, to perform its duties and responsibilities under this Agreement. All personnel provided by Engineer shall be qualified to perform the services for which they are provided. Engineer shall obtain District's written approval of each employee of Engineer who provides services under this Agreement, and written approval of each

change of employees who are providing such services. District may, upon seven (7) days' written notice, cause Engineer to remove a person from the Project if he/she has failed to perform to District's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Engineer shall provide them immediately.

5.1.8 Engineer is an agent of District and shall reasonably represent the District at all times in relation to the Project.

5.1.9 Engineer shall be fully licensed as required by law at all times when providing services under this Agreement.

5.2 Consultants

5.2.1 Engineer's Consultants. The Engineer shall employ or retain at Engineer's own expense, engineers and other consultants necessary to Engineer's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Engineer for this Project shall be approved by District prior to their commencement of work. The Engineer's consultants shall be employed or retained to provide assistance during all aspects of the Project and will include, in addition to design services: review of schedules, shop drawings, samples, submittals, and requests for information. The Engineer's Consultants shall also conduct periodic inspections of the site to determine conformance with the Project design and specifications and shall participate in the final inspections and development of any "punch list" items. Engineer must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

5.2.2 District's Consultants. Engineer shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain a construction manager to assist District in performance of District's duties for the Project.

5.2.3 The Engineer shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

5.2.4 Engineer shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part

of the testing.

5.2.5 Engineer shall assist the District and its consultants to apply for funding for the Project from the State Allocation Board. Engineer shall assist the Project architect with submittals required of the architect by the Division of the State Architect (“DSA”), OPSC and California Department of Education in connection therewith.

5.3 [Not Used]

5.4 Non-Design Pre-Construction Services

Engineer shall perform all non-design pre-construction engineering services required for the Basic Services, including all such services specified in *Exhibit C*.

5.5 Design Services

Engineer shall perform the engineering design services required for the Basic Service, including those specified in *Exhibit C*.

5.6 [Not Used]

5.7 Construction Phase

5.7.1 The construction phase shall begin on the date stated in the official Notice to Proceed.

5.7.2 [Not Used]

5.7.3 [Not Used]

5.7.4 The Engineer shall provide prompt and timely direction to the District, Project inspectors and/or Contractor as to the interpretation of Contract Documents. Engineer shall respond to all requests for information (“RFI’s”) from a Contractor within fourteen (14) calendar days of receipt, unless the subject of the RFI is impacting, or may impact, the critical path of the Project and is causing, or may cause, delay, in which case the Engineer shall respond as soon as reasonably possible, if not immediately. If the Engineer is not able to take action within the time required due to reasons beyond Engineer’s control, the Engineer may take action within a reasonable period of time under the circumstances; however, the Engineer shall make such determination within seven (7) calendar days of receipt of the RFI, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Engineer cannot take action within the time required, what the Engineer is doing to expedite its response, when the Engineer expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs.

5.7.5 Based on information provided by the Contractor and Engineer's own knowledge of the Project (including documents in Engineer's possession or reasonably available to it), Engineer shall assist the architect in preparation of an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon completion of the Project. While Engineer cannot guarantee precise accuracy of such drawings, Engineer shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. Engineer shall have no responsibility for their conformity to field conditions, except that in the event that the Engineer, consistent with standards of due care, becomes aware of non-conformity with field conditions, Engineer shall have a duty immediately to notify the District in writing. Engineer shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required of Contractor.

5.7.6 The Engineer shall assist the architect in the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.*

5.7.7 The Engineer shall, at all times, have access to the Project wherever it is in preparation and progress. To the extent reasonably possible given Contractor's work in progress, the District shall provide such access so that the Engineer may perform its functions under the Agreement and Contract Documents.

5.7.8 In the discharge of its duties of observation and interpretation, the Engineer shall require Contractors to comply with the Contract Documents, and shall guard the District against defects and deficiencies in the work of the Contractor. The Engineer shall advise and consult with the District and inspectors concerning the Contractor's compliance with the Contract Documents and shall assist the District and inspectors in securing the Contractor's compliance.

Engineer must assist and cooperate with the architect as architect supervises, coordinates, and manages the compliance of all parties, including the District's Inspector of Record/Project Inspector ("IOR"), Contractor, any Construction Manager, laboratories, District, and architect, with the DSA Construction Oversight Process.

The Engineer must comply with any applicable requirements of the DSA Construction Oversight Process.

The Engineer shall be responsible for any additional DSA fees and delay damages related to review of proposed changes to the DSA-approved construction documents, to the extent Engineer's negligence, recklessness or willful misconduct caused the additional DSA fees, and for delay damages to the extent required under Section 5.7.20.2 below.

5.7.9 The Engineer shall visit the site, both as the Engineer deems necessary and as requested by the District, but under no circumstances less than once a week, to maintain familiarity with the quality and progress of the Project, to determine that the Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing

in substantial accordance with the Contract Documents.

5.7.10 The Engineer shall notify the District promptly of any significant defect in materials, equipment or workmanship, and of any default by any Contractor in the orderly and timely prosecution of the Project. Engineer will exercise reasonable care in the discharge of Engineer's obligation to discover significant defects and faults.

