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Enactment Date	10/23/2024 os



OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems and Services Officer  
Kenya Chatman, Executive Director

**Board Meeting Date** October 23, 2024

**Subject** General Services Agreement – Terraphase Engineering Inc. – McClymonds High School Modernization Project- Division of Facilities Planning and Management

**Action Requested** Approval by the Board of Education of General Services Agreement between the District and **Terraphase Engineering Inc., Oakland, CA**, for the latter to provide Environmental Site Assessment Consulting Services for the **McClymonds High School Modernization Project**, in the amount of **\$9,350.00 which includes a contingency fee of \$850.00**, as the selected consultant, with work scheduled to commence on **October 24, 2024**, and scheduled to last until **October 24, 2025**.

**Discussion** Consultant was selected through an RFP process, using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50).

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of General Services Agreement between the District and Terraphase Engineering Inc., Oakland, CA, for the latter to provide Environmental Site Assessment Consulting Services for the McClymonds High School Modernization Project, in the amount of \$9,350.00 which includes a contingency fee of \$850.00, as the selected consultant, with work scheduled to commence on October 24, 2024, and scheduled to last until October 24, 2025.

**Fiscal Impact** Fund 21 Building Funds, Measure Y

**Attachments**

- Justification Form
- Agreement and Exhibits
- Insurance Certificate
- Routing Form



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 (including sole source) – *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 RFQ/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:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a 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 \$109,300 or less (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- 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 \$109,300 (as of 1/1/23)
- 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:

Consultant was selected through an RFP process, using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50).

**OAKLAND UNIFIED SCHOOL DISTRICT  
GENERAL SERVICES AGREEMENT**

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This general services agreement (“Agreement”) is made and entered into effective **October 24, 2024** (the “Effective Date”), by and between the Oakland Unified School District (“District”) and **Terraphase Engineering Inc.** (“Contractor” and together with District, the “Parties”).

1. **Contractor Services.** Contractor agrees to provide the following services to District (collectively, the “Basic Services”): Environmental Site Assessment Consulting Services for the McClymonds High School Modernization Project (“Project”), (as further described in *Exhibit A* to this Agreement). Contractor shall provide services related to the Project other than Basic Services (i.e., “Additional Services”) if directed in writing by District to perform specific Additional Services and if sufficient contract funds for Additional Services remain to pay for the directed Additional Services (see Section 5, below). “Services” shall mean Basic and Additional Services. Contractor agrees to perform such Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Services and the Project. All services performed by the Contractor under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by **Terraphase Engineering Inc.** consultants specially qualified to provide the services required by the District.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing Services shall be competent to perform those Services.

3. **Term.** The term for performance of the Services shall be the duration of the Project (“Term”), except as otherwise stated in Section 4 below, and Contractor shall complete the Services within the Term. There shall be no extension of the Term without an amendment signed by all Parties and approved by the District’s governing board. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either Party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other Party. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if (1) Contractor materially breaches any of the terms of this Agreement; (2) any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums; (3) Contractor is adjudged a bankrupt; (4) Contractor makes a general assignment for the benefit of creditors; (5) a receiver is appointed because of Contractor’s insolvency; or (6) Contractor or Contractor Parties fail to comply with or make material representations as to the fingerprinting, criminal background check, and/or tuberculosis certification sections of this Agreement. Such termination shall be effective immediately upon Contractor’s receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor based on the hourly rates listed in *Exhibit B* for Services satisfactorily performed. Contractor shall not increase these hourly rates over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed **Nine Thousand Three Hundred Fifty Dollars (\$9,350.00)**, which consists of a not-to-exceed amount of **Eight Thousand Five Hundred Dollars (\$8,500.00)** for performance of the Basic Services, and a not-to-exceed contingency amount of **Eight Hundred Fifty Dollars (\$850.00)** for performance of any Additional Services. Contractor acknowledges that the not-to-exceed fee for Basic Services, above, includes contingency compensation in the foreseeable event that more time and costs may be necessary to complete the Basic Services. Contractor shall perform all Basic Services required by the Agreement even if the not-to-exceed amount for performance of the Services has already been paid and no more payments will be forthcoming. District agrees to make payment within sixty (60) days of receipt of a detailed invoice from Contractor based on hours worked and hourly rates, including any additional supporting documentation that District reasonably requests. Contractor shall not submit its invoices to District more frequently than monthly. Contractor will not be compensated for any Basic or Additional Services required as a result of wrongful acts or omissions.

