Board Office Use: Le	gislative File Info.
File ID Number	14-0980
Introduction Date	5-28-2014
Enactment Number	14-0908
Enactment Date	528/14



Community Schools, Thriving Students

	Memo A
То	Board of Education
From	Dr. Gary Yee, Acting Superintendent and Secretary, Board of Education By: Vernon Hal, Deputy Superintendent, Business Operations Timothy White, Associate Superintendent, Facilities Planning and Management
Board Meeting Date	May 28, 2014
Subject	Amendment No. 7, Independent Consultant Agreement - Ninyo & Moore- La Escuelita Educational Center Project
Action Requested	Approval by the Board of Education of Amendment No. 7, Independent Consultant Agreement with Ninyo & Moore for Abatement Services on behalf of the District at La Escuelita Educational Center Project, in an amount not-to exceed \$17,800.00 increasing previous contract amount from \$79,150.00 to a not to exceed amount of 96,950.00 and revising the end date from September 23, 2008 through December 31, 2013 to December 31, 2014. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Background	Abatement of the eleven (11) portables at MetWest High School requires oversight and monitoring services.
Local Business Participation Percentage	100.00%
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,

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	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. 7, Independent Consultant Agreement with Ninyo & Moore for Abatement Services on behalf of the District at La Escuelita Educational Center Project, in an amount not-to exceed \$17,800.00 increasing previous contract amount from \$79,150.00 to a not to exceed amount of 96,950.00 and revising the end date from September 23, 2008 through December 31, 2013 to December 31, 2014. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Fiscal Impact	Developer Fee Fund
Attachments	<ul><li>Independent Contractors Agreement including scope of work</li><li>Certificate of Insurance</li></ul>



## AMENDMENT NO. 7 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and <u>Ninyo and Moore</u>. OUSD entered into an Agreement with CONTRACTOR for services on <u>September 23, 2008</u>, and the parties agree to amend that Agreement as follows:

1.	Services:
	If scope of work changed: 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>
	The CONTRACTOR agrees to provide the following amended services: The scope of the project is to provide oversite and monitoring services for the abatement of the MetWest Portables 1, 2, 3, 4, 5, 6, 8, 12, 14, 15 and 16. Duration includes twelve (12) eight hour work days. Services include a contingency of \$ 2,800.00 for potential destructive testing and report preparation as well as project management time.
2.	Terms (duration): The term of the contract is <u>unchanged</u> . X The term of the contract has <u>changed</u> .
	If term is changed: The contract term is extended by an additional One year, and the amended expiration date
	is December 31, 2014.
3.	Compensation: The contract price is <u>unchanged</u> . X The contract price has <u>changed</u> .
	If the compensation is changed: The contract price is amended by
	X Increase of \$17,800.00 to original contract amount
	Decrease of \$to original contract amount

- 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. X This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
1	5-5-2009	The scope of the project is to provide evaluation report of hazardous material at portables 3, 13, 14, 15, 16, and 18. Assessment will be conducted through a visual observation as well as collecting building material samples for testing. Report to include findings, opinions and recommendations and quantities of identified materials per a District request.	\$6,000.00
2	6-16-2009	The scope of the agreement is to change the funding source from Fund 35 to Fund 25.	\$0.00
3	9-1-2009	The scope of the project is to correct the not-to-exceed amount from \$11,200.00 to \$16,600.00 due to an error.	\$0.00
4	12-16-2009	The scope of the project is to provide additional abatement monitoring and demolition oversight for Portables 3, 13, 14, 15, 16 and 18, due to a District requested change.	\$24,300.00
5	8-3-2010	Time Extension	\$0.00
6	2-8-2012	The scope of the project is to provide hazardous building materials management services for Harper Building, Auto Shop, Centro Annex Infantil, and La Escuelita Portables. Scope of work to include providing hazardous building materials survey, specifications for removal, monitoring services ad close out documentation.	\$38,250.00

K999069.002 Rev. 10/30/08

Contract No.

P.O. No.

<u>4 (29/14</u> Date Incipal Geologist

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

OAKLAND UNIFIED SCHOOL DISTRICT David Kakashiba, President, Dat Board of Education / Dr. Gary Yee, Acting Superintendent Date Secretary, Board of Education Date

CONTRACTOR Contractor Signature arsor

5 11 Print Name, Title

Timothy White, Associate Superintendent Facilities, Planning and Management

File ID Number: Introduction Date: Enactment Number: Enactment Date: By:

#### EXHIBIT "A" Scope of Work

#### Contractor Name: Ninyo & Moore

#### Billing Rate: Seventeen thousand, eight hundred dollars and no cents (\$17,800.00)

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

The scope of the project is to provide oversite and monitoring services for the abatement of the MetWest Portables 1, 2, 3, 4, 5, 6, 8, 12, 14, 15 and 16. Duration includes twelve (12) eight hour work days. Services include a contingency of \$ 2,800.00 for potential destructive testing and report preparation as well as project management time.

#### 2. Specific Outcomes:

Create equitable opportunities for learning; provide accountability for quality.

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

0 Ensure a high quality instructional core	0 Prepare students for success in college and careers
0 Develop social, emotional and physical health	0Safe, healthy and supportive schools
X Create equitable opportunities for learning	x Accountable for quality
0 High quality and effective instruction	0 Full service community district

**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. <u>https://www.sam.gov/portal/public/SAM</u>

15-62014 Susie Butler-Berkley

Contract Analyst

	Cli	ent#: 704		NIN	YOMOOR1	
		FICATE OF LI	ABILITY I	NSURA	NCE	DATE (MM/DD/YY) 4/30/2014
Dea P. C	ley, Renton & Associates 0. Box 12675		ONLY A HOLDER.	ND CONFERS THIS CERTIF	SUED AS A MATTER OF NO RIGHTS UPON THI ICATE DOES NOT AME E AFFORDED BY THE PO	E CERTIFICATE ND, EXTEND OR
	land, CA 94604-2675 465-3090 Mandy Guo			INSURER	S AFFORDING COVERAG	E
INSU	Ninyo & Moore Geote	echnical &		ravelers Prope merican Autor	rty Casualty Co	
	Environmental Scien 1956 Webster Street,		INSURER C: A		& Surplus Ins. C	
	Oakland, CA 94612		INSURER D: INSURER E:			
THE	VERAGES E POLICIES OF INSURANCE LISTED Y REQUIREMENT, TERM OR CONI Y PERTAIN, THE INSURANCE AFFO	DITION OF ANY CONTRACT OR OR OR OF ANY CONTRACT OR OR OF ANY THE POLICIES DESCRI	DTHER DOCUMENT WI BED HEREIN IS SUBJ	TH RESPECT TO	WHICH THIS CERTIFICATE M	MAY BE ISSUED OR
	LICIES. AGGREGATE LIMITS SHOWN		ID CLAIMS. POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATIO		e
	TYPE OF INSURANCE GENERAL LIABILITY	POLICY NUMBER	10/03/13	DATE (MM/DD/YY 10/03/14	EACH OCCURRENCE	\$1,000,000
A	X COMMERCIAL GENERAL LIABILITY	0500500K247	10/03/13	10/03/14	FIRE DAMAGE (Any one fire)	\$1,000,000
					MED EXP (Any one person)	\$10,000
					PERSONAL & ADV INJURY	
	X Contractual					\$1,000,000
	XOCP				GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO- JECT X LOC				PRODUCTS - COMP/OP AGG	\$2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO	8108986R247	10/03/13	10/03/14	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	ALL OWNED AUTOS SCHEDULED AUTOS				BODILY INJURY (Per person)	\$
	X HIRED AUTOS X NON-OWNED AUTOS				BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	ANY AUTO				OTHER THAN AUTO ONLY: AGG	\$
A	EXCESS LIABILITY X OCCUR CLAIMS MADE	CUP8986R247	10/03/13	10/03/14	EACH OCCURRENCE AGGREGATE	\$9,000,000 \$9,000,000 \$
	DEDUCTIBLE RETENTION \$					\$
в		WZP81017915	05/01/14	05/01/15	X WC STATU- TORY LIMITS OTH- ER	
0	EMPLOYERS' LIABILITY				E.L. EACH ACCIDENT	s1,000,000
					E.L. DISEASE - EA EMPLOYEE	
					E.L. DISEASE - POLICY LIMIT	
	& Contractor's	MAX7PL0001210	04/03/14	10/03/15	\$5,000,000 per Clair \$5,000,000 AnnI Ag	n
GE RE LIA and (Se	Pollution Liab. CRIPTION OF OPERATIONS/LOCATIONS/VE NERAL LIABILITY POLICY EX F: N&M#401501013 - OUSD/E BILITY ADDITIONAL INSURE Representatives. COMMERC re Attached Descriptions)	CCLUDES CLAIMS ARISING owntown Educational Com D: Oakland Unified School CIAL GENERAL LIABILITY In DITIONAL INSURED ; INSURER LETTER:	OUT OF THE PER pplex/RAW II Imple District, its Directo nsurance is primar CANCELLA SHOULD ANYO DATE THEREO NOTICE TO THE	FORMANCE O mentation. GEI ors, Officers, Ei y and non-com TION of THE ABOVE DESCH of, THE ISSUING INS E CERTIFICATE HOLD	F PROFESSIONAL SER NERAL LIABILITY/AUTO mployees, Agents,	VICES. DMOBILE m refore the expiration 30 days writted
	Oakland, CA 94601-	0000	AUTHORIZED	REPRESENTATIVE		

# **DESCRIPTIONS (Continued from Page 1)**

wording. Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation.