5.7.11 The Engineer shall review and approve, take exception to, or take other appropriate action upon all schedules, shop drawings, samples and other submissions of the Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents. All such action shall be taken within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case Engineer shall take such action as soon as possible. If Engineer is not able to take such action within the required time due to reasons beyond Engineer's control, the Engineer may take action within a reasonable period of time under the circumstances; however, the Engineer shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the District and Contractor immediately after such determination with an explanation as to why the Engineer cannot take action within the time required, what the Engineer is doing to expedite its response, when the Engineer expects to be able to issue a response, and what action, if any, should be taken by District or Contractor in the meantime to mitigate delays and/or costs. The Engineer will have the authority to reject work and materials which do not conform to the Contract Documents. The Engineer's approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the Engineer's reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The Engineer will also recommend substitution of materials or equipment when, in the Engineer's reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

5.7.12 Engineer shall assist the District in requiring Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

5.7.13 The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The Engineer shall not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by Engineer, unless due to Wrongful Acts or Omissions.

5.7.14 The Engineer shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

5.7.15 The Engineer will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or

Engineer is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Engineer nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

[OPTIONAL PROVISION]

With respect to asbestos and asbestos containing materials, the parties acknowledge that the Engineer has recommended and the District has agreed to retain a qualified consultant to evaluate the presence of such materials at certain District facilities which are included in the scope of this Agreement. In the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. Engineer shall include consultant's recommendations and specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, Engineer shall provide such certification as to Hazardous Substances as may be required of engineers for such projects by the OPSC.

5.7.16 Based on the Engineer's observations, and an evaluation of each Project Application for Payment, the Engineer will assist the architect in its estimation of the amount of work completed by Contractor, and assist the District in (a) determining the amount owing to the Contractor, and (b) issuing Project Certificates for Payment incorporating such amount, all in accordance with the Contract Documents.

5.7.17 Notwithstanding anything else in this Agreement, as a part of its Basic Services the Engineer shall assist the District in evaluating and responding to claims, disputes and other matters in question between the Contractor and the District, including but not limited to claims made against the District as a result of alleged or claimed Wrongful Acts or Omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District. Engineer agrees to toll all statutory periods of limitations for District's claims, lawsuits or other proceedings against Engineer which arise out of, or are related to, any claims by Contractors against District until Contractors' claims are fully and finally resolved. This tolling period commences upon a Contractor's initial submission of a notice of claim, change order request or claim. At any time, District may terminate the tolling period effective ten (10) days after written notice to Engineer, and after such termination, District may pursue claims, lawsuits or other proceedings against Engineer.

5.7.18 The Engineer will provide construction advice to the District on apparent deficiencies in construction, both during construction and after acceptance of the Project.

5.7.19 The Engineer shall assist the architect in its recommending, preparing and processing

of the necessary change orders. Payment of fees to the Engineer as a result of change orders shall be handled as follows:

5.7.19.1 District-initiated change orders. If a change order is initiated by the District, the Engineer's fee for services related to such change order shall be paid as an Additional Service under Articles 4 and 6. If a change order is solicited by the District but not subsequently authorized by the District, the Engineer shall be paid for time spent on the proposed change order.

5.7.19.2 Change orders due to Engineer. When a change order is necessitated as a result of Wrongful Acts or Omissions, the Engineer's services in connection with that change order are not compensable and Engineer shall not include those services on any invoice.

5.7.19.3 Change orders beyond District or Engineer control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as District-initiated change orders.

5.7.20 Notwithstanding any other provision of this Agreement, in the event a change order is caused by, or necessitated as a result of, Wrongful Acts or Omissions, or the District otherwise incurs costs or damages as a result of Wrongful Acts or Omissions, the Engineer shall be responsible for the following:

5.7.20.1 In the event of such a change order, Engineer shall be responsible for the difference between (a) what the contractor would have added to its original bid or proposal for the Project if the Wrongful Act or Omission had not occurred (i.e., the "added value" portion of the change order), and (b) what the contractor charges the District in the change order. The amount of added value of any change order work shall be based on the circumstances of the Engineer's Wrongful Act or Omission and the change order work necessitated by the Wrongful Act or Omission. It is the parties' intent that the District should pay no more than what the District would have paid if the Wrongful Act or Omission had not occurred.

5.7.20.2 In addition, Engineer shall be responsible for any other costs or damages which the District incurs as a result of Wrongful Acts or Omissions, including but not limited to any delay damages the District pays to, or cannot collect from, Contractor or any third party.

The District may backcharge, and withhold payment from, the Engineer for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When District so backcharges and withholds, upon Engineer's request District and Engineer shall meet and confer in good faith in an effort to reach agreement on (a) whether a Wrongful Act or Omission occurred, (b) whether it caused the change order expense, (c) what damages have been incurred by District, and (d) what portion of the damages are attributable to Engineer as described above. If District and Engineer do not reach agreement on all four of these items when meeting and conferring, then District and Engineer shall use mediation in good faith to resolve the dispute. If mediation fails, then either District or Engineer can initiate a court action to resolve the dispute.

5.7.21 [Not Used]

5.7.22 The Engineer shall assist the architect and the District in determining the date of final completion and make a final detailed on-site review of the job with representatives of the District and the Contractor. Engineer shall also perform a warranty review with District 30-60 days before expiration of the specified warranty on the Project.

5.7.23 [Not Used]

5.7.24 Engineer shall make reasonable professional efforts so that the finished project complies with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Engineer has violated any of the above-referenced laws, or District, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Engineer shall remedy the violation at its own cost. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of this paragraph due to Engineer's negligence, recklessness or willful misconduct.** The Engineer shall not be responsible for acts or omissions of the Contractor or of any other persons performing portions of the Project not employed or retained by Engineer, nor shall Engineer be responsible for any subsequent changes in the law or any regulation applicable to disabled access or any subsequent differing interpretation of the laws or regulations applicable at the time Engineer's design is reviewed by DSA. In the event that the Engineer is or becomes aware of possible non-compliance with the foregoing standards, Engineer shall have a duty immediately to notify the District in writing of the possible non-compliance.