5.1 **Reimbursement for Certain Expenses.** Contractor shall not be reimbursed directly for any of its expenses, as the fees to be paid under this Agreement include compensation for any and all of Contractor's expenses.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The indemnification provided for in this Section 6 includes, without limitation to the foregoing, claims that may be made against District by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against District alleging civil rights violations by Contractor or Contractor Parties under the California Fair Employment and Housing Act ("FEHA").

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or

failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Section 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate; (iii) worker's compensation insurance as required by Labor Code section 3200, et seq.; and (iv) professional liability insurance covering errors and omissions. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self- insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** The Parties agree that Contractor is free from the control and direction of District in connection with Contractor's performance of the Services. Contractor is hereby retained to provide the specified Services for District, which are outside the usual course of District's business. Contractor certifies that it is customarily engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. Unless required by law, District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. If applicable, Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Before performing any Services, Contractor shall execute and return the District's Fingerprinting Notice

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and Acknowledgement form and the required certification (see *Exhibit C*).

Contractor further agrees and acknowledges that if at any time during the Term of this Agreement Contractor learns or becomes aware of additional information which differs in any way from the information learned or provided pursuant to Section 45125.1, or Contractor or Contractor Parties add personnel who will provide Services under this Agreement, Contractor shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis (“TB”) certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A.  Contractor and Contractor Parties will **only have limited contact or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B.  The following Contractor and Contractor Parties will have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test or risk assessment in full compliance with the requirements of Education Code section 49406:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_. [Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired to provide Services under this Agreement after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements of Education Code section 49406 and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** All District information disclosed to Contractor during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties excepts as authorized by District or required by law. Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the Services provided to any District student pursuant to this Agreement.



14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective Parties.

15. **Severability.** 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 of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties and approved by the District's governing board.

17. **Governing Law.** 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 of Alameda, 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.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1 and confidentiality of records. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** 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 from the other party all of its reasonable litigation expense, costs, and fees actually incurred, including reasonable attorneys' and experts' fees.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. **Time.** Time is of the essence for performance of the Services under this Agreement.
24. **Waiver.** No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude either Party from any or further exercise of any right or remedy.
25. **Reports.** Contractor shall maintain complete and accurate records with respect to the Services rendered and the costs incurred under this Agreement, including records with respect to any payments to employees and subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures. Upon request, Contractor shall make such records available to District for the purpose of auditing and copying such records for a period of five years from the date of final payment under this Agreement.
26. **Ownership of Documents.** All plans, studies, drawings, calculations, reports, specifications, 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 Contractor under this Agreement (“Documents”) shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to the Services but as they relate or may relate to any other project. Contractor will provide the District with a complete set of Documents, and will retain, on the District's behalf, the originals or reproducible copies of all Documents, however stored, in the Contractor's files for a period of no less than fifteen (15) years. Contractor shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.
27. **Licensing of Intellectual Property.** 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 the Documents (“Intellectual Property”) not only as they relate or may relate to the Services but as they relate or may relate to other projects. The Contractor shall require any and all subcontractors and subconsultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the Intellectual Property of such subcontractors or consultants that they provided to Contractor as part of the Services. The compensation for the Services includes compensation not only for any such use of the Intellectual Property in connection with the Services, but also for any re-use of the Intellectual Property by the District in relation to other projects. Contractor represents and warrants that Contractor has the legal right to license the Intellectual Property that Contractor, its subcontractors, or its subconsultants prepare or cause to be prepared under this Agreement.
28. **Entire Agreement.** This Agreement is intended by the Parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.
29. **Ambiguity.** The Parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.

30. **Execution of Other Documents.** The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

31. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

32. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

33. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. 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.

34. **Forms.** Prior to performing any Services, Contractor shall prepare, execute, and submit all forms that may be required by law for this Agreement, including but not limited to disabled veteran business enterprises ("DVBE") certification (Education Code §17076.11) and an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Contractor shall use the District's versions of these forms, which the District shall make available upon request.

35. **Sanctions in Response to Russian Aggression.** The District is using State of California funds for this Contract, and therefore Contractor must comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

36. **Designation of Key Personnel.** The individuals specified in the attached *Exhibit D* shall provide the services set forth herein, and shall be the persons primarily in charge of such work. No other individuals may provide services for Contractor on the this project without first obtaining the written approval of the City Manager.

37. **Conflict of Interest.** Contractor warrants that neither Contractor nor any of its employees, agents, or subcontractors has an actual or potential conflict of interest with the District in respect to the Services to be performed under this Agreement for the District. None of such individuals shall, during this term of this Agreement, acquire any interest which conflicts, or could potentially conflict, in any manner with the interests of the District.

