

Board Office Use: Legislative File Info.	
File ID Number	14-1969
Introduction Date	10-8-2014
Enactment Number	14-1716
Enactment Date	10/8/14 <i>AS</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT  
*Community Schools. Thriving Students!*

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Mia Settles-Tidwell, Chief Operations Officer  
Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date**

**Subject** Independent Consultant Agreement for Professional Services - Torone Consulting - LEEC1 Mediation - Delay Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Torone Consulting for Mediation Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$60,603.00. The term of this Agreement shall commence on October 8, 2014 and shall conclude no later than October 30, 2014.

**Background** Torone was hired as an expert witness to resolve a litigation case.

**Local Business Participation Percentage** 0.00% (Sole Source)

**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 an Independent Consultant Agreement for Professional Services with Torone Consulting for Mediation Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$60,603.00. The term of this Agreement shall commence on October 8, 2014 and shall conclude no later than October 30, 2014.

**Fiscal Impact**

Measure J

**Attachments**

- Independent Consultant Agreement including scope of work

# INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

## LEECI Mediation – Delay – Schedule Consultant Expert Witness Fees

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **September 2, 2014** by and between the Oakland Unified School District, Oakland, California ("District") and **Torone Consulting** ("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 is to provide services for expert consultant to prepare for mediation with Turner-ADCO, Joint Venture litigation of LEEC1 – delay and schedule analysis, PowerPoint presentation to rebut contractors claims.**

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.

**The project will commence October 8, 2014 and conclude no later than October 30, 2014.**

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:

<u>  X  </u>	Signed Agreement
<u>  X  </u>	Workers' Compensation Certification
<u>  X  </u>	Insurance Certificates and Endorsements

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 **Sixty thousand, six hundred three dollars and no cents (\$60,603.00).** 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 fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons,



including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), , or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

**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 fifty percent (50%) minimum participation requirement for all construction related professional service contracts over the informal bidding threshold (Public Contract Code Section 20111). 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 fifty percent (50%) 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) Under the Facilities Department drop down menu, Bids and Requests for Proposals.
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:**

Brian Torone  
Torone Consulting  
7 Turtle Creek Drive, P.O. Box 81  
Kenwood, CA 95452

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.

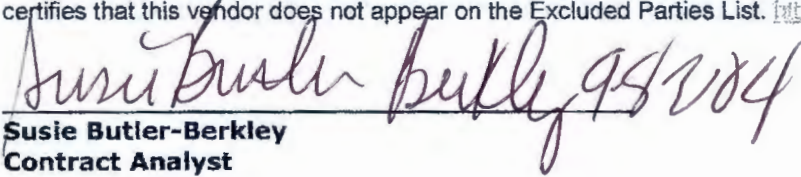
**36. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been

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.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/bulk/EPAL>


A handwritten signature in cursive script, appearing to read "Susie Butler-Berkley 982084", written over a horizontal line.

**Susie Butler-Berkley**  
**Contract Analyst**

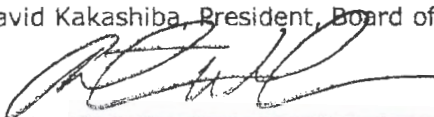


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

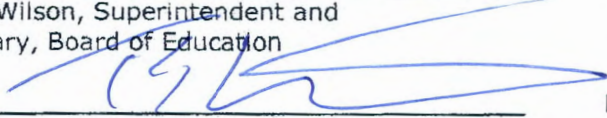
**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
Date: 10/9/14

David Kakashiba, President, Board of Education

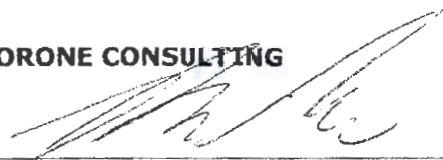
  
\_\_\_\_\_  
Date: 10/9/14

Antwan Wilson, Superintendent and Secretary, Board of Education

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

Timothy White, Deputy Chief, Facilities Planning and Management

**TORONE CONSULTING**

  
\_\_\_\_\_  
Date: 9/30/14  
BRIAN TORONE

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Date: 9.8.14

Catherine Boskoff, Facilities Counsel

File ID Number: 14-1969  
Introduction Date: 10/8/14  
Enactment Number: 14-1716  
Enactment Date: 10/8/14  
Bv: ost

**Information regarding Consultant:**

Consultant: TORONE CONSULTING

26-0087657  
Employer Identification and/or Social Security Number

License No.: \_\_\_\_\_

Address: PO BOX 181, 77.2111  
CREEK DRIVE  
KUNWOOD CA 95452

Telephone: \_\_\_\_\_

Facsimile: 415 388-8475

E-Mail: \_\_\_\_\_

- Type of Business Entity:
- Individual
  - Sole Proprietorship
  - Partnership
  - Limited Partnership
  - Corporation, State: \_\_\_\_\_
  - Limited Liability Company
  - Other: \_\_\_\_\_

**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.**



**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: 9/2/14  
Proper Name of Consultant: TELECOM CONSULTING  
Signature: [Signature]  
Print Name: SKILLIAN TELECOM  
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.)