5.8 Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Engineer, whether supplied by District or by Engineer, which are relied upon, altered or otherwise utilized by Engineer, Engineer shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Engineer under this Agreement.

ARTICLE 6 ADDITIONAL SERVICES TO BE RENDERED BY ENGINEER

6.1 "Additional Services" shall be provided by Engineer if authorized in writing by District. No additional compensation shall be paid to Engineer for performing these Additional Services unless the District and the Engineer agree in writing as to the amount of compensation for such services prior to such services being rendered. Such compensation shall be paid based on the hourly rates in Section 4.8 and as otherwise set forth in this Agreement. Any work performed by Engineer without written authorization OR without written agreement on compensation shall be presumed to be Basic Services.

6.2 The following is a list of services that are not included in the Basic Services to be provided under this Agreement, and will be performed only in accordance with Article 6.1, above:

6.2.1 providing financial feasibility or other special studies;

6.2.2 providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase;

6.2.3 providing coordination of Project performed by separate contractors or by the District's own forces;

6.2.4 providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor;

6.2.5 making revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the District's approval of Contract Documents or are due to other causes not within the control of the Engineer;

6.2.6 providing consultation concerning replacement of any work damaged by fire or other cause during construction of the Project, and furnishing services as may be required in connection with the replacement of such work;

6.2.7 providing services made necessary by the default of the Contractor;

6.2.8 preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than when resulting from Engineer's or its consultants' alleged Wrongful Acts or Omissions;

6.2.9 providing services of consultants for other than the normal engineering services for the Project;

6.2.10 providing services related to change orders requested by the District, but which are not subsequently authorized (see second sentence of Section 5.7.19.1), above; and

6.2.11 providing any other services not otherwise included in the Agreement and not customarily furnished in accordance with generally accepted engineering practice.

ARTICLE 7 RESPONSIBILITIES OF DISTRICT

It shall be the duty of District to:

7.1 pay all fees required by any reviewing or licensing agency;

- 7.2 designate a representative authorized to act as a liaison between the Engineer and the District in the administration of this Agreement and the Contract Documents;
- 7.3 furnish, at the District's expense, the services of a Project Inspector;
- 7.4 review all documents submitted by the Engineer and advise the Engineer of decisions thereon within a reasonable time after submission;
- 7.5 issue appropriate orders to Contractors through the Engineer;
- 7.6 furnish existing soil investigation or geological hazard reports, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Engineer;
- 7.7 furnish the services of consultants not routinely provided by the Engineer when such services are reasonably required by the scope of the Project and are requested by the Engineer;
- 7.8 provide asbestos review and abatement, identifying materials which may qualify for same;
- 7.9 furnish available as-built drawings for buildings and utilities systems related to the Project, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and the District will also provide information regarding programmatic needs and specific equipment selection data;
- 7.10 furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents, which the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by the Engineer; and
- 7.11 furnish prompt notice of any fault or defects in the Project or nonconformance with the Contract Documents of which the District becomes aware; however, the District's failure to do so shall not relieve the Engineer of Engineer's responsibilities under Title 21, Title 24, and the Field Act for this Project and under this Agreement.

ARTICLE 8 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

8.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the District, under forms satisfactory to the District, to protect the Engineer and District against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other District facilities or equipment, resulting from acts of commission

or omission by the Engineer, or otherwise resulting directly or indirectly from the Engineer's operations in the performance of this Agreement. The District shall be named as an additional insured on all such policies.

8.2 The following insurance shall be maintained by the Engineer in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written, to the extent reasonably available, on an "occurrence" basis: Commercial general liability insurance shall be in amounts not less than Two Million Dollars (\$2,000,000) general aggregate, Four Million Dollars (\$4,000,000) personal and advertising injury aggregate, with a per occurrence limit of Two Million Dollars (\$2,000,000); Automobile liability insurance covering motor vehicles shall be in an amount not less than Two Million Dollars (\$2,000,000) combined single limit. If liability insurance is not reasonably available on an occurrence basis, Engineer shall provide liability insurance on a claims-made basis.

8.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Said insurance shall also include a waiver of any subrogation rights as against the District.

8.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), 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. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

8.5 The Engineer's insurance policies shall contain a provision for thirty (30) days written notice to the District of cancellation or reduction of coverage. The Engineer shall name, on any policy of insurance required, the District as an additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval subject to the following requirements. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

8.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance will be in effect during the requested additional period of time.

8.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required

to, take out such insurance to cover any damages of the above-mentioned classes for which the District might be held liable on account of the Engineer's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

8.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Engineer may be held responsible for the payment of damages resulting from the Engineer's operations.

8.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

8.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

8.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 9 WORKER'S COMPENSATION INSURANCE

9.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the District for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. All such insurance shall include a waiver of any subrogation rights as against the District. If the Engineer employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the District immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured, the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

9.2 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer and all engineers, experts, consultants and subcontractors the Engineer intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the District. During the course of Engineer's services, if Engineer ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Engineer shall furnish such satisfactory proof of insurance to the District. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Engineer is self-insured,

the Engineer shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the District.

ARTICLE 10 ERRORS AND OMISSIONS INSURANCE

10.1 Prior to the commencement of services under this Agreement, the Engineer shall furnish to the District satisfactory proof that the Engineer has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Engineer shall provide errors and omissions insurance on a claims-made basis.

10.2 Each of Engineer's professional sub-consultants (including consultants of Engineer's) shall comply with this Article 10, and Engineer shall include such provisions in its contracts with them.

10.3 Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

10.4 Should any of the required insurance be provided under a claims-made form, Engineer shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the filing of a Notice of Completion (whichever is later), 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 policy. Nothing herein shall in any way limit or diminish Engineer's obligations to the District under any provision, including any duty to indemnify and defend the District.

