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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer, Division of Facilities Planning and Management; Kenya Chatman, Executive Director of Facilities Planning

Board Meeting Date November 16, 2023

Agreement for Material Testing and Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences Consultants – Oakland High School Pad Mounted Battery Energy Storage System Project - Division of Facilities Planning and Management

Action Requested Approval by the Board of Education to Agreement for Material Testing and Special Inspection Services between the **District and Ninyo & Moore , Alameda, CA**, for the latter to provide materials testing and special inspection services for the Oakland High School Pad Mounted Battery Energy Storage System Project in the not-to-exceed amount of **\$3,120.00**, which includes a not-to-exceed amount of **\$284.00** for Additional Services, with the work scheduled to commence on **November 30, 2023**, and scheduled to last until **December 31, 2024**, pursuant to the Agreement.

Discussion Consultant is providing specially trained material testing & special inspections services. (Public Contract Code §20111(d); Government §53060.)

LBP (Local Business Participation Percentage) Waived

Recommendation Approval by the Board of Education to Agreement for Material Testing and Special Inspection Services between the District and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, Alameda, CA, for the latter to provide materials testing and special inspection services for the Oakland High School Pad Mounted Battery Energy Storage System Project in the not-to-exceed amount of \$3,120.00, which includes a not-to-exceed amount of \$284.00 for Additional Services, with the work scheduled to commence on November 30, 2023, and scheduled to last until December 31, 2024, pursuant to the Agreement.

Fiscal Impact Fund 21, Measure J

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



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 23-2452

Department: Facilities Planning and Management

Vendor Name: Ninyo & Moore Geotechnical & Environmental Sciences Consultants Project No.: 23110

Project Name: Oakland High School Pad Mounted Battery Energy Storage System Project

Contract Term: Intended Start: November 30, 2023

Intended End: December 31, 2024

Total Cost Over Contract Term: \$3,120.00

Approved by: Preston Thomas

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

RFP- Q processes vetted this vendor for this project and an Addendum # 1

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

This is a requirement of the (DSA) Department of the State Architects and there DSA - 103 form check list. to assure the proper life, safety and access is met by the installing developer/contractors. Vendor to oversee the installation of a Telsa Meg pack 2 Backup Battery Plant and utility yards at the Oakland HS Campus per the approved (DSA) Department of the State Architects and there DSA - 103 form check list.

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. Ninyo & Moore Geotechnical & Environmental Sciences Consultants price was fair and reasonable compared to the prices submitted by the other responding architects.

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:

- Ninyo & Moore Geotechnical & Environmental Sciences Consultants is providing specially trained services.

AGREEMENT FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

THIS AGREEMENT FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES (“Agreement”) is made and entered into effective November 30, 2023, by and between the Oakland Unified School District, a school district duly organized and existing under the laws of the State of California (the “District”), and Ninyo & Moore Geotechnical & Environmental Sciences Consultants (the “Consultant”), with respect to the following recitals:

- A. District proposes to undertake the construction of an improvement project which requires the services of a duly qualified and licensed materials testing and special inspection consultant.
- B. Consultant represents that Consultant is licensed to provide materials testing and special inspection services in the State of California and is specially qualified to provide the services required by the District in this Agreement.
- C. The parties have negotiated the terms pursuant to which Consultant will provide such services and reduce such terms to writing by this Agreement.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Retention of Consultant.** District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the materials testing and special inspection services specified in this Agreement. Consultant 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 Consultant under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by materials testing and special inspection consultants specially qualified to provide the services required by the District.
2. **Description of Project.** The project concerning which such materials testing and special inspection services shall be provided (“the Project”) is described as the following: materials testing and special inspection services for the Oakland High School Pad Mounted Battery Energy Storage System Project.
3. **Term; Basic Services.** The term for performance of the Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Consultant shall complete the Services within the Term. Time is of the essence for performance of the Services under this Agreement. The Project is expected to be complete as of December 31, 2024, but may not be completed until later if delays in design or construction arise. Consultant’s “Basic Services” consist of materials testing and special inspection services more specifically described in the attached *Exhibit B*. Consultant shall perform all Basic Services required by this Agreement,

{SR801418}

This Agreement For Materials Testing And Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences Consultants- Oakland High School - Pad Mounted Battery Energy Storage System Project-\$3,120.00

even if no more compensation is possible due total compensation having reached the not-to-exceed amount. If delays in completion of the Project occur that are not caused by wrongful conduct by Consultant, including but not limited to Consultant's breaches of contract or deficient performance of Basic or Additional Services, then Consultant shall be entitled to an amendment to the Agreement that increases the not-to-exceed amounts for Basic Services during the additional time of the Project.