Insured: Ninyo & Moore Geotechnical &

05/01/14

Policy Number: WZP81017915

Effective Date:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

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 otherwise due on such remuneration.

% of the California workers' compensation premium

SCHEDULE

#### Person or Organization

**Job Description** 

SCHEDULE CONTINUATION: Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

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

Oakland, CA 94601-0000

Countersigned by Michele C

Authorized Representative

Form WC 04 03 06 Process Date: (1) Printed in U.S.A.

**Policy Expiration Date:** 

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

# BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### 1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

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

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "productscompleted operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SEC-TION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and noncontributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

#### The following is added to SECTION IV – COM-MERCIAL GENERAL LIABILITY CONDITIONS:

### **Duties Of An Additional Insured**

As a condition of coverage provided to the additional insured:

a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- i. How, when and where the "occurrence" or offense took place;
- ii. The names and addresses of any injured persons and witnesses; and
- The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
  - i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization 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 the signing and execution of the contract or agreement by you;
- **b.** While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.



EXHIBIT A

April 10, 2014 Proposal No. 81886B

Ms. Saya Nhim Project Manager Oakland Unified School District 955 High Street Oakland, California 94601

Subject: Proposal for Hazardous Building Materials Management Services Oakland Unified School District Portable School Buildings La Escuelita Educational Complex 1100 3rd Avenue Oakland, California

Dear Ms. Nhim:

In accordance with your request, Ninyo & Moore is pleased to provide this proposal to perform hazardous building materials management services related to the proposed demolition of the MetWest portables located at 1100 3rd Avenue at the Oakland Unified School District's (OUSD) La Escuelita Educational Complex in Oakland, California. There are 11 portables total, including portables 1, 2, 3,4,5,6,8,13,14,15,16. Ninyo & Moore's proposed scope of services will include:

- The review of previous hazardous building materials (HBMS) survey information/reports, as-built diagrams, and/or specifications/work plans (as available).
- Oversight of the abatement contractor conducting the hazardous building materials abatement at the site buildings. This task will include the inspection of negative pressure enclosure/work areas prior to commencement of abatement work (via smoke tube testing, etc.), the review of abatement supervisors'/workers' certifications and medical/respirator clearances, perimeter air monitoring during bulk abatement activities (clearance air monitoring if warranted), visual clearance of each abatement work area to ensure that targeted ACMs have been removed, and daily documentation of abatement activities (using daily work observation sheets).
- The development of a close-out documentation/report. This report will serve as a summary
  of project documents with tabular information including perimeter/clearance air sampling results, copies of notification documentation sent to oversight agencies, abatement worker
  certifications and medical/respirator clearances, air sampling analytical data reports and
  chain of custody documentation, and waste manifests and associated documentation.

1956 Webster Street, Suite 400 = Oakland, California 94612 • Phone (510) 343-3000 = Fax (510) 343-3001

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#### ESTIMATED FEE

Ninyo & Moore proposes to perform the services provided above in accordance with the tasks and associated fees presented below. We propose to conduct these tasks on a time-andmaterial basis in accordance with our existing contract with the OUSD.

- Project Management: Day-to-day management of project, attendance of on-site construction meetings; client communication and updates; and administrative costs.
   Estimated Fee: Included in Task 2
- 2. Hazardous Materials Abatement Monitoring and Oversight: Monitoring and oversight of the hazardous materials abatement contractor during abatement activities, as well as conduct perimeter and clearance air monitoring at each work area. The oversight/monitoring activities will also include daily logs of project activities (including visitors), a check of abatement workers' certification documents, visual observation clearances of work areas, progress reports to the Client, and appropriate administration of hazardous wastes (asbestos, lead, PCBs, etc.). The number of days that the abatement contractor requires to abate the 10 portable buildings is unknown, and is dependent upon the subcontractor selected and the pace at which they conduct abatement; however, based on our past experience with abatement projects of similar scope, we estimate that approximately 10 to 15 8-hour days will be required to accomplish abatement. The actual abatement time may be more or less. For purposes of this proposal, we are providing an estimate based upon 12 8-hour days of abatement that would require monitoring and oversight. Estimated Fee: \$15,000 (approximately \$1,250 per day inclusive of labor for 12 8-hour days, equipment and analyses)
- Close-out Reports/Documentation: Ninyo & Moore will prepare a close-out report that documents the abatement project's field activities and serves as a summary of important project documents (air sampling analytical results, abatement workers' certification documents, daily logs summary, and hazardous waste manifests, etc.). Estimated Fee: Included Task 2 above

#### **Optional Task**

Ninyo & Moore's previous HBMS of the portable buildings was non-destructive in nature due to the buildings being occupied at the time of the HBMS. Ninyo & Moore can provide additional sampling of the portables that would be destructive in nature if the buildings become unoccupied for a sufficient period of time prior to demolition. The purpose of the destructive sampling would be to identify those potential ACMs and LCMs that could not be identified by non-destructive means or that were not identified in the information or drawings provided during the initial HBMS. It is possible that no additional ACMs are present beyond those already identified; however, only destructive sampling can determine whether that is the case. If conducted, we estimate that approximately 50 sample analyses would be conducted as part of this task. Ninyo & Moore would prepare a brief report of the findings that would include **Estimated Fee: \$2,800** 

The total estimated fee for the above tasks (excluding the optional task), assuming 12 8-hour work shifts to complete hazardous materials abatement oversight and monitoring is \$15,000 (Fifteen Thousand Dollars).

#### ASSUMPTIONS

The following project-specific assumptions will be used by Ninyo & Moore during this project:

- Access will be granted to all portions of the site portable buildings during the HBMS sampling/quantification activities so that site work can be completed on each building concurrently under a single mobilization.
- Laboratory analysis of asbestos/lead samples will be conducted on a 3 to 5-day turnaround time.
- For purposes of this proposal, we have assumed that abatement monitoring and oversight will require 12 8-hour days/work shifts (see discussion above for Item 2). In the event more or less days are required, the estimated project budget will increase or decrease by approximately \$1,250 per 8-hour day of oversight.

1100 3<sup>rd</sup> Avenue Oakland, California

April 10, 2014 Proposal No. 81886B

We appreciate this opportunity to be of service to the OUSD. Please contact us with any questions regarding these costs at your earliest convenience.

Sincerely, NINYO & MOORE

William P. Larkin Senior Environmental Scientist DOSH Certified Asbestos Consultant (Cert. No. 99-2688) DPH Certified Lead Inspector/Assessor and Project Monitor (Cert. No. 5543)

Duane Blamer, PG 6913 Manager, Environmental Sciences

WPL/DWB/caa

Distribution: (1) Addressee



Community Schools, Theiving Students

	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. 6, Independent Consultant Agreement with Ninyo & Moore for Hazmet Services on behalf of the District at La Escuelita Educational Center (DEC) in an amount not-to exceed \$38,250.00 increasing previous contract amount from \$40,900.00 to a not to exceed amount of \$79,150.00 and revising the end date from May 31, 2010 through June 30, 2011 to December 31, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Fiscal Impact	GO Bond-Measure B
Attachments	Independent Consultant Agreement including scope of work

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# AMENDMENT INDEPENDENT CONTRACT ROUTING FORM

	Project Info	ormation		
Project Name	La Escuelita Educational Center	Site	121	
	Basic Dire	ections		
Ser	vices cannot be provided until the contract is fully	approved and a P	urchase Order has been issued.	
	Proof of general liability insurance, including certifi Workers compensation insurance certification, unle			

	Contr	actor Informatio	n					
Contractor Name	Ninyo & Moore	Agency's Co	ntact	Kris Lar	son			
OUSD Vendor ID #	V058012	Title		Project Manager				
Street Address	1956 Webster Street, Suite 400	City	Oal	Oakland State CA		Zip	94612	
Telephone	510-633-5640	Policy Expire	S		0-3-20	KI		
Contractor History	Previously been an OUSD contract	or? X Yes 🗌 No	1	Norked as	an OUSD e	mploye	e? 🗌	Yes x No
OUSD Project #	07047							

		Term	
Date Work Will Begin	9-23-2008	Date Work Will End By (not more than 5 years from start date)	12-31-2014

