

Board Office Use: Legislative File Info.	
File ID Number	12-3089
Committee	Facilities
Introduction Date	12-12-2012
Enactment Number	12-3004
Enactment Date	12-12-12-ef



OAKLAND UNIFIED  
SCHOOL DISTRICT

# Memo

**To** Board of Education

**From** Tony Smith, Ph.D., Superintendent  
Timothy White, Associate Superintendent, Facilities Planning and Management

**Board Meeting Date** December 12, 2012

**Subject** Amendment No. 1, Independent Consultant Agreement for Professional Services-ZFA Structural Engineers - King Estates Seismic Retrofit AB 300 Project

**Action Requested** Approval by the Board of Education of Amendment No. 1, Independent Consultant Agreement for Professional Services with ZFA Structural Engineers for Engineering Services on behalf of the District at King Estates Seismic Retrofit AB-300, in an amount not-to exceed \$43,000.00 increasing previous contract amount from \$90,000.00 to a not to exceed amount of \$133,000.00 and revising the end date from May 21, 2012 through December 21, 2012 to February 28, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

**Background** The existing Honeywell controls do not work properly and need to be replaced with the new Alerton system which is the District's standard. Necessary review process in order to receive hardship funding from OPSC.

**Local Business Participation Percentage** 0.00%

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

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources,



number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

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

**Recommendation**

Approval by the Board of Education of Amendment No. 1, Independent Consultant Agreement for Professional Services with ZFA Structural Engineers for Engineering Services on behalf of the District at King Estates Seismic Retrofit AB-300, in an amount not-to exceed \$43,000.00 increasing previous contract amount from \$90,000.00 to a not to exceed amount of \$133,000.00 and revising the end date from May 21, 2012 through December 21, 2012 to February 28, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

**Fiscal Impact**

County School Facilities Fund

**Attachments**

- Independent Contractors Agreement for Professional Services including scope of work

**AMENDMENT NO. 1 TO INDEPENDENT  
CONSULTANT CONTRACT**

This Amendment is entered into between the Oakland Unified School District (OUSD) and ZFA Structural Engineers. OUSD entered into an Agreement with CONTRACTOR for services on May 21, 2012, and the parties agree to amend that Agreement as follows:

<b>1. Services:</b>	<input type="checkbox"/> The scope of work is <u>unchanged</u> .	<input checked="" type="checkbox"/> <b>The scope of work has <u>changed</u>.</b>
<p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. <u>Attach revised scope of work.</u></p> <p>The CONTRACTOR agrees to provide the following amended services: <u>The scope of the project, per the District and Building and Grounds, is a request that the existing Honeywell controls be replaced with the Alerton Energy Management System. These fees are for G&amp;E Engineers to design the EMS system. Additional administrative fees for OPSC review and negotiations are also added to this amendment.</u></p>		
<b>2. Terms (duration):</b>	<input type="checkbox"/> The term of the contract is <u>unchanged</u> .	<input checked="" type="checkbox"/> <b>The term of the contract has <u>changed</u>.</b>
<p><b>If term is changed:</b> The contract term is extended by an additional <u>Two months</u>, and the amended expiration date is <u>February 28, 2013</u>.</p>		
<b>3. Compensation:</b>	<input type="checkbox"/> The contract price is <u>unchanged</u> .	<input checked="" type="checkbox"/> <b>The contract price has <u>changed</u>.</b>
<p><b>If the compensation is changed:</b> The contract price is amended by</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> <b>Increase of \$43,000.00 to original contract amount</b></p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease of \$ _____ to original contract amount</p> <p>and the new contract total is <u>One hundred thirty-three thousand dollars and no cents (\$133,000.00)</u></p>		


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

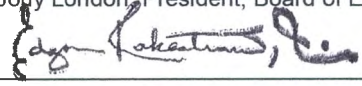
**5. Amendment History:**  
 **There are no previous amendments to this Agreement.**  This contract has previously been amended as follows:

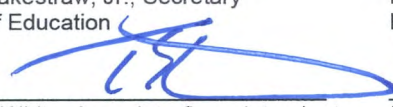
No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

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


**OAKLAND UNIFIED SCHOOL DISTRICT**

  
 \_\_\_\_\_  
 Jody London, President, Board of Education      Date 12/13/12


  
 \_\_\_\_\_  
 Edgar Rakestraw, Jr., Secretary  
 Board of Education      Date 12/13/12

  
 \_\_\_\_\_  
 Timothy White, Associate Superintendent  
 Facilities, Planning and Management      Date \_\_\_\_\_

**CONTRACTOR**

  
 \_\_\_\_\_  
 Contractor Signature      Date 11/8/12

Mark A. Moore, Executive Principal  
 \_\_\_\_\_  
 Print Name, Title

File ID Number: 12-3089  
 Introduction Date: 12-12-12  
 Enactment Number: 12-3004  
 Enactment Date: 12-12-12  
 By: 

**EXHIBIT "A" Scope of Work**

**Contractor Name:**

**Billing Rate:** Forty-three thousand dollars and no cents (\$43,000.00)

**1. Description of Services to be Provided**

Replacement of the Alerton System Management System. Per Exhibit A which is attached. And Additional OPSC fees for administrative charges for review and negotiation.

**2. Specific Outcomes:**

The existing boilers do not meet District standards, the new programming will allow the boilers to be remotely accessed.

**3. Alignment with District Strategic Plan:** Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

**Oakland Unified School District or the District verifies that the Contractor does not appear on the Excluded Parties List at [www.epls.gov/epls/search.do](http://www.epls.gov/epls/search.do).**

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**Susie Butler-Berkley**  
Contract Analyst

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## EXHIBIT A

# ZFA STRUCTURAL ENGINEERS

Tadashi Nakadegawa  
**Oakland Unified School District**  
Facilities Planning & Management  
955 High Street  
Oakland, CA 94601

October 23, 2012

**RE: Seismic Safety Enhancement for Oakland Unified School District  
Request for Add Services Related to SMP State Funding**

Tadashi,

We continue to support OUSD's efforts to obtain Hardship funding as part of the SMP. With recent letters and discussion with OPSC, specifically, in regard to the 15-day letters received for two of the projects and the subsequent conference call on Thursday, September 20, 2012, the OPSC has indicated that the submitted cost estimate provided as a basis of the funding request must be in conformance with the **Saylor Current Construction Cost Publication** as referenced in Regulation Section 1859.82(a)(1)(B).

Regulation Section 1859.82(a)(1)(B) states:

(B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.

We are challenging this with the support of SFC and seek a meeting with OPSC in the near future.

Should the outcome of that be either a "no, we have to provide a cost estimate based on the Saylor Publication" or a "negotiated position that enables us to use some of Swinerton's cost date", ZFA will be required to provide detail quantity and cost summary based on the DSA approved documents, the cost data provided by Swinerton, identified unforeseen conditions and the associated DSA-approved field changes, and field reports by the IOR/DSE. Based on the example cost date provided by OPSC's PVT, each item will have to be supported by a quantity calculation for each component and for every trade. This is very time consuming to go to this level of detail.

100 bush street  
suite 1850  
san francisco ca 94104  
415 243 4091

**ZFA will provide a detailed quantity and cost summary for each project that includes ALL soft and hard costs that can be claimed through the SMP. Further, we anticipate iterations and negotiations with OPSC.** We anticipate up to 120 hours (3 weeks) each for the Montera MS Gymnasium and Oakland Technical HS Auditorium, and up to 170 hours for King Estates MS. These are worst case scenarios, so we propose the following Not-To-Exceed fees.

King Estates MS	\$23,000
Montera MS, Gymnasium	\$18,000
Oakland Tech. HS, Auditorium	\$18,000

To minimize consultant fee costs to the District and to prepare the most persuasive cost data, we will utilize Swinerton's resources and data, recorded construction inspection and observation findings provided by IOR/DSE, and OUSD staff, and cost estimating resources OUSD has available.