10.5 Engineer shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Engineer shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

10.6 At the time of making application for any extension of time, Engineer shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

10.7 If the Engineer fails to maintain such insurance, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Engineer under this Agreement.

10.8 Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Engineer may be held responsible for the payment of damages resulting from the

Engineer's operations.

10.9 Each of Engineer's consultants shall comply with this Article, and Engineer shall include such provisions in its contracts with them.

10.10 Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

10.11 Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

ARTICLE 11 COMPLIANCE WITH LAWS

11.1 Engineer shall be familiar with, and Engineer and Engineer's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act ("ADA").

ARTICLE 12 TERMINATION OF AGREEMENT

12.1 **Termination by District** – This Agreement may be terminated, or the Project may be canceled, by the District for the District's convenience and without cause at any time immediately upon written notice to the Engineer. In such event, the Engineer shall be compensated for (a) all Basic or Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, (b) such Basic or Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing, and (c) any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

For any material breach of contract by the Engineer, the District may also terminate the Agreement for cause by delivering written Notice of Intent to Terminate to the Engineer. Such Notice shall include the following: (1) A description of such material breach, and (2) a date not less than fourteen days (14) after delivery of the notice by which the Engineer must cure such breach. In response to such Notice, if the Engineer fails to cure, and fails to reasonably commence to cure, the breach (es) by the deadline set by the Notice, then the District may terminate the Agreement through written notice delivered to the Engineer, which shall be effective upon such delivery. In

such event, the Engineer shall be compensated for all services completed under this Agreement through the date of termination, together with compensation for such services performed after termination which are authorized by the District in writing, but less any amounts the District is entitled to withhold under law or this Agreement. Upon the District's written request and authorization, Engineer shall perform any and all services necessary to complete the work in progress as of the date of the termination.

12.2 Termination by Engineer – For any material breach of contract by the District other than one related to a payment or invoice dispute as described in Section 4.4 of this Agreement, the Engineer may terminate the Agreement by delivering written Notice of Intent to Terminate to the District. Such Notice shall include the following: (1) A description of such material breach, (2) a date not less than fourteen (14) days after delivery of the notice by which the District must cure such breach or reasonably commence to cure such breach, (3) the status of work completed as of the date of the Notice of Intent to Terminate, and (4) a description and cost estimate of the effort necessary to complete the work in progress. In response to such Notice, if the District fails to cure, and fails to reasonably commence to cure, the breach by the deadline set by the Notice, then Engineer may terminate the Agreement by written notice delivered to the District within ten (10) days of the cure deadline, which shall be effective upon such delivery.

In the event of such termination by Engineer, Engineer shall be compensated for all Basic and Additional Services completed, and Reimbursable Expenses incurred, under this Agreement through the date of termination, together with compensation for such Basic and Additional Services performed, and Reimbursable Expenses incurred, after termination which are authorized by the District in writing. Upon the District's written request and authorization, Engineer shall perform any and all Basic and Additional Services necessary to complete the work in progress as of the date of termination.

12.3 Miscellaneous Termination Provisions

12.3.1 Following the termination of this Agreement for any reason whatsoever, the District shall have the right to utilize any designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared under this Agreement by the Engineer, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. Engineer shall promptly make any such documents or materials available to the District upon request without additional compensation.

12.3.2 In the event of the termination of this Agreement for any reason whatsoever, all designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared

or caused to be prepared by the Engineer or any of its agents under this Agreement shall immediately upon request by the District be delivered to the District. Engineer may not refuse to provide such writings or materials for any reason whatsoever, including but not limited to a possessory interest lien for any claim the Engineer may have against the District or a claim by the Engineer to an ownership interest in the intellectual property embodied in the documents or materials.

ARTICLE 13 ENGINEER AN INDEPENDENT CONTRACTOR

13.1 It is specifically agreed that in the making and performance of this Agreement, the Engineer is an independent contractor and is not and shall not be construed to be an officer or employee of the District.

ARTICLE 14 STANDARDIZED MANUFACTURED ITEMS

14.1 The Engineer shall consult and cooperate with the District in the use and selection of manufactured items to be used in the Project. Manufactured items, including but not limited to paint, finish hardware, plumbing fixtures and fittings, mechanical equipment, electrical fixtures and equipment, roofing materials, and floor coverings, shall be standardized to the District's criteria so long as the same does not interfere seriously with the building design or cost.

ARTICLE 15 OWNERSHIP OF DOCUMENTS

15.1 All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

15.2 The Engineer will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Engineer's files for a period of no less than fifteen (15) years. Engineer shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

ARTICLE 16
LICENSING OF INTELLECTUAL PROPERTY

16.1 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Engineer under this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Engineer shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

16.2 The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Engineer and retains a certified engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Engineer and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

16.3 Engineer represents and warrants that Engineer has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Engineer or its consultants prepares or causes to be prepared under this Agreement. **Engineer shall indemnify, defend and hold the District harmless under Article 18.1 of this Agreement for any breach of Article 16 due to Engineer's negligence, recklessness or willful misconduct.** The Engineer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Engineer and provided to Engineer by the District.

ARTICLE 17
ACCOUNTING RECORDS OF ENGINEER

17.1 Engineer's records of accounts regarding the Project shall be kept in accordance with generally accepted accounting principles and shall be available to the District or its authorized representative at mutually convenient times.

ARTICLE 18
INDEMNITY

18.1 Engineer Indemnification. To the fullest extent permitted by law, including California Civil Code section 2782.8, the Engineer shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees (“District Indemnitees”) against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Engineer, the Engineer's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement.