			Compensation		
Total Contract A	mount	\$	Total Contract Not To Exceed	\$96	6,950.00
Pay Rate Per H	OUI (If Hourly)	\$	If Amendment, Changed Amo	ount \$17	,800.00
Other Expenses			Requisition Number		
lf you are plan	ning to multi-fu		Budget Information funds, please contact the State and Federal C	Office <u>before</u> cor	npleting requisition.
Resource #	Fund	ing Source	Org Key	Object Code	Amount
0000	Develop	per Fee Fund	1219000825	6170	\$17,800.00

	Approval and Re	outing (in	order of ap	proval steps)			
	vices cannot be provided before the contract is fully approve wledge services were not provided before a PO was issued.		Irchase Order	is issued. Signing th	s documen	t affirms that to your	
	Division Head		Phone	510-535-7038	Fax	510-535-7082	
1.	Director, Facilities Planning and Management				1	1	
	Signature			Date Approved	56	514	
	General Counsel, Department of Facilities Planning and Management						
2.	Signature MMV			Date Approved	5.	6.14	
	Associate Superintendent, Facilities Planning and Ma	nagement	ż				
3.	Signature 2		A	Date Approved			
	Deputy Superintendent, Business Operations	THI	a				
4.	Signature	9HC	X	Date Approved	513	14	
	President, Board of Education					v ·	
5.	Signature	Y V		Date Approved			

File ID Number	12-0439
Committee	Facilities
Introduction Date	2-8-2012
Enactment Number	12-0771
Enactment Date	28/120



Community Schools, Thriving Students

# Memo

То	Board of Education
	191
From	Tony Smith, Ed.D., Superintendent (1) Timothy White, Assistant Superintendent, Facilities Planning and Management
Board Meeting Date	February 8, 2012
Subject	Amendment No. 6, Independent Consultant Agreement -Ninyo & Moore- La Escuelita Educational Center (DEC) Project
Action Requested	Approval by the Board of Education of Amendment No. 6, Independent Consultant Agreement with Ninyo & Moore for Hazmet Services on behalf of the District at La Escuelita Educational Center (DEC) in an amount not-to exceed \$38,250.00 increasing previous contract amount from \$40,900.00 to a not to exceed amount of \$79,150.00 and revising the end date from May 31, 2010 through June 30, 2011 to December 31, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Background	Phase II demolition will require any hazardous building material to be disposed of properly if identified in survey.
Local Business Participation Percentage	100.00%
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,

www.ousd.k12.ca.us



## AMENDMENT NO. 6 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and Ninyo & Moore. OUSD entered into an

Agreement with CONTRACTOR for services on December 16, 2008, and the parties agree to amend that Agreement as follows:

1.	Services: The scope of work is <u>unchanged</u> X The scope of work has <u>changed</u> .					
	If scope of work changed: 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. Attach revised scope of work.					
	The CONTRACTOR agrees to provide the following amended services: <u>The scope of the project is to provide hazardous</u> <u>building materials management services for Harper Building, Auto Shop, Centro Annex Infantil, and La Escuelita</u> <u>Portables</u> . Scope of work to include providing hazardous building materials survey, specifications for removal, monitoring services ad close out documentation.					
2.	Terms (duration):       The term of the contract is unchanged.       X The term of the contract has changed.         If term is changed:       The contract term is extended by an additional Two years, 6 months, and the amended expiration date is December 31, 2013.					
3.	Compensation:       If the contract price is unchanged.       X The contract price has changed.         If the compensation is changed:       The contract price is amended by					
	x Increase of \$38,250.00 to original contract amount					
	Decrease of \$ to original contract amount					
	and the new contract total is Seventy-nine thousand, one hundred fifty dollars and no cents (\$79,150.00)					

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)
1	5-5-2009	The scope of the project is to provide evaluation report of hazardous material at portables 3, 13, 14, 15, 16, and 18. Assessment will be conducted through a visual observation as well as collecting building material samples for testing. Report to include findings, opinions and recommendations and quantities of identified materials per a District request.	\$6,000.00
2	6-16-2009	The scope of the agreement is to change the funding source from Fund 35 to Fund 25.	\$0.00
3	39-1-2009The scope of the project is to correct the not-to-exceed amount from \$11,200.00 to \$16,600.00 due to an error.412-16-2009The scope of the project is to provide additional abatement monitoring and demolitiongroup right for Portables 3, 13, 14, 15, 16 and 18, due to a District requested change.		\$0.00
4			\$24,300.00
5	8-3-2010	Time Extension 92 8 V L	\$0.00

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

K999069.002 Rev. 10/30/08

Contract No.

P.O. No.

Amendment to Professional Services Contract ape 2 of 2 NO UNIFIED SCHOOL CONTRACTOR OAK DISTRICT Contractor Signature Jody London, Pr sident, Board of Education Date aher ANSON 154 Prnt Name Title Edgar Rakestraw le Secretar Board of Education Date Timothy White, Assistant Superintendent Date

Timothy White, Assistant Superintendent Facilities Planning and Management

#### EXHIBIT "A" Scope of Work

#### DESCRIPTION OF SERVICES TO BE PERFORMED BY CONTRACTOR

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

### SCOPE OF WORK

Contractor Name: Ninyo & Moore

Billing Rate: Thirty-eight thousand, two hundred fifty dollar and no cents (\$38,250.00)

Description of Services to be Provided

1. Goals or Objectives Hazmat survey

#### 2. Description of Services to be Provided

The scope of the project is to provide hazardous building materials management services for Harper Building, Auto Shop, Centro Annex Infantil, and La Escuelita Portables. Scope of work to include providing hazardous building materials survey, specifications for removal, monitoring services ad close out documentation.

3. Deliverables Report Tond Mand Ninyo & Moore

November 22, 2011 Proposal No. 81886

Mr. Bijan Beigi Project Manager Oakland Unified School District 955 High Street Oakland, California 94601

Subject: Proposal for Hazardous Building Materials Management Services Oakland Unified School District Harper Building, Auto Shop and Associated Portable School Buildings Downtown Educational Complex 314 East 10<sup>th</sup> Street and 1029 4<sup>th</sup> Avenue Oakland, California

Dear Mr. Beigi:

In accordance with your request, Ninyo & Moore is pleased to provide this proposal to perform hazardous building materials management services related to the proposed demolition of the Harper Building, the Auto Shop, and 10 associated portable buildings located at 1000 and 1025 2<sup>nd</sup> Avenue at the Oakland Unified School District's (OUSD) Downtown Educational Complex in Oakland, California. Ninyo & Moore's proposed scope of services will include:

- The review of previous hazardous building materials (HBMS) survey information/reports, as-built diagrams. and/or specifications/work plans (if available),
- Implementation of a HBMS at the site buildings to evaluate asbestos-containing materials (ACMs), lead-based paints/coatings, and additional hazardous building materials (i.e. fluorescent light bulbs with mercury vapor, PCB-containing light ballasts, etc.) not identified in the previous surveys,
- Preparation of hazardous building materials abatement specifications based upon the review of the past surveys and analytical results associated with Ninyo & Moore's additional HBMS activities at the site buildings,
- Preparation of a hazardous building materials abatement cost estimate based upon the review of past surveys and any analytical results associated with Ninyo & Moore's additional HBMS activities at the site buildings,
- Oversight of the abatement contractor conducting the hazardous building materials abatement at the site buildings. This task will include the inspection of negative pressure enclosure/work areas prior to commencement of abatement work (via smoke tube testing, etc.), the review of abatement supervisors'/workers' certifications and medical/respirator clearances, perimeter air monitoring during bulk abatement activities (clearance air monitor-

1956 Webster Street, Suite 400 · Daklarid, California 94612 P San Diego Invine · Los Arigeles · Rancho Cucamoniga Las Vegas · Phoenix · Tuccol · Prescott Valley

Phone (510) 633-5640 Fax (510) 633-5646 Cakland San Francisco Sacramento Derver El Paso Houston



ing if warranted) visual clearance of each abatement work area to ensure that all ACMs have been removed, and daily documentation of abatement activities (using daily work observation sheets), and

The development of close-out documentation/report. This report will serve as a summary of
project documents with tabular information including all perimeter/clearance air sampling
results, copies of notification documentation sent to oversight agencies, abatement worker
certifications and medical/respirator clearances, air sampling analytical data reports and
chain of custody documentation, and waste manifests and associated documentation.

#### ASSUMPTIONS

The following project-specific assumptions will be used by Ninyo & Moore during this project:

- Access will be granted to all site buildings during the HBMS sampling/quantification activities.
- The abatement activities will take place over a period of 20 work days/work shifts (4 weeks).