Should you have questions, please contact the undersigned.

Kind Regards,



Mark A. Moore, SE, LEED AP  
**ZFA STRUCTURAL ENGINEERS**  
Principal

# Exhibit A

GUTTMANN & BLAEVOET  
CONSULTING ENGINEERS

San Francisco  
Sacramento  
Santa Rosa  
Walnut Creek



Established in 1956

June 25, 2012

Mark Moore  
**ZFA Structural Engineers**  
100 Bush St, #1850  
San Francisco, CA 94111

Subject: King Estates Alternative School, OUSD  
Controls Consulting Services Proposal  
DDC for selected systems

Dear Mark,

We are pleased to propose our Controls Design and Construction Support Services for the above named project.

## Project Scope

This proposal is based upon e-mail and phone correspondence with the District and their preferred controls provider, as well as a site visit on May 4<sup>th</sup> to examine the equipment to be included in this project. The Owner wants DDC control of the following: three (3) boilers with associated circulating pumps, AHU's serving the multipurpose room, three (3) rooftops serving the Dance Hall, an Admin Room, and the Computer Lab. The new DDC controllers will be remotely accessible from the District Maintenance Office's BMS Operator Workstation, already in existence.

### A. Description of Services

1. Generate a control diagram, including specifications and a sequence of operation.
2. Provide Bidding Process Support (contractor questions).
3. Provide Construction Administration including:
  - a. Review of Contractor submittal drawings.
  - b. Review of Contractor RFI's.
  - c. Site visits (up to three (3)) to facilitate installation and integration into the existing District BMS.

### B. Assumptions

1. As-built set of existing building Mechanical Drawings will be provided to us in hard copy or electronic form.
2. Additional documentation as requested from the District will be provided to us in hard copy or electronic form.
3. Building Management Vendor of choice for the District is Alerton and this manufacturer's products will be used as the basis of design.

4. There is no fee calculated to respond to review of our work product other than by the District or the successful controls contractor. Third party peer review or Commissioning review of our documents is not included.

**Compensation**

- A. Compensation for Professional Services is the following:

<u>Scope Description</u>	<u>Fee</u>
Controls Design Documents for scope above	\$12,890
Construction Administration	<u>\$ 6,360</u>
TOTAL:	\$19,250

- B. The following expenses shall be reimbursed at cost plus a ten percent (10%) handling charge:
1. All plotting and reproduction to assemble documentation for required submissions, including those for contractors and consultant coordination packages.
  2. Courier, overnight, or other delivery service charges.
  3. Additional site visits or meetings beyond those outlined in the scope above.
  4. Response to additional independent third-party review of the design documents other than the Owner or the Controls Contractor.
  5. Travel.

- C. Payment

Guttman & Blaevoet requires regular progress payment for continuation of professional services. Payments shall be considered overdue if they have not been paid within sixty (60) days of the invoice date. A service charge of 1.5% per month (but not exceeding the maximum rate allowable by law) will be charged on all overdue accounts. In addition, Guttman & Blaevoet shall have the right to consider overdue payments a breach of contract for professional services, and services under this agreement may be suspended or terminated at our discretion.

**Schedule**

Work is expected to be complete within one (1) year after authorization is given.

The fees in this Consulting Services Proposal shall be in effect until September 26, 2012. Adjustment may be made after this date.



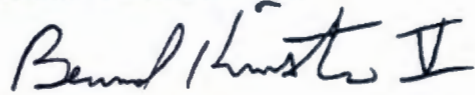


Mark Moore, **ZFA Structural Engineers**  
King Estates Alternative School, OUSD  
Controls Consulting Services Proposal  
DDC for selected systems  
June 25, 2012  
Page 3 of 3

We are committed to the successful completion of this project. We appreciate the opportunity to participate in this important project and look forward to discussing our services with you further. If you have any questions, please feel free to call.