For purposes of this Article 18.1 only, (a) “claims” means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations, and (b) the Engineer’s defense obligation shall include but not be limited to (i) provision of a full and complete defense of the District Indemnitees by an attorney chosen or approved by the District, and (ii) payment of the District’s attorneys’ fees, experts’ fees, and all other litigation costs incurred in the District’s defense (“Defense Costs”) within thirty (30) days of Engineer’s receipt of each invoice for such Defense Costs. After conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse Engineer for the portion of the Defense Costs proportionate to the percentage of fault of parties other than the Engineer (“Other Parties”) for the amounts paid or owed to the third party by the District Indemnitees, but this duty of reimbursement shall only be owed by the District if there are specific findings in a settlement agreement, arbitration award, or verdict as to the Other Parties’ percentage of fault for those amounts paid or owed to the third party.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Engineer shall meet and confer with other parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Engineer.

18.2 District Indemnification for Use of Third Party Materials. The District shall defend, indemnify, and hold harmless the Engineer and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Engineer's com-

pletion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Engineer shall be entitled to such indemnification only if each of the following conditions are met: (a) Engineer actually re-draws or completes such other designs or contract documents; (b) Engineer complies with the provisions of Article 5.8 regarding use of materials prepared by other design professionals; (c) District has supplied Engineer with the previously prepared documents or materials; and (d) District expressly requests that the Engineer utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE 19 TIME SCHEDULE

19.1 Time for Completion. Time is of the essence of this Agreement. The Engineer shall timely complete its Basic and Additional Services as expeditiously as possible and according to the schedule attached as *Exhibit B* to this Agreement.

19.2 Delays. The District recognizes that circumstances may occur beyond the control of either the District or the Engineer and extensions for such delays may be made to the schedule if approved by the District. Any time during which the Engineer is delayed in the Engineer's work by acts of District or its employees or those in a direct contractual relationship with District or by acts of nature or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any Wrongful Acts or Omissions, shall be added to the time for completion of any obligations of the Engineer. District shall not be liable for damages to the Engineer on account of any such delay.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County in which the District maintains its district office, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

20.2 The Engineer shall not assign or transfer any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of the District.

20.3 All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the parties at the addresses set forth below:

District: Oakland Unified School District
955 High Street
Oakland, California 94601
Attention: Mr. Timothy E. White, Deputy Chief, Facilities

Engineer: Terraphase Engineering
1404 Franklin Street
Oakland, CA 94612
Attention: Alice Hale Price, Senior Associate Engineer

20.4 This Agreement shall inure to the benefit of and shall be binding upon the Engineer and the District and their respective successors and assigns.

20.5 If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

20.6 The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

20.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the District or the Engineer.

20.8 This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. The Engineer, by the execution of this Agreement, acknowledges that the Engineer has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20.9 The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's professional materials. The Engineer's materials shall not include the District's confidential or proprietary information if the District has previously advised the Engineer in writing of the specific information considered by the District to be confidential or proprietary.

20.10 Prior to executing this Agreement, the Engineer shall submit a certification if required by Public Contract Code section 3006(b) for roofing projects.

20.11 If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover all of its litigation expense, costs and fees from the other party, including reasonable attorneys' and experts' fees.

20.12 A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute (including a dispute related to indemnity by the Engineer for claims against the District by a contractor based on allegations of deficiencies in the

Engineer's plans or specifications). The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

20.13 Engineer shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."

20.14 The following forms, attached to the proposal, are incorporated into the contract:

- ~~Roof project certification (if required; see Public Contract Code §3006).~~
- Fingerprinting Notice and Acknowledgement.
- ~~Iran Contracting Act Certification.~~
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- ~~Buy American Certification.~~
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

20.15 CHPS Verified Only; No OPSC HPI Eligibility Track:

20.15.1 CHPS Criteria, CHPS Verified Program As part of Basic Services, the Engineer shall adhere to the District's CHPS Guidelines, and Owner's Project Requirements (OPR) based on incorporating required and voluntary design Criteria of the CHPS—2009 Criteria (or latest version per CHPS Guidelines) into the project. As a part of Basic Services the Engineer shall complete all documentation and submission requirements necessary for Registration and Design and Construction Submissions of the CHPS Verified Program. The Engineer shall work with the District and its CHPS Program Manager to confirm CHPS Verified review path and verify that the District's project meets the District's Project Requirements and the District's CHPS Guideline goals for a CHPS Verified school project consistent with the District's budget.

20.15.2 The Engineer and Consultants shall participate early on in two CHPS integrated design workshops, led by the District's CHPS Program Manager to establish the District's CHPS Guideline goals and identify target credits. The Engineer shall be responsible for registering the project on-line with the CHPS Verified Program, and submitting for design and construction verification according to CHPS Verified Program Guidelines. The Engineer shall update the CHPS "Scorecard" with credit documentation, concurrent with each design phase submittal. The status of project compliance and documentation submitted in relation to CHPS Verified credits shall be assessed with the District at the end of each phase of the work.

20.15.3 Whole building energy performance analysis with a goal of a minimum of thirty percent (30%) of California Title 24 minimum energy performance standard shall be performed at least once during the following phases: Schematic Design, Design Development, and Construction Documentation. Energy Conservation Measures (ECMs) shall be proposed with Schematic and Design Development energy analysis runs to improve performance to meet or exceed goal. Daylighting analysis to identify strategies to improve daylighting to maximize goals of CHPS Credit EQ 1.1 'Daylighting,' shall also be performed at Schematic, and Design Development Phases prior to final Construction Documentation phase analysis reflecting final design incorporating daylighting improvements identified in earlier phases.