#### COMPENSATION/FEE BREAKDOWN

The hourly fee breakdown of Ninyo & Moore employees for this project would be as follows:

- Principal Environmental Scientist: \$135/hour
- Project Manager: \$120/hour
- SST/Field Technician: \$90/hour
- Technical Illustrator: \$80/hour
- Data Processing/Administration: \$65/hour

Ninyo & Moore intends to perform the services set forth in this scope of work as indicated in the

following tasks at the proposed costs indicated:

- Review of Past Hazardous Materials Sampling/Information: Ninyo & Moore personnel will review pertinent past hazardous materials sampling reports/information related to the site buildings. Task Cost: \$1,450
- Field Work Activities: Ninyo & Moore personnel will conduct a HBMS at the site buildings (including confirmation bulk asbestos and lead-paint sampling) based upon information ascertained in Task 1. Confirmation bulk material sampling will be implemented as well as quantification of other miscellaneous hazardous building materials (fluorescent light tubes, light ballasts, mercury switches, etc.). Task Cost: \$7,2010
- Bulk Material Analysis: Ninyo & Moore will deliver the bulk material samples to a statecertified laboratory for analysis of asbestos content (with a standard 3-5 day turn-around time request). Task Cost: \$1,600

314 East 10<sup>th</sup> Street and 1029 4<sup>th</sup> Avenue Oakland, California

- Sampling Report Write-up/Delivery: Ninyo & Moore personnel will prepare the HBMS report and deliver two copies to the Client. Task Cost: \$3,000
- 5. Development of Abatement Specifications: Based upon information ascertained during Tasks 1 and 2, Ninyo & Moore will develop hazardous building materials abatement specifications to guide the selected abatement contractor in removing the identified hazardous materials (asbestos, lead-based paint, PCB-containing ballasts, etc.) from the site buildings in the appropriate manner. Task Cost: \$3,000
- Development of Estimated Abatement Costs: Based upon information ascertained during Tasks 1 and 2, Ninyo & Moore will develop a hazardous materials abatement cost estimate for the Client. Task Cost: \$1,500
- 7. Hazardous Materials Abatement Field Work Activities: Ninyo & Moore personnel will oversee the hazardous materials abatement contractor during abatement activities as well as conduct perimeter and clearance air monitoring at each work area. The oversight/monitoring activities will also include daily logs of project activities (including visitors), a check of abatement workers' certification documents, visual observation clearances of work areas, progress reports to the Client, and appropriate administration of hazardous wastes (asbestos, lead, PCBs, etc.). This activity is estimated to require 20 working days or work shifts to complete and includes daily perimeter/clearance air monitoring costs. Task Cost: \$900 per day; \$18,000 assuming 20 working days or work shifts.
- Close-out Reports/Documentation: Ninyo & Moore will prepare a close-out report that documents the abatement project's field activities and serves as a summary of important project documents (air sampling analytical results, abatement workers' certification documents, daily logs summary, and hazardous waste manifests, etc.). Task Cost: \$2,500

Total Time-and-Materials Fee For All Tasks: \$38,250 (based on the assumption of 20 working days/shifts for Task 7 and 8).

Ninyo & Moore's daily rate for the perimeter air monitoring and abatement contractor oversight activities is **\$900 per day** and is based on the assumption that 20 business days/work shifts will be needed to complete the work. Therefore, Ninyo & Moore's estimated cost for the perimeter/clearance air monitoring and abatement contractor monitoring activities is **\$18,000**. A close-out document will be compiled and written for a lump sum fee of **\$2,500** as indicated above. Ninyo & Moore's total estimated cost for Items 7 and 8 above is **\$20,500** based on the projected 20-day work schedule for this project. If abatement activities proceed longer than the estimated 20 days, the daily rate of **\$900** (Task 7) will apply until abatement activities are completed.

P-81885

Ninyo . Moore

3

November 22, 2011 Proposal No. 81886

Please contact us with any questions regarding these costs at your earliest convenience. Thank you

We appreciate this opportunity to be of service to the OUSD.

Sincerely, NINYO & MOORE

e.

Warn

William P Larkin Senior Project Environmental Scientist DOSH Certified Asbestos Consultant (Cert. No. 99-2688) DPH Lead-Related Construction Services Inspector/Assessor and Project Monitor (Cert. No. 5543)

Duane Blamer. PG Manager, Environmental Sciences

Distribution: (1) Addressee (via e-mail)

Ninyo . Moore

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## **DESCRIPTIONS (Continued from Page 1)**

GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

COMMERCIAL GENERAL LIABILITY Insurance is primary and non-contributory per policy form wording.

Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation.

AMS 25.3 (01797) 2 3.2 #M:289449

POLICY NUMBER: 6308986R247

COMMERICAL GENERAL LIABILITY ISSUE DATE: 1/17/2012

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# SCHEDULED ADDITIONAL INSURED - WRITTEN CONTRACT (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): Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

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

#### PROVISIONS

 The following is added to SECTION II - WHO IS AN INSURED:

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" and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

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

c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance" This endorsement shall not increase the limits of insurance described in Section III - Limits Of Insurance.

- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to that additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
- 2. The following is added to Paragraph 4.a. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured shown in the Schedule above is excess over any valid and collectible "other

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Page 1 of 2

#### COMMERICAL GENERAL LIABILITY

insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

3. The following is add to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

#### Duties Of An Additional Insured

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
  - i. How, when and where the "occurrence" or offense took place;
  - The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
  - Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.
- 4. The following definition is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement with the person or organization shown in the Schedule above, under which you are required to include that person or organization 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 the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

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Page 2 of 2

#### WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" needs to be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement forms a part of Policy No. WZP80993464

Issued to: Ninyo & Moore Geotechnical &

By: American Automobile Ins. Co.

Premium (if any) TBD

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

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 2-5% of the California workers compensation premium otherwise due on such remuneration.

Schedule

#### Person or Organization

Job Description

Oakland Unified School District Attn: Susie Butler-Berkley 955 High Street Oakland, CA 94601 REF: OUSD - La Escuelita Downtown Project. Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

Bu

WC 04 03 06 (Ed. 4-84) Countersigned by \_

File ID Number	10-1861
Committee	Facilities
Introduction Date	8-3-2010
Enactment Number	16-1438
Enactment Date	8-11-10



# Memo

То	Board of Education
From	Tony Smith, Ed.D., Superintendent Timothy White, Assistant Superintendent, Facilities Planning and Management
Board Meeting Date	August 11, 2010
Subject	Amendment No. 5 - Ninyo & Moore - Downtown Educational Complex Project
Action Requested	Approval by Board of Education of Amendment No. 5 with Ninyo & Moore for Additional Phase 1 Environmental Services on behalf of the District for the Downtown Educational Complex Project, revising the end date from May 31, 2010 to June 30, 2011. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Background	Contractor will continue to provide services und the originally contract including oversight of abatement and demolition of the one remaining portable building (P-16) and preparation of report documenting the abatement activities performed.
Local Business Participation Percentage	100.00%
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 Board of Education of Amendment No. 5 with Ninyo & Moore for Additional Phase 1 Environmental Services on behalf of the District for the Downtown Educational Complex Project, revising the end date from May 31, 2010 to June 30, 2011. All remaining portions of the agreement shall remain in full force and effect as originally stated.
Fiscal Impact	The funding source for this project is Developer Fees (Fund 25)
Attachments	Professional Services Contract including scope of work
Key Code:	1219000825-6262

www.ousd.k12.ca.us



OAKLAND UNIFIED

## AMENDMENT NO. 5 TO PROFESSIONAL SERVICES CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and Ninyo and Moore (CONTRACTOR).

OUSD entered into an Agreement with CONTRACTOR for services on September 23, 2008, and the parties agree to amend that Agreement as follows:

1.	Services:	X The scope of work is uncha	inged. [	The scope of work has changed.			
		e of work including description of expe pages as necessary. <u>Attach revised s</u>					
	The CONT	RACTOR agrees to provide the follow	wing amended services				
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	And April Program and April and April 201				1999 - 1994 - 1995 - 1999 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 - 1994 -		
2.	Terms (durativ	on): The term of the contract is	upchanged )	X The term of the contract has chang	ned		
2.	If term is		is extended by an	additional 1 year (days/weeks/m			
3.	Compensatio	on: X The contract price is unchar	nged.	The contract price has changed.			
	If the compensation is changed: The contract price is amended by						
	Increase of \$to original contract amount						
		] Decrease of \$	to original contract	amount			
	and the n	ew contract total is		dollars (\$	)		

 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. X This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
1	May 13, 2009	The scope of the project is to provide evaluation report of hazardous material at portables 3, 13, 14, 15, 16, and 18. Assessment will be conducted through a visual observation as well as collecting building material samples for testing. Report to include findings, opinions and recommendations and quantities of identified materials per a District request.	\$6,000.00
2	June 23, 2009	The scope of the agreement is to change the funding source from Fund 35 to Fund 25.	\$0.00
3	September 9, 2010	The scope of the project is to correct the not-to-exceed amount from \$11,200.00 to \$16,600.00 due to an error.	\$0.00
4	December 16, 2009	The scope of the project is to provide additional abatement monitoring and demolition oversight for Portables 3, 13, 14, 15, 16 and 18, due to a District requested change.	\$24,300.00



K999069.002 Rev. 10/30/08

Contract No.

P.O. No.