In addition, as a part of its Basic Services, the Consultant shall assist the District in evaluating claims, disputes and other matters in question between the contractor and the District relating to Consultant's work, including but not limited to claims made against the District as a result of Consultant's alleged or claimed errors 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.

Consultant shall confer and cooperate with District's other consultants. Consultant shall take precautions to minimize any damage due to Consultant's activities. Consultant shall be responsible and liable for any damage Consultant causes through its wrongful acts or omissions.

During the construction phase, Consultant shall visit the Project site when requested by District to observe conditions encountered by the contractor and to assess the progress and quality of contractor's work. Consultant shall participate in job site meetings as requested by District.

The Consultant must comply with the applicable requirements of the Division of State Architect Construction Oversight Process ("DSA Oversight Process"), including but not limited to (a) obtaining a copy of the DSA-approved construction documents and Statement of Structural Tests and Special Inspections (DSA form 103) from the Architect before the beginning of construction; (b) reporting all project related activities to the Inspector of Record (the Inspector of Record is responsible for monitoring the work of the Laboratory of Record and Special Inspectors to ensure the testing and special inspection program is satisfactorily completed); (c) submitting applicable verified reports (DSA forms 291, 292, and 293) to DSA, Inspector of Record, Owner and Architect; and (d) coordinating with the Owner, Owner's Architect, any Construction Manager, the Inspector of Record, and the Contractor to meet the DSA Oversight Process requirements without delay or added costs to the Project.

In the performance of the special inspection duties required by this Agreement, the Consultant exercises limited authority as defined in this Agreement. The Consultant shall not:

- a. Authorize deviations from the construction contract documents;
- b. Avoid conducting any required tests;
- c. Enter the area of responsibility of the contractor's field superintendent;
- d. Expedite the job for the contractor;
- e. Advise on, or issue directions relative to, any aspect of the building technique or se-

quence unless a specific technique or sequence is called for in the specifications;

f. Approve shop drawings or samples;

g. Authorize or advise the District to occupy the Project, in the whole or in part, prior to final acceptance of the Project; or

h. Interfere in contractor/subcontractor relationships.

If Consultant determines contractor is not meeting the requirements of Consultant's recommendations or the plans and specifications, Consultant shall immediately bring that information to District's attention.

Consultant shall retain all samples for the duration of the Agreement.

For all Basic Services satisfactorily performed, compensation shall be as described in *Exhibit A* to this Agreement.

4. **Additional Services.** Any services not included in this Agreement but related to the Project shall be considered "Additional Services." Compensation for additional services shall be as described in *Exhibit A* to this Agreement. Consultant shall keep complete records showing all hours worked and all costs and charges incurred for Additional Services. District shall be given reasonable access to those records for audit purposes. Consultant shall provide 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 *Exhibit A*).

5. **Payment.** Services satisfactorily performed shall be billed monthly via properly documented and submitted invoices. Invoices that are not disputed by District shall be paid within thirty (30) days of District's receipt of the invoice. Consultant shall comply with any applicable prevailing wage law. Consultant shall not be reimbursed for any of its expenses; the parties agree that Consultant shall pay all of its expenses from its fees for Services.

6. **Insurance.** Consultant shall purchase and maintain insurance that will protect Consultant from the claims set forth below that may arise out of or result from the Consultant's performance of services or failure to perform services required by this Agreement:

a. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;

b. Claims for damages because of bodily injury, occupational sickness or disease or death of Consultant's employees, agents or invitees;

c. Claims for damages because of bodily injury or death of any person;

- d. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Consultant or (2) by any other person;
- e. Claims for damages, other than to the work itself because of injury to or destruction of tangible property, including loss of use therefrom; or
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

Consultant's comprehensive general and automobile liability insurance shall be written for not less than the following limits of liability:

Comprehensive General Liability

Personal Injury:	Property Damage:
\$1,000,000. Each Occurrence	\$1,000,000. Each Occurrence
\$2,000,000. Aggregate	\$2,000,000. Aggregate

Comprehensive Automobile Liability

Bodily Injury:	Property Damage:
\$1,000,000. Each Person	\$1,000,000. Each Occurrence
\$1,000,000. Each Occurrence	

Consultant shall also maintain errors and omissions insurance on an occurrence basis with limits of at least One Million (\$1,000,000.) with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000.00).