20.15.4 The Engineer shall complete steps as required by the CHPS Verified Program to achieve a CHPS Verified school project, including calculations demonstrating Acoustic Performance standards per CHPS guidelines are met, and forward electronic pdf copies of all submissions and communications with CHPS, concurrently, to the District's Project Manager and CHPS Program Manager.

20.16 BIM. The Engineer shall produce a Building Information Model, if the Parties so indicate by checking the adjacent box. The Building Information Model shall be created in accordance with Autodesk® BIM 360™ Building Information Modeling software and file format. The Engineer shall utilize the Building Information Model to minimize costs of Services under this Agreement.

20.16.1 Model Requirements. The Engineer shall make the Building Information Model in accordance to the current version of the "National BIM Standard – United States" ("NBIMS") of the National Institute of Building Sciences. The Engineer shall develop each BIM Element to the Level of Development in accordance with generally accepted industry practice by the end of each Project phase.

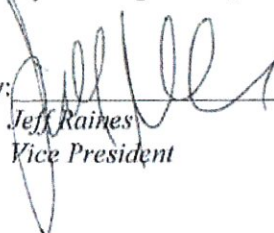
20.16.2 Model Management and Coordination. The Engineer shall manage the Model and coordinate efforts with Consultants to detect and resolve all Clashes. The Engineer must require all applicable Consultants engage in Clash detection. In management of the Model, the Engineer is responsible for facilitating and establishing the following: the Model coordinate system and units; file storage locations; processes for transferring and accessing Model files; Clash detection procedures; and Model access rights. Furthermore, the Engineer is responsible for the following: maintaining record copies of each file received for the Building Information Model; aggregating Building Information Model files; performing Clash detection in accordance with established procedures; maintain Building Information Model Archive and backups; manage Building Information Model access rights; and any additional responsibilities set forth in NBIMS. In the event a Clash is detected, the Engineer shall timely resolve the Clash in the Building Information Model, and the Engineer shall timely make corresponding corrections to any plan, specification, drawing, model, analysis, estimate, file, document, or item produced under the Services of this Agreement.

20.16.3 Building Information Model Archive. At the end of each Project phase, the Engineer is responsible for and shall produce a Building Information Model Archive that cannot be altered for any reason. Each Building Information Model Archive shall consist of two sets of files. The first set shall be a collection of all files the Engineer received for the Building Information Model during that Project phase, in both the file format received and all converted file formats.

The second set shall consist of the Building Information Model as developed at the end of that Project phase. In the event this Agreement is terminated, the Engineer shall create a Building Information Model Archive for the current Project phase up to the date of termination.

ENGINEER:
Terraphase Engineering

By:


Jeff Raines
Vice President

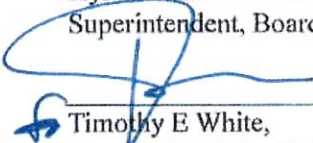
DISTRICT:
OAKLAND UNIFIED SCHOOL DISTRICT

 12/12/19

Aimee Eng Date
President, Board of Education

 12/12/19

Kyla Johnson-Trammell, Date
Superintendent, Board of Education

 11/5/19

Timothy E White, Date
Deputy Chief, Facilities Planning & Management

Approved As to Form:

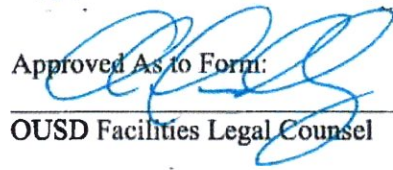
 11/15/19
OUSD Facilities Legal Counsel Date

Exhibit A
RATE SCHEDULE

Table 1
Time and Materials Cost Estimate
 Oakland Unified School District
 Emerson Elementary School

Category	Units	Standard 2019 Rate	Discount	Discounted Rate	Task 1		TOTALS	
					SWPPP Inspections and Compliance Support	Cost	Quantity	Cost
LABOR								
Principal	hour	\$ 238.00	10%	\$ 214.20	10	\$2,142	10	\$2,142
Senior Associate	hour	\$ 220.00	10%	\$ 198.00	4	\$792	4	\$792
Associate	hour	\$ 204.00	10%	\$ 183.60	0	\$0	0	\$0
Senior Project	hour	\$ 192.00	10%	\$ 172.80	0	\$0	0	\$0
Project	hour	\$ 175.00	10%	\$ 157.50	22	\$3,465	22	\$3,465
Senior Staff	hour	\$ 153.00	10%	\$ 137.70	35	\$4,820	35	\$4,820
Staff II	hour	\$ 134.00	10%	\$ 120.60	41	\$4,945	41	\$4,945
Staff I	hour	\$ 111.00	10%	\$ 99.90	0	\$0	0	\$0
Administrator 1	hour	\$ 84.00	10%	\$ 75.60	4	\$302	4	\$302
Technician II	hour	\$ 116.00	10%	\$ 104.40	0	\$0	0	\$0
Technician I	hour	\$ 75.00	10%	\$ 67.50	0	\$0	0	\$0
Total Terraphase Labor						\$16,466		\$16,466
DIRECT COSTS								
TERRAPHASE EQUIPMENT								
Field tablet	day	\$ 15.00		\$ 15.00	8	\$120	8	\$120
Mileage	mi	\$ 0.58		\$ 0.58	64	\$37	64	\$37
Turbidity meter	day	\$ 30.00		\$ 30.00	0	\$0	0	\$0
pH meter	day	\$ 10.00		\$ 10.00	0	\$0	0	\$0
Total Terraphase Equipment						\$157		\$157
Totals Estimated Project Costs (Without Contingency)						\$16,623		\$16,623
Contingency (20%)						20%		\$3,325
Total Budget Request (Including Contingency)								\$19,947