Very truly yours,

**GUTTMANN & BLAEVOET**



Bernard Keister V, P.E.  
*Senior Engineer*  
License No. 61660

Authorized by:

**ZFA Structural Engineers**

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Mark Moore

Date

BK;bk  
P:\ZFA-001-OUSD Seismic Retrofit\Contract\PRO-001 King Estates Controls.doc



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB5283Y562

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

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' Compensation premium otherwise due on such remuneration.

**Schedule**

**Person or Organization:**

Oakland Unified School District  
Attn: Susie Butler-Berkley  
955 High Street  
Oakland, CA 94601

**Job Description:**

Ref: King Estates Seismic Retrofit  
/ ZFA #11256.05. A Waiver of  
Subrogation applies in favor of the  
Oakland Unified School District,  
its Directors, Officers, Employees,  
Agents and Representatives.

DATE OF ISSUE: 04/06/12

## COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**NAME OF PERSON(S) OR ORGANIZATION(S):** The Oakland Unified School District, its Directors, Officers, Employees, Agents and Representatives.

**PROJECT/LOCATION OF COVERED OPERATIONS:** All Operations of the Named Insured.

### PROVISIONS

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, 'property damage' or 'personal injury' caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
  - e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that 'contract or agreement requiring insurance' to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.
- B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

## DESCRIPTIONS (Continued from Page 1)

Representatives are included as Additional Insured for General and Automobile Liability. Primary insurance and severability of interests apply per policy form. A Waiver of Subrogation applies to Workers' Compensation.

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
04/06/12

**PRODUCER**  
Dealey, Renton & Associates  
P. O. Box 12675  
Oakland, CA 94604-2675  
510 465-3090

**INSURED**  
ZFA Structural Engineers  
1212 4th Street, Suite Z  
Santa Rosa, CA 95404

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

**INSURERS AFFORDING COVERAGE**

INSURER A: Travelers Property Casualty Co of Am  
INSURER B: Travelers Casualty & Surety Co. Amer  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6806746L839	02/01/12	02/01/13	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$2,000,000
					GENERAL AGGREGATE	\$4,000,000
					PRODUCTS - COMP/OP AGG	\$4,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
A	AUTOMOBILE LIABILITY	BA313M1350	02/01/12	02/01/13	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
					EACH OCCURRENCE	\$
					AGGREGATE	\$
					DEDUCTIBLE	\$
	RETENTION	\$				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB5283Y562	02/01/12	02/01/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	\$1,000,000
					E.L. EACH ACCIDENT	\$1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
					E.L. DISEASE - POLICY LIMIT	\$1,000,000
B	OTHER Professional Liability	105398557	02/01/12	02/01/13	\$2,000,000 per Claim	
					\$2,000,000 Annt Aggr	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
**General Liability Policy excludes claims arising out of the performance of professional services.**  
 Ref: King Estates Seismic Retrofit / ZFA #11256.05. The Oakland Unified School District, its Directors, Officers, Employees, Agents and (See Attached Descriptions)

<b>CERTIFICATE HOLDER</b>	<b>ADDITIONAL INSURED; INSURER LETTER:</b>	<b>CANCELLATION</b>
Oakland Unified School District Attn: Susie Butler-Berkley 955 High Street Oakland, CA 94601		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.
		AUTHORIZED REPRESENTATIVE <i>Shardell, - CRCU</i>

## AMENDMENT TO INDEPENDMENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
Project Name	King Estates Seismic Retrofit AB 300	Site	King Estates
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information			
Contractor Name	ZFA Structural Engineers	Agency's Contact	Mark Moore
OUSD Vendor ID #	V060441	Title	Project Manager
Street Address	100 Bush Street, Ste 1850	City	San Francisco State CA Zip 94104
Telephone	415-601-6054	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 #	12101		

Term			
Date Work Will Begin	5-21-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	2-28-2013

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$90,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$43,000.00
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
3535	County School Facilities Fund	2169003890	6252	\$43,000.00