7. **Hazardous Materials.** In the event the District or Consultant 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, or the substantial risk thereof, each shall have a duty immediately to notify the other in writing.

8. **Compliance with Laws.** Consultant shall be familiar with and 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.

9. **Termination.**

a. District may unilaterally terminate this Agreement for any reason, in its absolute discretion, by giving Consultant seven (7) days written notice of termination.

b. This Agreement may also be terminated by either Party upon seven (7) days written notice should the other Party fail substantially to perform their duties or for any material breach under this Agreement.

c. In the event of termination, Consultant shall be compensated for all services satisfactorily performed to the termination date and, if terminated under subparagraph (a) above, any costs incurred by reason of such termination; but less any amounts the District is entitled to withhold under law or this Agreement.

10. **Independent Contractor Status.** Consultant and any and all agents and employees of Consultant shall perform the services required pursuant to this Agreement as an independent contractor, not as officers, employees, or agents of the District. In providing the services contemplated by this Agreement, Consultant shall maintain a professional working relationship with the District, the Contractor, the Inspector and the Architect. Nothing contained in this Agreement shall be deemed to create any contractual relationship between Consultant and the Architect, Inspector or the Contractor for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District or the Consultant which does not otherwise exist.

11. **Indemnity.** Consultant shall indemnify, defend, and hold harmless the District, its Board of Trustees, officers, agents, and employees from any and all claims damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Consultant's performance of or failure to perform any of the duties contemplated by this Agreement or for any tax liability arising out of this Agreement.

12. **Taxes.** Consultant shall be liable and solely responsible for paying all required taxes including, but not limited to, Federal and State income taxes and social security taxes. Consultant agrees to indemnify, defend and hold the District harmless from any liability which Consultant may incur to the Federal or State governments as a consequence of this Agreement. All payments to the Consultant shall be reported to the appropriate Federal and State tax authorities as required.

13. **Successors and Assigns.** The District and Consultant, respectively, bind themselves, their successors, assigns, and representatives to the other Party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other Party with respect to all terms of this Agreement. Neither District nor Consultant shall assign or transfer any interest in this Agreement without the written consent of the other.

14. **Notices.** All payments and any notices or communications under this Agreement shall be in writing and shall be deemed to be duly given if served personally on the Party to whom it is directed or shall be deemed served when deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, and addressed in the case of:

Consultant: Ninyo & Moore Geotechnical & Environmental Sciences
Consultants; Attn: Ransom Hennefer, Project Manager
1301 Marina Village Parkway, Suite 110
Alameda, CA 94501

District: Oakland Unified School District
Attn: Preston Thomas
955 High Street
Oakland, CA 94601

15. **Governing Law.** This Agreement shall be governed by 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.

16. **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.

17. **Amendment.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all parties.

18. **Compliance with Law.** While performing the services contemplated by this Agreement, Consultant agrees to comply with all applicable laws and regulations.

19. **Requests.** Consultant agrees to timely and properly complete all reports requested by the District or as required by law. In addition, Consultant agrees that District has a right to a copy of all reports and other records created or maintained by Consultant.

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

21. **Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

22. **Entire Agreement.** 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. Consultant, by the execution of this Agreement, acknowledges that Consultant has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

23. **Warranty of Authority.** The persons signing 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.

24. **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.

25. **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.

26. **Fingerprinting and Criminal Background Check Certification.** Consultant 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, Consultant shall execute and return the District's Fingerprinting Notice and Acknowledgement form and the required certification (see *Exhibit C*).

Consultant further agrees and acknowledges that if at any time during the Term of this Agreement Consultant learns or becomes aware of additional information which differs in any way from the representations set forth above, or Consultant add personnel who will provide Services under this Agreement, Consultant 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.

27. **Forms.** Prior to performing any Services, Consultant 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, Consultant shall use the District's versions of these forms, which the District shall make available upon request.

28. **Sanctions in Response to Russian Aggression.** The District is using State of California funds for this Contract, and therefore Consultant 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.