Exhibit B
PROJECT SCHEDULE

Contract Term: Intended Start: December 12, 2019
Intended End: September 27, 2020

Exhibit C
SCOPE OF SERVICES



October 21, 2019

Mr. John Esposito
Facilities Project Manager
Oakland Unified School District
955 High Street
Oakland, California 94601

sent via email to john.esposito@ousd.org

Subject: Proposal to Perform SWPPP Inspections and Compliance Support for the Oakland Unified School District Emerson Elementary School Project

Dear Mr. Esposito:

Terraphase Engineering Inc. (Terraphase) thanks the Oakland Unified School District (the District) for the opportunity to submit this Proposal to Perform Storm Water Pollution Prevention Plan (SWPPP) inspections and compliance support services for the Emerson Elementary School Girls Softball Field Project (the Project) located at 4803 Lawton Avenue in Oakland, California ("the Site").

Our understanding is that the Project will obtain coverage under the State Water Resources Control Board (SWRCB) Order No. 2009-0009 DWQ General Permit for Construction (CGP) and that Verde Design, Inc. would prepare the SWPPP and serve as the Qualified SWPPP Developer (QSD). Our services would begin upon construction kickoff and would extend through final stabilization and permit closure. For the purposes of this proposal we have assumed this period to extend from June 1, 2020 through September 30, 2020.

Scope of Work

Task 1: SWPPP Inspections and Compliance Support

Training:

Terraphase will conduct on-site Best Management Practice (BMP) and stormwater awareness training at the kickoff of construction activities. The BMP training scope includes training materials preparation, contractor and subcontractor notification, presentation, and travel to the site. The BMP training will include one 1-hour training seminar for contractors and subcontractors associated with project proposed construction activities and will occur in a tailgate training format.

Inspections:

Terraphase will perform regular inspections in accordance with the requirements of the CGP. This will include:

- Pre-storm inspections within 48 hours of forecasted rain with a 50% or greater chance.
- During-storm inspections once every 24-hour period during extended rain events.

- Post-storm inspections within 48 hours of conclusion of qualifying rain events (a precipitation depth of 0.5" or greater).
- Weekly inspections during periods of no rain.
- One quarterly non-stormwater inspection (in tandem with one of the inspections above).
- Filing inspection reports in the onsite SWPPP and providing copies to relevant team members
- Periodic project coordination, weather forecasting, and management

Terraphase will coordinate with Site personnel on an ongoing basis, track construction progress and changing site conditions, conduct weather forecasting, and manage scope, schedule, and budget. Terraphase will work directly with construction personnel and project managers if corrective actions (including additional BMPs or BMP maintenance) are required based on inspection results.

Terraphase's Qualified SWPPP Practitioner (QSP) or their designee will conduct inspections of the construction during business hours, which are assumed to be approximately 7 am to 5 pm Monday through Friday. Tracking of rainfall and inspections will be performed in accordance with the site-specific SWPPP. Up to fifteen inspections have been included, including the final inspection. Inspections will be conducted weekly and surrounding rain events (as described above).

If weather or construction schedule dictate further visits or reporting is necessary, additional fees will apply. Only with written authorization from the District will additional work be conducted.

Non-Visible Pollutant Sampling:

Collection of discharge samples for non-visible pollutant monitoring will be triggered when pollutants associated with construction activities have the potential to be discharged with storm water runoff due to a spill or in the event there was a breach, malfunction, failure and/or leak of any BMP. Sampling for non-visible pollutants will be conducted during the first two hours of rain events. Samples for non-visible pollutants and a sufficiently large uncontaminated background sample will be collected during business hours and for rain events which generate runoff. Lab analytical costs are not included and will be provided if such work becomes necessary and once potential pollutants are determined.

Annual Report Preparation

Terraphase will prepare one Annual Report, per the requirements of the CGP. Draft Annual Reports will be prepared for the District's review and certification in the SWRCB's Stormwater Multi-Application Reporting and Tracking System (SMARTS).

Notice of Termination Preparation:

Terraphase will prepare a Notice of Termination (NOT) per the requirements of the CGP.

The NOT will be prepared in order to facilitate the Site's permit closure. Draft NOT documents will be provided to the District for comment prior to finalization and certification in SMARTS.

Additional Assumptions

- Permit fees will be paid by the District.
- The District's Legally Responsible Person will make him/herself available for certification of documents, as required, in the SWRCB's SMARTS online database.

- Terraphase will be added to the District's SMARTS account as a Data Submitter (Terraphase can provide guidance on this process).
- An employee of Verde Design, Inc. will serve as the QSD. The QSD will perform all SWPPP updates that are required online per the CGP and prepare the Long-Term Maintenance Plan upon project completion.
- All deliverables will be provided in electronic format.
- Terraphase has assumed that 15 site inspections will be required. If additional inspections are needed, they will be performed using the contingency budget, if available, or under a subsequent authorization.
- Effluent sampling is not required based on the Risk Level 1 determination for the Site.
- BMP maintenance/installation is not included.

Cost Estimate

A twenty percent contingency has been added to the project as shown in the following table, which will not be used without District approval. Our not-to-exceed cost for performing the work is \$19,947 (\$16,623 plus contingency of \$3,325). A detailed cost estimate is provided in the attached table.

Closing

Thank you for the opportunity to provide the District with this proposal. If you have any questions, please contact Hans Kramer at 510-414-6169 or Alice Hale Price at 510-390-1276.

Sincerely,

For Terraphase Engineering Inc.