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	Charles Love	Phone	510-535-7081	Fax 510-535-7082
1.	Capital Program Contract & Accounting Manager			Date Approved	11-8-12
	Signature 				
2.	General Counsel, Department of Facilities Planning and Management			Date Approved	11-8-12
	Signature 				
3.	Associate Superintendent, Facilities Planning and Management			Date Approved	11/15
	Signature 				
4.	President, Board of Education			Date Approved	
	Signature				

Board Office Use: Legislative File Info.	
File ID Number	12-0979
Committee	Facilities
Introduction Date	4-25-2012
Enactment Number	12-1230
Enactment Date	4-25-12, XZ



OAKLAND UNIFIED  
SCHOOL DISTRICT

## Memo

To Board of Education

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

Board Meeting Date April 25, 2012

Subject Independent Consultant Agreement for Professional Services - ZFA Structural Engineers - King Estates Seismic Retrofit AB-300 Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with ZFA Structural Engineers for Seismic Retrofit services on behalf of the District at King Estates Middle School Seismic Retrofit AB-300 project, in an amount not-to exceed \$90,000.00. The term of this Agreement shall commence on May 21, 2012 and shall conclude no later than December 21, 2012.

**Background** Structural deficiencies were identified and documented in an Evaluation and Design Criteria Report prepared by ZFA Structural Engineers dated 11-21-2011. The purpose of the seismic retrofit is to meet the Division of State Architect Procedure 08-02 and through this process seek state seismic funding under Proposition 1D.

**Local Business Participation Percentage** 22.00%

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

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





all individuals participating in the learning process.

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

**Recommendation**

Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with ZFA Structural Engineers for Seismic Retrofit services on behalf of the District at King Estates Middle School Seismic Retrofit AB-300 project, in an amount not-to exceed \$90,000.00. The term of this Agreement shall commence on May 21, 2012 and shall conclude no later than December 21, 2012.

**Fiscal Impact**

County School Development Fee

**Attachments**

- Independent Consultant Agreement including scope of work

FACILITIES PLANNING  
AND MAINTENANCE

2012 APR - 2 A 7:31

**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES  
(CONSTRUCTION RELATED)**

**KING ESTATES SEISMIC RETROFIT AB300**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **21st day of March, 2012** by and between the Oakland Unified School District, Oakland, California ("District") and **ZFA Structural Engineers** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

**Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

The scope of the project includes construction administration during the Seismic Retrofit of the Gymnasium No. 6, Multi-Purpose Building No. 5, and Classroom Building No. 4, ADA restroom and ramp upgrades and the Fire Alarm Replacement project. Services include processing request for information, observation of work, field reports, submittal review, conducting meetings, punch list and Division of State Architect close-out.

- 2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
- 3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

- Signed Agreement
- Workers' Compensation Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements
- W-9 Form

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Ninety- thousand dollars and no cents (\$90,000.00). District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant 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 Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
  - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
  - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
  - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
  - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's

name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. **Termination.**

12.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

12.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 12.3.1. material violation of this Agreement by the Consultant; or
- 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives,

officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

**14. Insurance.**

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and

approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

14.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code

Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us)
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
  - 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
  - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
ATTN: **Tadashi Nakadegawa,**  
**Director of Facilities**

**Consultant:**

Mark Moore  
ZFA Structural Engineers  
100 Bush Street, Suite 1850  
San Francisco, CA 94104

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

28. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

29. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

30. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

33. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.