38. **Notice to Proceed; Progress; Completion.** Upon execution of this Agreement by the parties and approval of it by the District's governing board, District shall give Contractor written notice to proceed with the Services. Such notice may authorize Contractor to render all of the Services

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contemplated herein, or such portions or phases as may be directed by the District. In the latter event, District shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the Services. Upon receipt of such notices, Contractor shall diligently proceed with the Services authorized and complete it within the agreed time period.

39. **California Residency.** Contractor *is* a resident of the State of California.





**Address for District Notices:**  
 955 High Street  
 Oakland, CA 94601  
 Attention: Preston Thomas


**Address for Contractor Notices:**  
 1300 Clay Street  
 Oakland, CA 94612  
 Attention: Alice Hale Price

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**OAKLAND UNIFIED SCHOOL DISTRICT**

**TERRAPHASE ENGINEERING INC.**

 10/24/2024  
 Benjamin Davis, President, Date  
 Board of Education  
 10/24/2024  
 Kyla Johnson-Trammell, Superintendent Date  
 & Secretary Board of Education Sep 27, 2024  
  
 Preston Thomas, Chief Systems & Services Date  
 Officer  
  
 09/26/2024  
 Mark Williams, Esq. Date  
 Counsel, OUSD

 9/24/2024  
 Signature Date  
 Alice Hale Price, Principal Engineer  
 Print Name, Title

Preston Thomas (Sep 27, 2024 13:05 PDT)

**EXHIBIT A**

**Scope of Services**

## B. Statement of Qualifications

### 2.4.3 Long Beach Unified School District (LBUSD)

Fremont Elementary School, Long Beach, CA	
<p><b>Role of Firm:</b> Prime</p> <p><b>Staff Involvement &amp; Roles:</b> James Bryson (Client Manager), Tanner Rickard (Project Manager)</p> <p><b>Dates of Services:</b> 2021 – 2023</p> <p><b>Description:</b> Conducted hazardous building material surveys prior to demolition. Performed site investigations to determine extent of impacted soil. Remedial design and implementation of remedy included coordination with DTSC and removal of soil.</p>	<p><b>RELEVANCE TO THIS PROJECT</b></p> <ul style="list-style-type: none"> <li>Due Diligence Support</li> <li>Subsurface Investigation</li> </ul> <p><b>CLIENT CONTACT</b></p> <p>Talitha Crain, 213-576-6793,  <a href="mailto:tcrain@lbschools.net">tcrain@lbschools.net</a></p>
<b>Budget:</b> \$1,024,595	<b>Construction Dollar Value:</b> \$n/a
Multiple Sites, Long Beach, CA	
<p><b>Role of Firm:</b> Prime</p> <p><b>Staff Involvement &amp; Roles:</b> James Bryson (Client Manager), Salvador Mendoza (Project Manager)</p> <p><b>Dates of Services:</b> 2023 – 2024</p> <p><b>Description:</b> Performed hazardous building materials surveys to assess for asbestos-containing materials and lead-based paint on shade structures at over 50 school campuses.</p>	<p><b>RELEVANCE TO THIS PROJECT</b></p> <ul style="list-style-type: none"> <li>Due Diligence Support</li> <li>Subsurface Investigation</li> </ul> <p><b>CLIENT CONTACT</b></p> <p>Talitha Crain, 213-576-6793,  <a href="mailto:tcrain@lbschools.net">tcrain@lbschools.net</a></p>
<b>Budget:</b> \$99,645	<b>Construction Dollar Value:</b> \$n/a

## 2.5 Scope of Work

Terraphase will prepare a Phase I ESA for the CCPA property in accordance with: ASTM E1527-21, the United States Environmental Protection Agency (USEPA) 40 CFR 312 “Innocent Landowners, Standards for Conducting All Appropriate Inquiries”<sup>1</sup> (AAI rule), adopted November 1, 2006, and most recently amended on December 15, 2022, and the Phase I ESA requirements of the DTSC Brownfields Restoration and School Evaluation Branch for school site selection (Ed. Code. Sections 17210(b) and 17213.1(a)).<sup>2</sup> The Phase I ESA reports will be prepared under the oversight of an environmental professional as defined in ASTM E1527-21.

We propose performing the following Phase I ESA tasks in general accordance with guidelines contained within ASTM E1527-21. The Phase I ESA includes the following steps: (i) records review; (ii) site reconnaissance, (iii) interviews with owners, operators, and occupants; and (iv) preparation of the Phase I ESA Report. During the site reconnaissance, Terraphase staff will endeavor to traverse what we identify to be key portions of the subject properties by foot or vehicle in an effort to perform a visual inspection of major on-site features (although water bodies will not be entered for inspection), as possible.