DISTRICT:
OUSD

NINYO & MOORE GEOTECH-
NICAL & ENVIRONMENTAL
SCIENCES CONSULTANTS

[Signature]

11/17/2023

Mike Hutchinson, President,
Date
Board of Education

Signature

[Signature]

[Signature]

11/17/2023

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

Title

Ransom Hennefer, Principal Engineer

Date

November 2, 2023

Preston Thomas, Chief Systems Date
and Services Officer, Facilities Planning
and Management

[Signature]

11/6/23

Approved As to Form

[Signature]

11/2/23

OUSD Facilities Legal Counsel

Date

EXHIBIT A

Payments

For the Basic and Additional Services satisfactorily performed, and based on invoices properly documented and submitted, Consultant shall be compensated according to its hourly rate schedule (see next page).

For Basic Services, Consultant's total compensation shall not exceed \$2,836.00, which is Consultant's estimate of the maximum total cost of its Basic Services on the Project, based on its October 12, 2023, fee estimate. Consultant 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.

For Additional Services, Consultant's total contingency compensation shall not exceed \$284.00.

The total price under this Agreement for Basic and Additional Services shall not exceed \$3,120.00. Consultant will not be compensated for any Basic or Additional Services required as a result of its wrongful acts or omissions.

1.4.1 Not-to-Exceed Fee

Table 1 - Breakdown of Estimated Fee for Oakland HS Pad Mounted Battery Energy Storage System			
Reinforced Concrete			
Field Technician	Sampling and Tagging of Reinforcing Steel	4 hours @ \$ 95.00 /hour	\$ 380.00
Field Technician	Sampling and Testing of Concrete (Slump & Temperature)	6 hours @ \$ 95.00 /hour	\$ 570.00
Reinforcing Steel	Tensile and Bend Test in the Laboratory	2 tests @ \$ 55.00 /test	\$ 110.00
Compression Tests	5 Concrete Cylinders / 50 Cubic Yards (4"x 8" Cylinders)	5 tests @ \$ 30.00 /test	\$ 150.00
Vehicle/Equipment		10 hours @ \$ 12.00 /hour	\$ 120.00
		Subtotal	\$ 1,330.00
Post-Installed Anchors			
Special Inspector	Post-Installed Anchor, Anchor Rods and Anchor Bolts Installaton Inspection	4 hours @ \$ 95.00 /hour	\$ 380.00
Field Technician	Torque or Pull testing of Post-Installed Anchors	4 hours @ \$ 95.00 /hour	\$ 380.00
Vehicle/Equipment		8 hours @ \$ 12.00 /hour	\$ 96.00
		Subtotal	\$ 856.00
Project Management			
Project Manager	Meetings, Concrete Mix Design Review, Project Coordination & Progress Report Preparation	2 hours @ \$ 140.00 /hour	\$ 280.00
Principal Engineer	Project Oversight, Consultation and Final Verified Report (DSA 291)	2 hours @ \$ 185.00 /hour	\$ 370.00
		Subtotal	\$ 650.00
		Contingency 10%	\$ 284.00
TOTAL ESTIMATED FEE			\$ 3,120.00

Assumptions:

1. Our services are subject to California prevailing wage law.
2. Project labor agreement is not required.
3. Field technician and special inspection hours are charged portal to portal at a 2-hour minimum, and 2-hour minimum for hours exceeding 2 hours.

EXHIBIT B

Scope of Services

1.4 /// PROFESSIONAL FEES



1.4.0 Professional Fees

Ninyo & Moore's not-to-exceed table is on the following page. Hourly rates and laboratory fees is on page 11.

Project Understanding

This project includes construction of Tesla megapack 2 (450kva), mini power station, outlets & fence equipment enclosure.

Proposed Scope of Services

Based on our understanding of the proposed construction, review of the project plans, DSA 103 form, project RFP and experience with similar projects, we propose to provide the following scope of services:

Reinforced Concrete

- Review concrete mix designs submitted by the contractor for compliance with the project documents.
- Sampling and tagging of reinforcing steel at the shop.
- Tensile and bend tests of reinforcing steel in the laboratory.
- Sample and test concrete including measuring slump, temperature, and batch times. One set of five cylinders will be cast for every 50 cubic yards of concrete placed or fraction thereof, per day.

- Sample pick up for concrete cylinders and transportation to our laboratory for curing and testing.
- Compressive strength testing of concrete cylinders in the laboratory.

Post Installed Anchors

- Inspection during the installation of post-installed anchors, anchor bolts and anchor rods.
- Load testing including pull and torque testing of post installed anchors, anchor bolts and anchor rods.