#### Amondment to Professional Services Contract

Page 2 of 2

8. 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 Gan ard of Educat Pres 'er nt DE Date Edgar Rakestraw, Jr., Secretary Board of Education Date

Date

CONTRACTOR Contractor Signature

Rev. 7/2/03

M. Larson, P. G. Principal Gudosist Kristophen Print Name, Title

Timothy White, Assistant Superintendent Facilities, Planning and Management

LEGISLATIVE FILE 16-186 File ID No. -10 Introduction Date 38 Enactment No. 8-11-10 Enactment Date 69

K999069.001

Geotechnical and Environmental Sciences Consultants

May 5, 2010 Project No. 401501005

Ms. Saya Nhim Facilities Planning & Management Department Oakland Unified School District 955 High Street Oakland, California 94601

Subject: Contract Ending Date Extension Request Downtown Education Complex (OUSD project No. 07047) 314 East 10<sup>th</sup> Street, 1100 3<sup>rd</sup> Avenue & 1029 4<sup>th</sup> Avenue Oakland, California

#### Dear Ms. Nhim:

The purpose of this letter is to formally request an extension to the ending date of the contract originally established between the Oakland Unified School District (OUSD) and Ninyo & Moore for a Phase I Environmental Site Assessment of the Downtown Educational Complex (address noted above). The original contract amount was \$10,600, and the current contract amount includes two amendments totaling \$6,000 and \$24,300, for a total current contract amount of \$ 40,900. The contract end date is currently 5/1/2010, however Ninyo & Moore will continue to provide services under this contract including oversight of the abatement and demolition of the one remaining portable building (P-16) and preparation of a report documenting the abatement activities performed.

*linyo* « Moor

We appreciate the opportunity to provide continued assistance on this important project. If you have any questions regarding this request for contract ending date extension, please contact the undersigned.

Sincerely, **NINYO & MOORE** 

Kris M. Larson, P.G. Senior Environmental Geologist

1956 Webster Street + Suite 400 + Oakland, California 94612 + Phone (510) 633-5640 + Fax (510) 633-5646

Ontario • Ivine • San Diego • Los Angeles • Oakland • Las Vegas • Salt Lake City • Phoenix



## PROFESSIONAL SERVICES CONTRACT ROUTING FORM

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Services	cannot be provided until the	contract is fully approved	and a Purchase C	order has be	een issued.
the second se	of of general liability insurance rkers compensation insurance	47		ntract is ove	r \$15,000
		Contractor Information		(at s	
Contractor Name	Ninyo & Moore	Agency's Con	West and the second sec		
OUSD Vendor ID #	1 V058012	Title	Project Mar	and a second sec	
Street Address	1956 Webster Street, Suite		Oakland		CA Zip 94612
Telephone	510-633-5640	Policy Expires		3-201	
Contractor History	Previously been an OUSD	contractor? X Yes No	Worked as an	OUSD empl	loyee? 🗋 Yes X No
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	ledge services were not provided b Division Head	Charles Love	Phone	510-879-8389	Fax	510-879-3673
4 44 00000000	Capital Program Contract & Accounting Manager					
	Signature Sul		. r	ate Approved	6-25-11	
	General Counsel, Department of Facilities Planning and Management					
-	Signature		r	ate Approved	7.15.10	
00000000	Assistant SuperIntendent, Faci	itie Planning and Management				
	Signature 11		>	Date Approved		
	President, Board of Education	-				
1.	Signature			Date Approved		

\$

A999069.P001 Rev. 5/9/2010

THIS FORM IS NOT A CONTRACT

LEGISLA'	<b>FIVE FILE</b>
File ID No.	09-3282
Introduction Date	12-8-2009
Enactment No.	09-2513
Enactment Date	17-16-09
By	P.A.

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#### OAKLAND UNIFIED SCHOOL DISTRICT Office of the Board of Education December 16, 2009

To:	Board of Education		
From:	Tony Smith, Ed.D., Superintendent of Schools Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services		
Subject:	Amendment No. 4 - Ninyo and Moore - Downtown Education Complex Project		

#### ACTION REQUESTED

Approval by the Board of Education of Amendment No. 4 with Ninyo and Moore for Additional Abatement Services on behalf of the District for the Downtown Education Complex Project, increasing the contract by a not to exceed amount of \$24,300.00, increasing previous contract amount from \$16,600.00 to a not to exceed amount of \$40,900.0 and revising the end date from December 31, 2009 to May 1, 2010. All remaining portions of the agreement shall remain in full force and effect as originally stated.

#### BACKGROUND

Based on hazmat survey, abatement will be required prior to demolishing Portables 3, 13, 14, 15, 16 and 18.

#### 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.

ER:TEW:SMB

P-CONTRACT ADMINISTRATION - RESTRICTED/CONTRACTS - WORKING FOLDER/Mise. Contracts/Ninyo & Moore/Downlown Ed Complex - Fund 25/Amendment No. 4/Template-Board memo-Ameniment.1d.doc 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.

#### **DISCUSSION**

The scope of the project is to provide additional abatement monitoring and demolition oversight for Portables 3, 13, 14, 15, 16 and 18, due to a District requested change.

#### FISCAL IMPACT

The funding source for this project is Developers Fees.

#### RECOMMENDATION

Approval by the Board of Education of Amendment No. 4 with Ninyo and Moore for Additional Abatement Services on behalf of the District for the Downtown Education Complex Project, increasing the contract by a not to exceed amount of \$24,300.00, increasing previous contract amount from \$16,600.00 to a not to exceed amount of \$40,900.0 and revising the end date from December 31, 2009 to May 1, 2010. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Kcy code: 1219000825-6262

ER:TEW:SMB

P:CONTRACT ADMINISTRATION - RESTRICTED/CONTRACTS - WORKING FOLDER/Mise. Contracts/Ninyo & Moore/Downlown Ed Complex - Fund 25/Amendment No. 4/Template- Board memo-Amendment.1d.doc
# AMENDMENT NO. 4 TO AGREEMENT FOR PROFESSIONAL SERVICES

-

WITH

Ninyo and Moore

FOR

Additional Services for the Downtown Education Complex Project

Project Number: 07047

OAKLAND UNIFIED SCHOOL DISTRICT

October 29, 2009

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### AMENDMENT NO.4 TO AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND NINYO AND MOORE DATED DECEMBER 31, 2008

This 4<sup>th</sup> Amendment is entered into this 29th day of October, 2009 between the OAKLAND UNIFIED SCHOOL DISTRICT ("DISTRICT") AND NINYO AND MOORE ("CONSULTANT") for the Downtown Education Complex.

WHEREAS, CONSULTANT has commenced the professional services under the original contract and additional budget is warranted to compensate for additional abatement services provided by CONSULTANT. Whereas the consultant is to provide additional abatement monitoring and demolition oversight for Portables 3, 13, 14, 15, 16 and 18, due to a District requested change.

NOW THEREFORE, the DISTRICT and CONSULTANT amend this contract as follows;

### I. SCOPE OF WORK

Appendix A, Scope of Work, is hereby modified as follows to allow for additional budget to compensate for added costs:

The scope of the project is to provide additional abatement monitoring and demolition oversight for Portables 3,13, 14, 15, 16 and 18.

### II. COMPENSATION

Appendix B. Compensation and Payment, is hereby modified to allow for the additional fees required to complete additional abatement services for the Downtown Education Complex Project. The present fee of \$16,600.00 is hereby increased by a not-to-exceed amount of \$24,300.00 for a new total contract amount of \$40,900.0.

### III. PROJECT SCHEDULE

Appendix C is hereby modified to extend the end date from December 31, 2009 to May 1, 2010,

All remaining portions of the agreement shall remain in full force and effect as originally stated.

Amendment No. 4 to agreement for professional services with Ninyo and Moore for Additional Services for the Downtown Education Complex Project. Project Number: 07047. IN WITNESS WHEREOF, Consultant has executed this Agreement, and the District, by its Board of Education, who is authorized to do so, has executed this Agreement.

**CONSULTANT: Ninyo and Moore** 

By

erations Manager Title:

OAKLAND RAFIED SCHOOL Ø18TRICT By:

Dated: 12/17/09 Dated: 12/17/09 Dated:

Noel Gallo, President of the Board of Education

By: Edgar Rakestra District Secretary

By:

Timothy E. White, Assistant Superintendent, Division of Facilities, Planning & Management Dated:

Dated: //

Approved as to form:

Cate Boskoff, Facilities Counsel

Dated: 11.19.09

Attachments: Agreement for Professional Services with Ninyo and Moore dated December 31, 2008

Consultant: School Funding: Developers Fees

Ninyo and Moore **Downtown Education Complex** 

Amendment No. 4 to agreement for professional services with Ninyo and Moore for Additional Services for the Downtown Education Complex Project. Project Number: 07047

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	65-3090 Christine Silan		INSURERS AFFORDING COVERAGE					
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# **ROUTING FORM**

Check contract title: Professional Ser

Professional Services Contract X Amendment to PCS

Downtown Education Complex-Amend 4

This Form is NOT a Contract. Complete this form and a Contract. Forward these documents to the Program Manager who will approve the IFAS Requisition. See Professional Services Contract Instruction for further information.