Hans Kramer, PE, QSD
Principal Engineer



Alice Hale Price, PE
Senior Associate Engineer

<i>This proposal is hereby accepted by a duly authorized representative of the Client to whom it is addressed:</i>	
<i>Signature:</i> _____	
<i>Printed Name:</i> _____	
<i>Title:</i> _____	<i>Date:</i> _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/5/2019

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

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

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland CA 94604-2675	CONTACT NAME: PHONE (A/C, No, Ext): 510-465-3090		FAX (A/C, No): 510-452-2193
	E-MAIL ADDRESS: certificates@dealeyrenton.com		
INSURED Terraphase Engineering, Inc. 1404 Franklin Street, Suite 600 Oakland CA 94612	TERRAENGI3		INSURER(S) AFFORDING COVERAGE
			INSURER A: Hartford Accident and Indemnity Company
			INSURER B: Travelers Property Casualty Company of America
			INSURER C: Crum & Forster Specialty Insurance Company
			INSURER D:
			INSURER E:
		INSURER F:	NAIC #

COVERAGES

CERTIFICATE NUMBER: 1376277144

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			EPK128252	10/4/2019	10/4/2020	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			57UECFM0438	10/4/2019	10/4/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EFX113472	10/4/2019	10/4/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB7J183014	10/16/2019	10/16/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional and Pollution Liability			EPK128252	10/4/2019	10/4/2020	Per Claim \$5,000,000 Annual Aggregate \$5,000,000

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

Re: Emerson Elementary School - Oakland Unified School District and its Governing Board, agents, representatives, employees, trustees, officers, consultants and volunteers are named as Additional Insureds as respects General and Auto Liability for claims arising from the operations of the named insured. Umbrella Liability follows form for General and Auto Liability. General and Auto Liability insurance is Primary/Non-Contributory per policy form wording. Waiver of Subrogation applies to the General, Auto Liability policy and Workers' Compensation if required.

CERTIFICATE HOLDER

CANCELLATION 30 Days Notice of Cancellation.

Oakland Unified School District 955 High Street Oakland CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Angela Borg</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) or Organization(s)
Where Required By Written Contract.

SECTION III – WHO IS AN INSURED within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but only with respect to liability caused, in whole or in part, by "your work" for that insured which is performed by you or by those acting on your behalf.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED WITH WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) or Organization(s)
Where Required By Written Contract.

- A. **SECTION III – WHO IS AN INSURED** within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but solely with respect to "claims" caused in whole or in part, by "your work" for that person or organization performed by you, or by those acting on your behalf.
- This insurance shall be primary and non-contributory, but only in the event of a named insured's sole negligence.
- B. We waive any right of recovery we may have against the person(s) or organization(s) indicated in the Schedule shown above because of payments we make for "damages" arising out of "your work" performed under a designated project or contract with that person(s) or organization(s).
- C. This Endorsement does not reinstate or increase the Limits of Insurance applicable to any "claim" to which the coverage afforded by this Endorsement applies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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

Additional Insured: SECTION II – COVERED AUTO LIABILITY COVERAGE

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

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

Primary Insurance: SECTION IV – BUSINESS AUTO CONDITIONS

B. General Conditions - 5. Other Insurance

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

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

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

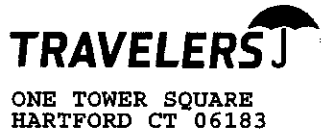
Cross Liability Clause: SECTION V – DEFINITIONS

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

EXCERPTS FROM HA9916 (0312)

**HARTFORD COMMERCIAL AUTOMOBILE BROAD
FORM ENDORSEMENT**

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



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB7J183014

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

Re: Emerson Elementary School - Oakland Unified School District and its Governing Board, agents, representatives, employees, trustees, officers, consultants and volunteers

DESIGNATED ORGANIZATION:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED NOTICE OF CANCELLATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
ONSITE CLEANUP COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART**

In consideration of the premium charged and solely with respect to the coverage parts shown above, it is hereby agreed that the **Common Provisions, Section VI – Common Conditions** is amended by the addition of the following:

Limited Notice Of Cancellation

In the event that we cancel this Policy for any reason other than non-payment of premium and;

- a. The effective date of cancellation is prior to the expiration date of this Policy; and
- b. You are under an existing written contractual obligation to notify a certificate holder when this Policy is canceled and have provided to us, either directly or through your broker of record, the email address of a contact at each such certificate holder; and
- c. We received this information after you received notice of cancellation of this Policy and prior to the effective date of cancellation, via an electronic spreadsheet that is acceptable to us,

We will provide notice of cancellation via email to each such certificate holder within thirty (30) days of your providing such information to us. Proof of our emailing the notice of cancellation, using the information provided by you, will serve as evidence that we have satisfied our obligations under this condition.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Emerson Elementary School Girls' Softball Field	Site	115
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

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

Contractor Information

Contractor Name	Terraphase Engineering	Agency's Contact	Jeff Raines
OUSD Vendor ID #	004240	Title	Vice Principal
Street Address	1404 Franklin Street	City	Oakland
Telephone	510-390-1276	State	CA
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Zip	94612
OUSD Project #	17117	Worked as an OUSD employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	12-12-2019	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	9-27-2020
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$19,947.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9350 9735	Fund 21, Measure J	210-9350-0-9735-8500-6235-115-9180-9905-9999-99999	6235	\$19,947.00

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities Planning and Management	Signature	Date Approved	11/5/19	
2.	General Counsel, Department of Facilities Planning and Management	Signature	Date Approved	11/15/19	
3.	Deputy Chief, Facilities Planning and Management	Signature	Date Approved	11/5/19	
4.	Chief Financial Officer	Signature	Date Approved		
5.	President, Board of Education	Signature	Date Approved		