<sup>1</sup> <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-312?toc=1>.

<sup>2</sup> Please note that AAI defines certain client responsibilities beyond just having a Phase I ESA completed; thus, Terraphase strongly encourages its Phase I ESA clients to become familiar with the AAI rule to understand what must be done by the client to fully demonstrate AAI and achieve the full benefit of AAI “liability protections.”

## B. Statement of Qualifications

Additionally, Terraphase will review records to determine if the potential exists for exposure to hazardous materials, including methane and naturally occurring hazardous substances (Ed. Code, § 17210.1, subsec. (a)(1) and (2)). In accordance with Ed. Code Section 17213.1(a)(1), the Phase I ESA will include a recommendation stating either:

- Further investigation of the subject property is not warranted.
- A preliminary endangerment assessment (or Phase I ESA Addendum) is needed to further evaluate potential environmental impacts.

### 3. Litigation

There are no judgments against Terraphase, nor any other evidence of liability of Terraphase during the past five (5) years preceding this response to the RFQ.

Terraphase's five (5)-year summary of litigation, arbitration, and negotiated/settled history with previous clients follows.

<b>Entity bringing suit:</b>	Terraphase Engineering Inc.
<b>Complaint:</b>	Breach of contract
<b>Accusation:</b>	Contract was breached; client did not inform Terraphase of any issues with invoices and failed to pay them
<b>Outcome:</b>	Dispute was resolved without further litigation in May 2020

**EXHIBIT B**

**Hourly Rates**



## Fee Proposal

We propose to provide the scope-of-services described above for a total of \$9,350, inclusive of a 10 percent contingency of \$850 (use of contingency requires District approval). This cost estimate and associated rates schedule assumes that work will be completed prior to January 2025.

	Base Fee
Task 1. Phase I ESA	\$8,500
Contingency Budget (Requires PM Approval)	\$850
<b>Project Total</b>	<b>\$9,350</b>

## Hourly Rates

The following table provides the schedule of fees for Terraphase; rates for support and clerical staff are included. Rates are inclusive of all overhead costs. Terraphase is pleased to offer the District a 10 percent discount from our 2024 Standard Schedule of Charges.

Labor Classification	Standard Hourly Rate	Hourly Rate with 10% Discount
Senior Principal	\$303	\$272.70
Principal Engineer/Scientist	\$286	\$257.40
Senior Associate Engineer/Scientist	\$266	\$239.40
Associate Engineer/Scientist	\$250	\$225.00
Senior Project Engineer/Scientist	\$235	\$211.50
Project Engineer/Scientist	\$219	\$197.10
Senior Staff 2 Engineer/Scientist	\$202	\$181.80
Senior Staff 1 Engineer/Scientist	\$183	\$164.70
Staff 2 Engineer/Scientist	\$164	\$147.60
Staff 1 Engineer/Scientist	\$144	\$129.60
Senior Technician	\$149	\$134.10
Technician 3	\$129	\$116.10
Technician 2	\$109	\$98.10
Technician 1	\$91	\$81.90
Senior Editor/Senior Project Coordinator	\$158	\$142.20
Editor 2/Project Coordinator 2/Accountant 2	\$140	\$126.00
Editor 1/Project Coordinator 1/Accountant 1	\$117	\$105.30
Administrator/Project Assistant/Billing Specialist	\$98	\$88.20

**EXHIBIT C**

**Fingerprinting Notice and Acknowledgement Form**

**FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT**  
**FOR ALL CONTRACTS EXCEPT WHEN CONSTRUCTION EXCEPTION IS MET**  
(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:


1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a).

(Education Code §45125.1(h).)

I, as Vice President of HR *[insert "owner" or officer title]* of Terraphase Engineering, Inc. *[insert name of business entity]*, have read the foregoing and agree that Terraphase Engineering, Inc. *[insert name of business entity]* will comply with the requirements of Education Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: 09/25/2024

Name: Hank Galindo -

Signature:  -

Title: Vice President of HR

## ATTACHMENT A

### Violent and Serious Felonies

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

**ATTACHMENT B**

**Form for Certification of Lack of Felony Convictions**

*Note: This form must be submitted by the owner, or an officer, of the contracting entity before it may commence any work or services, and before it may be present on District property or be within the vicinity of District pupils.*

Entity Name: Terraphase Engineering Inc.  
Date of Entity’s Contract with District: 10/24/2024  
Scope of Entity’s Contract with District: Environmental Site Assessment