**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: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ 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: 9/2/14

Proper Name of Consultant: TERCER CONSULTING

Signature: [Signature]

Print Name: DAVID TERCAO

Title: PRINCIPAL



**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: 9/2/14  
Proper Name of Consultant: TOKONE CONSULTING  
Signature: [Handwritten Signature]  
Print Name: BRITTON TOKONE  
Title: PRINCIPAL

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

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

**(PLEASE SEE THE ATTACHED PROPOSAL FROM THE CONSULTANT)**



<b>Billing Detail</b>		
<b>Date</b>	<b>Service</b>	<b>Hours/Costs</b>
<b>1 PROFESSIONAL SERVICES</b>		
<b>1a. Time for B. Torone, Principal</b>		
5/30/2014	Work on findings and mediation presentation.	1.25
6/1/2014	Prepare for mediation, work on mediation presentation.	2.00
<b>Total Hours</b>		<b>3.25</b>
Rate/hr		315.00
<b>SUBTOTAL PROFESSIONAL SERVICES</b>		<b>1,023.75</b>
<b>1b. Time for D. Ross, Sr. Claims Analyst</b>		
5/1/2014	Review TCCo PCOs & CORs.	1.80
5/2/2014	TCCo PCO & COR review.	1.50
5/5/2014	Review and analyze details of Turner's claimed impacts & disruptions.	5.50
5/6/2014	Review early project schedules and correspondence.	3.50
5/7/2014	Continue reviewing disrupted activities.	5.00
5/9/2014	Review Window 1 schedule analysis; correlate with REA Exhibit 8.	3.20
5/12/2014	Review W2 activities and schedule changes; telephone conference with counsel.	3.00
5/14/2014	Telephone conference; continue reviewing alleged impacts.	4.50
5/15/2014	Analyze alleged RFI impacts.	2.75
5/16/2014	Review late project schedules and alleged impacts.	3.10
5/17/2014	TCCo end of project schedule analysis.	1.50
5/19/2014	Review Criterion REA update regarding subcontractor claims.	0.75
5/20/2014	Telephone conference; review curtainwall and window header issue details and contemporaneous correspondence.	5.20
5/22/2014	Draft memo outline of response to REA; analyze submittal response data.	6.80
5/23/2014	Continue response memo; work on Findings presentation.	5.50
5/26/2014	Complete draft response memo, forward to counsel; continue preparing mediation presentation.	4.20
5/27/2014	Edit response memo; continue presentation prep.	3.60
5/28/2014	Continue preparing mediation presentation; telephone conference with counsel.	4.50
5/29/2014	Continue work on presentation.	2.40
5/30/2014	Continue work on presentation; review mediation brief.	2.80
5/31/2014	Continue work on presentation.	7.10
6/1/2014	Final preparation for mediation; telephone conference with counsel.	5.50
6/2/2014	Attend mediation, present District Response & Findings.	8.50
<b>Total Hours</b>		<b>92.20</b>
Rate/hr		295.00
<b>SUBTOTAL PROFESSIONAL SERVICES</b>		<b>27,199.00</b>
<b>1c. Time for A. Hill, Claims Analyst</b>		
5/1/2014	Schedule analysis	0.75
5/2/2014	Schedule analysis, conf call w/BT	0.75
5/4/2014	Schedule analysis	1.00
5/5/2014	Schedule analysis	2.00
5/5/2014	Doc review	1.00
5/6/2014	Schedule analysis	0.25
5/7/2014	Schedule analysis	0.50
5/8/2014	Schedule analysis	3.50
5/9/2014	Doc review	1.00
5/9/2014	Schedule analysis	4.50
5/10/2014	Schedule analysis	2.00
5/11/2014	Schedule analysis	6.00
5/12/2014	Schedule analysis	5.50
5/13/2014	Schedule analysis	5.00
5/14/2014	Schedule analysis	7.25
5/15/2014	Schedule analysis	3.75
5/16/2014	Schedule analysis	8.00
5/17/2014	Schedule analysis	5.75
5/18/2014	Schedule analysis	2.50
5/19/2014	Schedule analysis	1.25