Project Management

- Attend project meetings, project coordination, monitoring and administration including review and distribution of reports with laboratory test data and daily field inspection and testing re-ports, prepare weekly progress, and cost summaries report with invoices.
- Compile, review, and upload progress reports with field and laboratory test data to DSA box.
- Final verified reports including DSA

“The technical knowledge of your staff and managers, ability to respond to multiple complex task orders simultaneously, care in interactions with regulators and stakeholders, reasonableness of costs, and your firm’s overall dedication to client service is all to be commended. I would not hesitate to recommend Ninyo & Moore.”



- Rhoda D. Parham
SAN FRANCISCO
UNIFIED SCHOOL
DISTRICT



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 Principal Engineer [*insert "owner" or officer title*] of Ninyo & Moore
[insert name of business entity], have read the foregoing and agree that Ninyo & Moore
[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: November 2, 2023

Name: Ransom Hennefer

Signature: 

Title: Principal Engineer

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: Ninyo & Moore
Date of Entity’s Contract with District: November 2, 2023
Scope of Entity’s Contract with District: Special Inspection

I, Ransom Hennefer [insert name], am the Principal Engineer [insert “owner” or officer title] for Ninyo & Moore [insert name of business entity] (“Entity”), which entered a contract on November 2, 2023, with the District for Special Inspection.

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: November 2, 2023
Signature: 
Typed Name: Ransom Hennefer
Title: Principal Engineer
Entity: Ninyo & Moore

**Oakland Unified School District
Department of Facilities Planning and Management
955 High Street Oakland CA 94601**

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Material Testing and Special Inspection Services
for Pad Mounted Battery Energy Storage System
at Oakland High School
1023 MacArthur Boulevard, Oakland, CA 94610**

September 20, 2023 (Issued)

Responses must be received October 12, 2023, no later than 2:00 p.m.

The Oakland Unified School District ("District") is requesting fee proposals from the District's pre-qualified pool of firms ("Consultants") to provide material testing and special inspection services associated with the Pad Mounted Battery Storage System ("Project") at Oakland High School.

Interested firms are invited to submit a Statement of Qualifications ("SOQ") and a detailed Fee Proposal (collectively "RFQ/P Packet") as described below of the requested materials with a cover letter addressed to:

Oakland Unified School District
Kenya Chatman, Executive Director of Facilities
Department of Facilities Planning and Management
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile, or telephone RFP Packets will not be accepted. RFP Packets received after this date and time will not be accepted. The District reserves the right to waive any informalities or irregularities in the RFP Packets. The District also reserves the right to reject any and all RFP Packets and to negotiate contract terms with one or more Respondents.

The District will only accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 p.m. (Pacific Time) on October 12, 2023 via email will be accepted (to Juanita Hunter at juanita.hunter@ousd.org and the contacts below).

If you have any questions regarding this RFP and/or submitting proposal electronically, please email Kenya Chatman, Executive Director of Facilities at kenya.chatman@ousd.org and cc: to Colland Jang at colland.jang@ousd.org.

LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE PROGRAM

District Modification: Based on the availability analysis conducted for the Material Testing and Special Inspections, the District had waived its mandatory Local Business Utilization Policy requirement for LBE/SLBE/SLRBE certifications.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Oakland High School Pad Mounted Battery Energy Storage System Project -	Site	109
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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
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Contractor Information

Contractor Name	Ninyo & Moore	Agency's Contact	Ramson Hennefer		
OUSD Vendor ID #	003087	Title	Principal		
Street Address	2020 Challenger Drive, Ste. 103	City	Alameda	State	CA
Telephone	510-343-3000	Policy Expires			
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	19119				

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	11-30-2023	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	12-31-2024
		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)	\$3,120.00
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
9655/9863	Fund 21 Measure Y	210-9655-0-9863-8500-6265-304-9180-9906-9999-21 17	6265	\$3,120.00

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.	Executive Director, Facilities Planning and Management				
	Signature	Date Approved	11/6/2023		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature Lozano Smith, approved as to form	Date Approved	11/2/23		
3.	Chief Systems and Services Officer, Facilities Planning and Management				
	Signature	Date Approved	11/6/23		
4.	Chief Financial Officer				
	Signature	Date Approved			
5.	President, Board of Education				
	Signature Mike Hutchinson	Date Approved	11/17/2023		