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A999069.P001 Rev. 7/24/03

THIS FORM IS NOT A CONTRACT

Prepared By: \_Susle Butter-Berkley

Client#: 704	NINYOMOOR1				
ACORD. CERTIFICATE OF LIABILITY INSURANCE					
DEUCER aley, Renton & Associates <b>0. Box 12675</b> Ikland, CA 94604-2675 0 465-3090 Christine Silan	THIS CERTIFICATE IS ISSUED AS A MATTER ONLY AND CONFERS NO RIGHTS UPON T HOLDER. THIS CERTIFICATE DOES NOT AN ALTER THE COVERAGE AFFORDED BY THE INSURERS AFFORDING COVERA	HE CERTIFICATE IEND, EXTEND OR POLICIES BELOW.			
URED	INSURERA: American Automobile Ins. Co.				
Ninyo & Moore Geotechnical &	INSURER B. Fireman's Fund Insurance Co. INSURER C. Lexington Ins. Co. INSURER C:				
Environmental Sciences Consultants					
1956 Webster Street, Suite 400					
Oakland, CA 94612	biship to t				

#### VERAGES

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

17. 20	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MMODOYY)	LIMIT	5
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SCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

ENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL ERVICES.

:EF: N&M#401501003. OUSD/DOWNTOWN EDUCATIONAL COMPLEX/PEA.

#### See Attached Descriptions)

ERTIFICATE HOLDER ADDITIONAL INSURED, INSURER LETTER	CANCELLATION
Oakland Unified School District 955 High Street Oakland, CA 94601	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WINX TO MAIL 3D DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT XIN X AXERXIX DOCOCOCKING NAMED DATE WITH A READ AND A DOCKDOOK AND
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CORD 25-5 (7/97)1. of 2 #M267851

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THE PARTY

DESCRIPTIONS (Continued from Page 1)

ENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified shool District, its Directors, Officers, Employees, Agents, and presentatives.

surance is primary per policy form.

aiver of Subrogation applies to Commercial General Liability, Automobile ability and Workers Compensation.

AMS 25.3 (07/97) 2 of 2 #M267851

POLICY NUMBER: MZG80911156

COMMERCIAL GENERAL LIABILITY CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Name Of Additional Insured Person(s) Or Organziation(s):	Location(s) Of Covered Operations
Oakland Unified School District 955 High Street Oakland, CA 94601	REF: N&M#401501003. OUSD/DOWNTOWN EDUCATIONAL COMPLEX/PEA. Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - 1. Your acts or omissions; or
  - The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance alforded to these additional insureds, the following additional exclusions apply: This insurance does not apply to "boddy injury" or "property damage" occurring after:

- All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontrator engaged in performing operations for a principal as a part of the same project.

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Page 1 of 1 UNIFORM

### WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" needs to be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement forms a part of Policy No. WZP80982095

Issued to: Ninyo & Moore Geotechnical &

By: American Automobile Ins. Co.

Premium (if any) TBD

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

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 2-5% of the California workers compensation premium otherwise due on such remuneration.

Schedule

#### Person or Organization

Job Description

Oakland Unified School District 955 High Street Oakland, CA 94601 REF: N&M#401501003. OUSD/DOWNTOWN EDUCATIONAL COMPLEX/PEA. Oakland Unified School District, its Directors, Officers, Employees, Agents, and Representatives.

bu-

WC 04 03 06 (Ed. 4-84) Countersigned by \_\_\_\_

Authorized Representative

LEGISLA'	<b>FIVE FILE</b>
File ID No.	09-2298
Introduction Date	9-1-09
Enactment No.	09-1898
Enactment Date	9-9-09
By	BX

OAKLAND UNIFIED SCHOOL DISTRICT Office of the Board of Education September 9, 2009

To:	Board of Education
From:	Tony Smith, Ed.D., Superintendent Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services
Subject:	Amendment No. 3 - Ninyo & Moore - Downtown Educational Complex Project

#### ACTION REQUESTED

Approval by the Board of Education of Amendment No. 3 with Ninyo & Moore for Additional Abatement Services on behalf of the District for the Downtown Educational Complex Project, correcting the not to exceed amount from \$11,200.00 to \$16,600.00 All remaining portions of the agreement shall remain in full force and effect as originally stated.

### BACKGROUND

This amendment is to correct the addition error on the original contract.

#### 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

#### REW: TEW. PF

P.CONTRACT ADMINISTRATION - RESTRICTED/CONTRACTS - WORKING FOLDER/Mise, Contracts/Ninyo & Moore/Downtown Ed Complex - Fund 25/Amendment No. 3/Template- Board memo-Amendment, 1e.doc 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.

### DISCUSSION

The scope of the project is to correct the not-to-exceed amount from \$11,200.00 to \$16,600.00 due to an error.

FISCAL IMPACT The funding source for this project is Fund 25.

#### RECOMMENDATION

Approval by the Board of Education of Amendment No. 3 with Ninyo & Moore for Additional Abatement Services on behalf of the District for the Downtown Educational Complex Project, correcting the not to exceed amount from \$11,200.00 to \$16,600.00 All remaining portions of the agreement shall remain in full force and effect as originally stated.

Key code: 1219000825-6262

REW: TEW. PF P:CONTRACT ADMINISTRATION - RESTRICTED/CONTRACTS - WORKING FOLDER/Mise. Contracts/Ninyo & Moore/Downlown Ed Complex - Paul 23/Amendment No. 3/Template-Based memo-Amendment. 16.000 2

# AMENDMENT NO. 3 TO AGREEMENT FOR PROFESSIONAL SERVICES

ng: may

WITH

Ninyo & Moore

# FOR

Additional Services for the Downtown Educational Complex Project

Project Number: 07047

OAKLAND UNIFIED SCHOOL DISTRICT

May 28, 2009

### AMENDMENT NO.3 TO AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND NINYO & MOORE DATED MAY 1, 2009

This 3<sup>rd</sup> Amendment is entered into this 28th day of May, 2009 between the OAKLAND UNIFIED SCHOOL DISTRICT ("DISTRICT") AND NINYO & MOORE ("CONSULTANT") for the Downtown Educational Complex.

WHEREAS, CONSULTANT has commenced the professional services under the original contract and additional budget is warranted to compensate for additional abatement services provided by CONSULTANT. Whereas this amendment is to correct the not-to-exceed amount from \$11,200.00 to \$16,600.00, due to an error.

NOW THEREFORE, the DISTRICT and CONSULTANT amend this contract as follows;

1. SCOPE OF WORK

Appendix A, Scope of Work, is hereby modified as follows to allow for additional budget to compensate for added costs:

The scope of the project is to correct not-to-exceed amount from \$11,200.00 to \$16,600.00

#### H. COMPENSATION

Appendix B, Compensation and Payment, is hereby modified to allow for the additional fees required to complete additional abatement services for the Downtown Educational Complex Project. The present fee of \$11,200.00 is hereby changed to the correct contract amount of \$16,600.00.

All remaining portions of the agreement shall remain in full force and effect as originally stated.

Amendment No. 3 to agreement for professional services with Ninyo & Moore for Additional Services for the Downtown Educational Complex Project. Project Number 07047 IN WITNESS WHEREOF, Consultant has executed this Agreement, and the District, by its Board of Education, who is authorized to do so, has executed this Agreement.

CONSULTANT: Ninyo & Moore

na -2 . 3.

William P. Larlin Title: Sr. Project Env. Sclentet

OAKLAND THE SCHOOL DISTRICT By:

By: / Katto Noel Gallo, President of the Board of Education

By: **District Secretary** Edgar Rakestraw,

By:

Dated:

Dated:

Dated:

Timothy E. White, Assistant Superintendent, Division of Facilities, Planning & Management

Approved as to form:

Cate Boskoff, Facilities Counsel

Dated: 8.16.09

Attachments: Agreement for Professional Services with Ninyo & Moore dated May 1, 2009

School: Funding:

Consultant: Ninyo & Moore Downtown Educational Complex. Fund 25

Amendment No, 3 to agreement for professional services with Ninyo & Moore for Additional Services for the Downtown Educational Complex Project. Project Number: 07047

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Dated: 8/13/09

9/10/09

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NINYO AND MOORE

PAGE 04/05

### POLICY NUMBER: MZG80894367

COMMERCIAL GENERAL LIABILITY CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

tion(s) Of Covered Operations
ofessional Services nt - Downtown Education & Facilities / O.U.S.D. No. 07047. GENERAL TY ADDITIONAL INSURED: Unified School District,
I

A. Section II - Who is An insured is amanded to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to Ilability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- 1. Your acts or omissions; or
- The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance alforded to these additional insureds, the following additional exclusions apply: This insurance does not apply to "bodily injury" or "property damage" occurring after:

- All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repetrs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontrator engaged in performing operations for a principal as a part of the same project.

its Dirctors, Offiers, Employees, Agents, and Representatives.