**35. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

**36. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

**37. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**38. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_

Jody London, President, Board of Education

Date: 4/26/12

  
\_\_\_\_\_

Edgar Rakestraw, Jr., Secretary, Board of Education

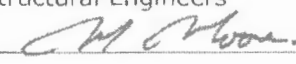
Date: 4/26/12

  
\_\_\_\_\_

Timothy White, Associate Superintendent Facilities Planning and Management

Date: \_\_\_\_\_

ZFA Structural Engineers

  
\_\_\_\_\_


3/30/2012

**APPROVED AS TO FORM:**

  
\_\_\_\_\_

Catherine Boskoff, Facilities Counsel

Date: 4.11.12

File ID Number: 12-6974  
Introduction Date: 4-5-12  
Enactment Number: 12-1236  
Enactment Date: 4-25-12  
By: 



## ZFA Structural Engineers

March 7, 2012

**Oakland Unified School District**  
Attn.: Mary Ledezma, Project Manager  
Facilities Planning & Management  
955 High Street  
Oakland, CA 94601

**RE: King Estates Jnr High School, Oakland Unified School District, Oakland, CA  
Proposal for Construction Administrative Services: Project #12101**

Mary Ledezma:

Please find herein our proposal for services for the ongoing work associated with the OUSD Seismic Safety Enhancement (SSE) Program. We anticipate DSA approval in time for construction of the seismic retrofit work of the Buildings 4, 5 and 6 and their covered walkways, located at the King Estates Junior High School, to occur the summer of 2012. To this end, we provide herein a Construction Administration fee proposal.

The project schedule is being confirmed by Swinerton Builders as essentially completed over the summer months of June and July. So punch list items will inevitable run into the fall of 2012. Because the project construction is through a lease-lease back, with significant input during the pre-contract phase by the Swinerton Builders, we do not foresee significant coordination based change orders. The unforeseen conditions are being minimized by thorough review during the design phase, however the observed dilapidation of the covered walkways during the wet season does pose risk. We also note that the fire alarm replacement work will also be under the purview of ZFA with the assistance of AON Consultants.

That said; our scope will be to provide responses to contractor, district and inspector of record questions and comments. Further, we will review and respond to fiber reinforced polymer, structural steel shop drawings and other submittals. As prime consultant, we will also be responsible for timely and responsive reviews of non-structural submittals by the sub consultants.

We will also assist with observing work for conformance with the design intent, as shown in the Construction Documents. To this end, we will compile and coordinate punch list and perform the final walk through with all consultants, the inspector of record and the contractor. We will ensure Verified Reports for all work are completed and responsive to DSA 103. This will ensure project close out is achieved.

The ZFA Structural Engineers team's Not-To-Exceed (NTE) fee for services described above is \$90,000. This includes all sub consultants, including AON.

OUSD Seismic Safety Enhancement Program

Thank you for providing ZFA Structural Engineers with the opportunity to contribute to improvement of the Oakland Unified School District's learning environment and safety level.

Sincerely,

Mark A. Moore SE, LEED AP  
Executive Principal  
ZFA STRUCTURAL ENGINEERS

**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

Consultant's entire Proposal is **not** made part of this Agreement. (SEE ATTACHED CONSULTANT PROPOSAL)

**DRUG/SMOKE-FREE WORKPLACE CERTIFICATION**

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: 3/30/2012  
Proper Name of Consultant: ZFA STR. ENGRS.  
Signature: [Handwritten Signature]  
Print Name: MARIL A. MOORE  
Title: PRINCIPAL.

---

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

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

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

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: 3/30/2012

Proper Name of Consultant: ZFA STR. ENGRS.

Signature: M Moore.

Print Name: MARK A. MOORE

Title: Principal.

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

Information regarding Consultant:

Consultant: ZFA STR. ENGS

94-2518496 :

License No.: MARLBOROUGH SE 4443

Employer Identification and/or Social Security Number

Address: 100 BURN ST SUITE 1850  
SAN FRANCISCO  
CA 94104

Telephone: 415 243 4091

Facsimile: —

E-Mail: markcm@zfa.com

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: CA
- Limited Liability Company
- Other: \_\_\_\_\_

WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 99 03 76 (00) --

POLICY NUMBER: UB5283Y562

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

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be \_\_\_\_\_ % of the California workers' Compensation premium otherwise due on such remuneration.