5/20/2014	Schedule analysis	8.50
5/21/2014	Schedule analysis	7.50
5/22/2014	Schedule analysis	6.00
5/23/2014	Schedule analysis	4.00
5/24/2014	Schedule analysis, conf call w/BT	4.00
5/25/2014	Schedule analysis	5.75
5/26/2014	Schedule analysis	4.00
5/27/2014	Schedule analysis	3.00
5/28/2014	Schedule analysis	7.00
5/29/2014	Schedule analysis	1.00
5/30/2014	Schedule analysis	1.75
6/1/2014	Schedule analysis	2.00
	<b>Total Hours</b>	<b>116.75</b>
	Rate/hr	275.00
	<b>SUBTOTAL PROFESSIONAL SERVICES</b>	<b>32,106.25</b>
	<b>1d. Time for M. Lee, Staff</b>	
5/1/2014	RFI Analysis, PCO Analysis, IOR Analysis	6.00
5/2/2014	PCO Analysis	5.00
5/5/2014	Visit to Turner offices in Oakland, Register for TurnerTalk and update our files with recently obtained documents	5.25
5/6/2014	RFI Analysis	5.20
5/7/2014	RFI Analysis	4.75
5/8/2014	RFI Analysis	6.75
5/9/2014	RFI Analysis, Troubleshoot TurnerTalk with Turner's IT contact, Cast of Characters list	6.75
5/12/2014	RFI Analysis, IOR Analysis, Cast of Characters list	5.00
5/13/2014	Cast of Characters list, IOR Analysis, Submittal Log	4.75
5/14/2014	Submittal Log	6.80
5/15/2014	Submittal Log, Adding missing documents to our files, reviewing Meeting Minutes	4.75
5/16/2014	Complete Submittal Log	2.00
5/19/2014	Analyzing Meeting Minutes, Updating our files with new documents, PCO Log	5.45
5/20/2014	PCO Log	3.75
5/21/2014	As-Built Critical Path Impacts Analysis, Air Systems Inc Claim Analysis	5.00
5/22/2014	As-Built Critical Path Impacts Analysis	6.00
5/23/2014	As-Built Critical Path Impacts Analysis	6.00
5/26/2014	As-Built Critical Path Impacts Analysis	2.25
5/27/2014	As-Built Critical Path Impacts Analysis	5.00
5/28/2014	As-Built Critical Path Impacts Analysis	4.75
5/29/2014	As-Built Critical Path Impacts Analysis	5.25
	<b>Total Hours</b>	<b>106.45</b>
	Rate/hr	125.00
	<b>SUBTOTAL PROFESSIONAL SERVICES</b>	<b>13,306.25</b>
	<b>TOTAL PROFESSIONAL SERVICES</b>	<b>73,635.25</b>
	<b>2 Summary of Expenses</b>	
5/31/2014	Passport 1tb HD for jobsite photos copying.	\$87.19
5/31/2014	Postage - mail HD to Saya Nhim	\$7.85
5/31/2014	Parking at 1901 Harrison St - mediation on June 2.	\$16.00
	<b>Total Expenses</b>	<b>\$111.04</b>
	<b>Totals</b>	
	<b>Total Professional Services</b>	<b>73,635.25</b>
	<b>Total Expenses</b>	<b>111.04</b>
	<b>Total Amount Due</b>	<b>73,746.29</b>

17144.17





## INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	LEECI Mediation	<b>Site</b>	918
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### Basic Directions

**Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.**

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

<b>Contractor Name</b>	Torone Consulting	<b>Agency's Contact</b>	Brian Torone		
<b>OUSD Vendor ID #</b>	V057868	<b>Title</b>	Expert Witness		
<b>Street Address</b>	7 Turtle Creek Drive, P.O. Box 81	<b>City</b>	Kenwood	<b>State</b>	CA
<b>Telephone</b>	415-388-8475	<b>Policy Expires</b>			
<b>Contractor History</b>	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>OUSD Project #</b>	NA				

### Term

<b>Date Work Will Begin</b>	10-8-2014	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	10-30-2014
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### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$60,603.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9350	Measure J	9189905802	5825	\$60,603.00

### Approval and Routing (in order of approval steps)

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

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	Date Approved	9/8/14		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	Date Approved	9.8.14		
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	Signature	Date Approved	9/9/14		
4.	<b>Chief Operations Officer, Board of Education</b>				
	Signature	Date Approved	9/12/14		
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			