CG 20 10 07 04

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Page 1 of 1 UNIFORM

510-633-5646 08/18/2009 13:42

NINYO AND MOORE

PAGE 85/6

#### WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different dete is indicated below.

The following "alberting clause" needs to be completed only when this endersement is issued subsequent to protection of the policy.)

This endorsement forms a part of Policy No. W2P80973506

Issued to: Ninyo & Moore Geotechnical &

American Automobile Ins. Co. By:

Premium (il any) TBD

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

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

The additional promium for this endorsement shall be 2-5% of the California workers compensation premium otherwise due on such remuneration.

Schedule

### Person or Organization

Job Description

Authorized Representative

Oakland Unified School District 955 High Street Oakland, CA 94601

REF: Professional Services Agreement -Downtown Education Complex & Facilities Attm: Susie Butler-Berkley Downtown Education Complex & Facilities Dept. of Facilities Planning & Mgmt. / O.U.S.D. Project No. 07047. Oakland Unified School District, its Dirctors, Offiers, Employees, Agents, and Representatives.

Countersigned by

TEA 15

### KUUTING PUKIM

Check contract title: Professional Services Contract X Amendment to PCS

**Downtown Educational** Complex-Amend 3

This Form is NOT a Contract. Complete this form and a Contract. Forward these documents to the Program Manager who will approve the IFAS Requisition. See Professional Services Contract Instruction for further Information.

		الارو الجليجي عود أروا	Contra	ctor Information	
Contractor Name	Ninyo & Me	aloc		Contractor's Contact Person	William Larkin
Slreet Address	1956 Webs	ster Street, Ste.	400	Title	Project Manager
City	Oakland		¢	Telephone	510-633-5640
State	CA	Zip Code	94612	Policy Expires	10/3/09
Tax ID/Soc	Sec #			OUSD Project #	07047
Has Contrac	tor been an (	OUSD contracto	x?	Has Contractor work	ed as an OUSD employee?
If yes to eith number(s), i		me(s) and tax I	D/social sec		

		Term	
Date Work Will Begin	May 1, 2009	Date Work Will End By (not more than 5 years from start date)	December 31, 2009

		Compensation	
Total Contract Amount	\$	Total Contract Not To Exceed	\$16,600.00
Pay Rate Per Hour (II Hours)	\$	If Amendment, Changed Amount	\$ 0.00
Other Expenses	1	Requisition Number	

Funding Resources		Orp Key #	Information	(hine)	
Funding resources	Site	Program	F Drigue	Object	Amount
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Name of Funding Source: Developers Fees - Fund 25

Progra	m Information - Indicate I	the Number of Persons to E	Benefit from Services	8
Grade Level (s)	Students	Teachers	Parents	
Administrators	Others (Please Sp	ecify)		

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Name of OUSD Contact	Charles Lovo	Email	charles.love@ousd.k12.ca.us
Telephone	510-879-8389	Fax	510-879-3673
Site/Dept. Name	Department of Faciliti	es Planning and	Management

٠	Approved	Denied	Date
Principal/Division Head	- 131		912
Program Manager			
Contract Services	Chi		8-13-09
FCMAT Fiscal Advisors			
State Administrator			
Additional	approvals may be needed if	contract amount is gre	ater than \$59,600
Legal			
Legal Review Needed:	Submitted to Legal by:	Legal Log #:	Returned to:

**Dates of Clearance** Submitted by: Email Address YID\$ Full Funding In Req. Unit Member Work Conflict TB Fingerprint Current Employee

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THIS FORM IS NOT A CONTRACT

Prepared By: Susie Butler-Berkley

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File ID No. 0	1-1324
Introduction Date	5-5-09
Enactment No.	07-0926
Enactment Date	5/13/09
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# OAKLAND UNIFIED SCHOOL DISTRICT Office of the Board of Education May 13, 2009

To: Board of Education
------------------------

From:	Roberta Mayor, Ed.D., Interim Superintendent	
	Timothy E. White, Assistant Superintendent of Facilities_Planning &	
	Management, Buildings & Grounds and Custodial Services	

Subject: Amendment No. 1 - Ninyo & Moore - Downtown Educational Complex Project

# ACTION REQUESTED

Approval by Board of Education of Amendment No. 1 with Ninyo & Moore for Additional hazmat Services on behalf of the District for the Downtown Educational Complex Project, increasing the contract by a not to exceed amount of \$6,000.00, increasing previous contract amount from \$10,600.00 to a not to exceed amount of \$11,200.00 and revising the end date from December 31, 2008 to December 31, 2009. All remaining portions of the agreement shall remain in full force and effect as originally stated.

## BACKGROUND

Based on findings, abatement may be required prior to demolishing Portables 3, 13, 14, 15, 16 and 18 if buildings contain hazardous materials.

## 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.

### DISCUSSION

The scope of the project is to provide evaluation report of hazardous material at portables 3, 13, 14, 15, 16, and 18. Assessment will be conducted through a visual observation as well as collecting building material samples for testing. Report to include findings, opinions and recommendations and quantities of identified materials per a District request.

### FISCAL IMPACT

The funding source for this project is Developer Fees.

### RECOMMENDATION

Approval by Board of Education of Amendment No. 1 with Ninyo & Moore for Additional hazmat Services on behalf of the District for the Downtown Educational Complex Project, increasing the contract by a not to exceed amount of \$6,000.00, increasing previous contract amount from \$10,600.00 to a not to exceed amount of \$11,200.00 and revising the end date from December 31, 2008 to December 31, 2009. All remaining portions of the agreement shall remain in full force and effect as originally stated.

Key code: 121020825-6262

### AMENDMENT NO. 1 TO AGREEMENT FOR PROFESSIONAL SERVICES

47 . 14

# WITH

Ninyo & Moore

### FOR

Additional Services for the Downtown Educational Complex Project

Project Number: 07047

# OAKLAND UNIFIED SCHOOL DISTRICT

April 7, 2009

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SCILITIES PLANNING & MANAGEMENT & MANAGEMENT & MANAGEMENT MENTING OFPARTMENT

# AMENDMENT NO.1 TO AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND NINYO & MOORE DATED SEPTEMBER 23, 2008

This 1<sup>rd</sup> Amendment is entered into this 7th day of April, 2009 between the OAKLAND UNIFIED SCHOOL DISTRICT ("DISTRICT") AND NINYO & MOORE ("CONSULTANT") for the Downtown Educational Complex.

WHEREAS, CONSULTANT has commenced the professional services under the original contract and additional budget is warranted to compensate for additional hazmat services provided by CONSULTANT. Whereas the consultant is to provide evaluation report of hazardous materials at portables 3, 13, 14, 15, 16 and 18 located at 314 East 10<sup>th</sup> Street. Assessment will be conducted through a visual observation as well as collecting buildings material samples for testing. Report to include findings, opinions and recommendations and quantities of identified materials, per a District request.

NOW THEREFORE, the DISTRICT and CONSULTANT amend this contract as follows;

### 1. SCOPE OF WORK

Appendix A, Scope of Work, is hereby modified as follows to allow for additional budget to compensate for added costs:

The scope of the project is to provide evaluation report.

II. COMPENSATION

Appendix B. Compensation and Payment, is hereby modified to allow for the additional fees required to complete additional hazmat services for the Downtown Educational Complex Project. The present fee of \$10,600.00 is hereby increased by a not-to-exceed amount of \$6,000.00 for a new total contract amount of \$11,200.00.

### III, PROJECT SCHEDULE

Appendix C is hereby modified to extend the end date from December 31, 2008 to December 31, 2009.

All remaining portions of the agreement shall remain in full force and effect as originally stated.

IN WITNESS WHEREOF, Consultant has executed this Agreement, and the District, by its Board of Education, who is authorized to do so, has executed this Agreement.

CONSULTANT: Ninyo & Moore

P. Ja By: /

Dated: 4/8/09

Dated:

Dated:

Dated:

Title: Sr. Project Environmental Scientist

UAKLAND OPPTED SCHOOL DISTRICT By:

Noel Gallo President, Board of Education

OAKLAND UNIFIED SCHOOL DISTRIC By:

Edgar Rakestraw, Jr., Secretary, **Board of Education** 

By:

Timothy E. White, Assistant Superintendent, Division of Facilities, Planning & Management

Approved as to form:

Cate Boskoff, Facilities Counsel

Dated: 4.16.09

Attachments: Agreement for Professional Services with Ninyo & Moore dated September 23, 2008.

Consultant: Ninyo & Moore School: Downtown Educational Complex Funding: Developer Fees

Amendment No. 1 to agreement for professional services with Ninyo & Moore for Additional Services for the Downtown Educational Complex Project. Project Number: 07047

LEGISLATIVE	FILE
FileIDNo. (	28-2642
Introduction Date	11-19-08
Enactment No.	08-2136
Enactment Date	11/19/08
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OAKLAND UNIFIED SCHOOL DISTRICT Office of the Board of Education November 19, 2008

To:	Board of Education
From:	Vincent Matthews, Interim State Administrator (Superintendent of Schools) Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services
Subject:	Agreement for Professional Services - Ninyo and Moore - Downtown Educational Complex Project

### ACTION REQUESTED

Approval by Board of Education for a Professional Services Agreement with Ninyo and Moore for Title 5 California Code Services on behalf of the District at Downtown Educational Complex Project, in an amount not-to-exceed \$10,600,00. The term of this Agreement shall commence on September 23, 2008 and shall conclude no later than December 31, 2008.