**Schedule**

**Person or Organization:**

Oakland Unified School District  
Attn: Susie Butler-Berkley  
955 High Street  
Oakland, CA 94601

**Job Description:**

Ref: King Estates Seismic Retrofit  
/ ZFA #11256.05. A Waiver of  
Subrogation applies in favor of the  
Oakland Unified School District,  
its Directors, Officers, Employees,  
Agents and Representatives.

DATE OF ISSUE: 04/06/12



## COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**NAME OF PERSON(S) OR ORGANIZATION(S):** The Oakland Unified School District, its Directors, Officers, Employees, Agents and Representatives.

**PROJECT/LOCATION OF COVERED OPERATIONS:** All Operations of the Named Insured.

### PROVISIONS

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, 'property damage' or 'personal injury' caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
  - e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that 'contract or agreement requiring insurance' to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.
- B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

## DESCRIPTIONS (Continued from Page 1)

Representatives are included as Additional Insured for General and Automobile Liability. Primary insurance and severability of interests apply per policy form. A Waiver of Subrogation applies to Workers' Compensation.

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YY) 04/06/12
PRODUCER <b>Dealey, Renton &amp; Associates</b> P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED <b>ZFA Structural Engineers</b> 1212 4th Street, Suite Z Santa Rosa, CA 95404	INSURERS AFFORDING COVERAGE	
	INSURER A: <b>Travelers Property Casualty Co of Am</b>	
	INSURER B: <b>Travelers Casualty &amp; Surety Co. Amer</b>	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	6806746L839	02/01/12	02/01/13	EACH OCCURRENCE	\$2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	\$2,000,000
					GENERAL AGGREGATE	\$4,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG	\$4,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
A	AUTOMOBILE LIABILITY	BA313M1350	02/01/12	02/01/13	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input type="checkbox"/> RETENTION \$					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB5283Y562	02/01/12	02/01/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	\$1,000,000
					E.L. EACH ACCIDENT	\$1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
					E.L. DISEASE - POLICY LIMIT	\$1,000,000
B	OTHER Professional Liability	105398557	02/01/12	02/01/13	\$2,000,000 per Claim	\$2,000,000 Ann'l Aggr

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
**General Liability Policy excludes claims arising out of the performance of professional services.**  
 Ref: King Estates Seismic Retrofit / ZFA #11256.05. The Oakland Unified School District, its Directors, Officers, Employees, Agents and (See Attached Descriptions)

CERTIFICATE HOLDER <b>Oakland Unified School District</b> Attn: Susie Butler-Berkley 955 High Street Oakland, CA 94601	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL BE OBLIGATED TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. REPRESENTATIVE <i>Spardelli, CRCU</i>
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## INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

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

Contractor Information							
Contractor Name	ZFA Structural Engineers	Agency's Contact	Mark Moore				
OUSD Vendor ID #	V060441	Title	Project Manager				
Street Address	100 Bush Street, Suite 1850	City	San Francisco	State	CA	Zip	94104
Telephone	415-601-6054	Policy Expires	2-1-2013				
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 #	12101						

Term			
Date Work Will Begin	5-21-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	12-21-2012

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$90,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
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
9299, 9399, 9499	Fund 35	2169003890	6215	\$90,000.00

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	Charles Love	Phone	510-535-7081	Fax 510-535-7082
1.	Capital Program Contract & Accounting Manager		Signature	Date Approved	4-10-12
2.	General Counsel Department of Facilities Planning and Management		Signature	Date Approved	
3.	Associate Superintendent, Facilities Planning and Management		Signature	Date Approved	
	President, Board of Education				
4.	Signature			Date Approved	

**CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its sub-consultants' employees is

Name: MARK D. MOORE

Title: PRINCIPAL

The Work on the Contract is at an unoccupied school site and no employee and/or sub-consultant or supplier of any tier of Contract shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: 3/30/2012

Proper Name of Consultant: ZFA STRUCTURAL ENGS.

Signature: [Signature]

Print Name: MARK MOORE

Title: PRINCIPAL