I, Hank Galindo [insert name], am the Vice President of Human Resources [insert “owner” or officer title] for Terraphase Engineering, Inc. [insert name of business entity] (“Entity”), which entered a contract on October 24, 2024 with the District for environmental site assessment

I certify that (1) pursuant to Education Code section 45125.1(f), neither the Entity, nor any of its employees who are required to submit fingerprints and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1; and (2) the Entity is in full compliance with Education Code section 45125.1, including but not limited to each employee who will interact with a pupil outside of the immediate supervision and control of the pupil’s parent or guardian having a valid criminal background check as described in Education Code section 44237.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: Sept. 25, 2024

Signature:   
Typed Name: Hank Galindo  
Title: Vice President of HR  
Entity: Terraphase Engineering Inc.



**LOCAL BUSINESS PARTICIPATION WORKSHEET**

Prime	Terraphase Engineering Inc.	Bid Opening Date	August 8, 2024
Project Name	McClymonds High School Modernization Project	Time:	
Project Number	21110	Project Manager:	Kenya Chaltman
Proposed Total Contract Amount	9350	Architect:	

BASE BID AMOUNT	9350
Proposed Total SLBE Amount (%)	100 %

Small, Local Business Enterprise(s)/Small Emerging, Local Business Enterprise(s)	Total Amount of Contract (as a \$ amount)	Local Business Enterprise (LBE)	Small, Local Business Enterprise (SLBE)	Small, Local Resident Business Enterprise (SLRBE)
<b>Company Name</b> <b>Terraphase Engineer/Alameda County</b> <b>Address, City/State</b> 1300 Clay Street, Oakland, CA <b>Certifying Agency</b> 11-00059 <b>Company Name</b> Certifying Agency <b>Address, City/State</b> Certifying Agency Certification No. (if available) <b>Company Name</b> Certifying Agency <b>Address, City/State</b> Certifying Agency Certification No. (if available) <b>Company Name</b> Certifying Agency <b>Address, City/State</b> Certifying Agency Certification No. (if available)	9350		100	
<b>TOTAL PARTICIPATION</b>	\$ 9350	0 %	100 %	0 %

APPROVAL - LBU Compliance Officer

NOTE: All Local Business Utilization documentation must be included with bid form at the time of bid opening.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDED WAIVER OF TRANSFER OF RIGHTS  
OF RECOVERY AGAINST OTHERS TO US**

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  
ONSITE CLEANUP COVERAGE PART

**SCHEDULE**

Name of Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.

**SECTION VI – COMMON CONDITIONS, item 17. Transfer Of Rights of Recovery Against Others To Us** within the Common Provisions is amended by the addition of the following:

Solely as respects the person(s) or organization(s) indicated in the Schedule shown above, 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 ongoing operations or “your work” performed under a written contract with that person(s) or organization(s) and included in the “products-completed operations hazard”.

However, this waiver shall not apply to “damages” resulting from the sole negligence of the person(s) or organization(s) indicated in the Schedule shown above.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**



## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	McClymonds High School Modernization Project	<b>Site</b>	303
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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.**

<b>Attachment Checklist</b>	<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
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### Contractor Information

<b>Contractor Name</b>	Terraphase Engineering Inc.	<b>Agency's Contact</b>	Alice Hale Price		
<b>OUSD Vendor ID #</b>	004240	<b>Title</b>	Principal Engineer		
<b>Street Address</b>	1300 Clay Street	<b>City</b>	Oakland	<b>State</b>	CA
<b>Telephone</b>	510-645-1850	<b>Zip</b>	94612		
<b>Contractor History</b>	Previously been an OUSD contractor?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Worked as an OUSD employee?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>OUSD Project #</b>	21110				

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	10-24-2024	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	10-24-2025
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>	\$	<b>If New Contract, Total Contract Price (Not To Exceed)</b>	\$9,350.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	
<b>Other Expenses</b>		<b>Requisition Number</b>	

### 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
9657/9856	Fund 21, Measure Y	210-9657-0-9856-8500-5825-303-9180-9906-9999-21110	5825	\$9,350.00

### 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.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Executive Director, Facilities</b>				
	<b>Signature</b>	<b>Date Approved</b>	Sep 27, 2024		
2.	<b>Counsel, Department of Facilities Planning and Management</b>				
	<b>Signature</b>	<b>Date Approved</b>	09/26/2024		
3.	<b>Chief Systems and Services Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>	Sep 27, 2024		
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>	<b>Date Approved</b>			
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	<b>Date Approved</b>			