#### BACKGROUND

A site assessment will be performed to identify areas of possibly contaminated surficial soil, water, hazardous materials, PCBs, propane or underground tanks on, above ground, underground, adjacent to the site, or underground gas pipelines. In addition, the assessment will identify the location of high voltage lines, railroad tracks, and various other items that could impede future construction.

### 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.

ER: TEW:SMB

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.

### DISCUSSION

The scope of the project includes a review of requirements related to Title 5 of the California Code of Regulations. The objective of this assessment is to evaluate whether past or current activities have resulted in "recognized environmental conditions" as defined in ASTM E 1527-05, and other environmental concerns as described in the SFPD Advisory 00-01 and regulatory code referenced therein per the attached to the agreement which is subordinate to and not inconsistent with the terms and conditions of the agreement for the Downtown Education Complex.

### FISCAL IMPACT

The funding source for this project is Fund 35 Development Fees.

### RECOMMENDATION

Approval by Board of Education for a Professional Services Agreement with Ninyo and Moore for Title 5 California Code Services on behalf of the District at Downtown Educational Complex Project, in an amount not-to-exceed \$10,600.00. The term of this Agreement shall commence on September 23, 2008 and shall conclude no later than December 31, 2008.

2

Key code: 1210202825-6262

ER: TEW:SMB

# AGREEMENT FOR PROFESSIONAL SERVICES

WITH

Ninyo and Moore

FOR

Downtown Educational Complex O.U.S.D. Project Number: 07047

October 24, 2008

## OAKLAND UNIFIED SCHOOL DISTRICT

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### AGREEMENT FOR PROFESSIONAL SERVICES

This is an Agreement between OAKLAND UNIFIED SCHOOL DISTRICT, 955 High Street, Oakland, CA 94606 (hereafter "District") and NINYO AND MOORE, 1956 Webster Street, Suite 400, Oakland, CA 94612 (hereinafter "Consultant ").

### RECITALS

WHEREAS, this Agreement sets forth the terms and conditions under which the District shall obtain and Consultant will provide professional services pertaining to review of requirements related to Title 5 for the Downtown Educational Complex Project.

WHEREAS, Consultant was selected by means of the District's consultant selection process, represents itself, as having the requisite qualifications, and desires to provide the professional services required;

Now, THEREFORE, the District and Consultant agree as follows:

### 1 Definitions

- 1.1 Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.
  - 1.1.1 Agreement: This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to:
    - 1.1.1.1 Appendix A, Scope of the Work, Scope of Services, Additional Services
    - 1.1.1.2 Appendix B, Compensation, Payment, Reimbursable Expenses
    - 1.1.1.3 Appendix C, Project Schedule, Project Budget, Statement of Confidentiality
    - 1.1.1.4 Appendix D, Consultant's Billing Rates, Direct Costs
  - 1.1.2 Work: The entirety of the work, tabor, services and materials to be done in providing the District with services described in this Agreement for the work, pursuant to the terms and conditions of this Agreement.
  - 1.1.3 Project: This definition includes the total construction of which the Work performed under this Agreement may be whole or part.

#### 2 Term of the Agreement

2.1 The term of this Agreement shall commence on September 23, 2008 and shall conclude no later than December 31, 2008.

### 3 Services Consultant Agrees to Perform

3.1 Consultant must achieve the Work described in Appendix "A," "Scope of the Work," attached hereto and incorporated by reference as though fully set forth herein. Unless specifically excepted, the Consultant shall complete all services required by this Agreement, as set forth in Appendix A "Scope of Work" and all work of each activity within the times specified.

3.2 The Consultant shall keep District informed of its progress performing the Work. If Consultant anticipates exceeding the durations in the Schedule, it shall immediately inform the District in writing. Should the progress of the Work under this Agreement at any time fall behind schedule due to conditions not beyond the control of Consultant, Consultant shall be required to apply such additional resources as necessary to bring progress of the Work under this Agreement back on schedule.

### Compensation

- 4.1 Upon written approval of each of Consultant's invoices by District's project manager, compensation shall be due Consultant according to the Compensation Schedule established in Appendix "B".
- 4.2 District shall have no obligation to pay Consultant for charges incurred or payments due Consultant for any payment period until District receives from Consultant the deliverables required for that payment period and accepts them as complying with this Agreement. Consultant shall submit invoices in the form and manner required by the District. All amounts paid by District to Consultant shall be subject to audit by District.
- 4.3 Final payment will be made when all Work required under this Agreement has been completed and Consultant has transmitted all deliverables to the District. The final payment will include the final month's payment, plus any retention withheld from previous payments for deficient work corrected in the final submittal, less any amounts which may be determined due District because of Consultant's negligent errors, omissions, breaches of this Agreement, delays or other acts which caused District monetary damages.
- 5 Taxes
  - 5.1 Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Consultant.

### 6 Qualified Personnel

6.1 Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant agrees that any studies or analysis included in the Work shall be performed or prepared by principals-in-charge of supervised by principals-in-charge, and that principals-in-charge shall be in "responsible charge" of the work. Such principals-in-charge shall sign all applicable documents and other items as required.

### 7 Standard of Care

7.1 Consultant represents that it is qualified to perform the Work and that it possesses the necessary licenses and/or permits required to perform the Work. Consultant represents that it is knowledgeable in preparing the required documents for this type and scope of project.

2

7.2 The granting of any progress payment by District, or the receipt thereof by Consultant, or any review, approval or oral statement by any representative of District shall in no way waive or limit the representations and obligations in this section or lessen the liability of Consultant to re-perform or replace unsatisfactory Work. Nothing in this section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

#### 8 Indemnification and General Liability

- 8.1 Consultant shall indemnify, defend, and hold District, its directors, officers, agents, employees and representatives harmless from and against all claims, demands and judgments of any description arising out of or alleged to have arisen out of performance or nonperformance of this Agreement to the extent that such claims, demands and judgments are the result of any error, omission or negligent act of Consultant or any person employed or agent engaged by Consultant.
- 8.2 Specifically regarding professional negligent errors or omissions, the Consultant shall indemnify, defend, and hold hamless District, its directors, officers, agents, employees, and representatives from and against any and all demands, claims, loss, liability costs and damages (whether in contract, tort or strict liability) incurred by District, or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attomeys' fees and litigation expenses) incurred by District, or any other person, to the proportionate extent that it is alleged to have arisen out of or arises out of or Is In connection with the professional negligent errors or omissions of the Consultant in the performance of this contract. The indemnity and save harmless agreements expressed in this Section 8 shall not apply to the extent that doing so violates the provisions of Section 2782 of the California Civil Code.
- 8.3 Consultant shall place in its sub-consulting agreements and cause its sub-consultants to agree to indemnities and insurance obligations in the exact form and substance of those contained herein, each naming the District as an additional beneficiary or insured.

### 9 Liability of District

- 9.1 District's obligations under this Agreement shall be limited to the payment of the compensation provided for in this Agreement. To the furthest extent permitted by law, and 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 or the services performed in connection with this Agreement.
- 9.2 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by District. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any

3

Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

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damage or injury of any type, including attomeys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, District employees or third parties, or to property belonging to any of the above.

### 10 Independent Contractor: Payment of Taxes and Other Expenses

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between District and Consultant.

#### 11 Insurance

- 11.1 Without in any way limiting Consultant's liability under any other section of this Agreement, Consultant will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
  - 11.1.1 Workers' Compensation Employers' Liability limits not less than each \$1,000,000 each accident, per disease, and aggregate. Consultant's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
  - 11.1.2 Consultant's right to self-insure is subject to approval by the District. As a condition to such approval, Consultant shall submit to the District evidence that consultant maintains sufficient financial resources for said self-insurance.
  - 11.1.3 Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant's or subcontractor's or sub-consultant's operations.
  - 11.1.4 Comprehensive or Business Owners Automobile Liability insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, Including Owned and Non-owned and hired auto coverage, as applicable.
  - 11.1.5 Professional Liability Insurance with limits not less than \$1,000,000.00 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- 11.2 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

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- 11.2.1 Name as Additional Insured District, its Directors, Officers, Employees, Agents, and Representatives.
- 11.2.2 That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- 11.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to District of cancellation, non-renewal or reduction in coverage, and certificates of all policies and endorsements shall be mailed to the following address:

Timothy E. White, Assistant Superintendent Oakland Unified School District Department of Facilities Planning and Management 955 High Street Oakland, California 94601

- 11.4 Insurance shall be provided by an admitted California insurance company with a current Best's Key Rating of A minus (A-) or better. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- 11.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- 11.6 Certificates of insurance evidencing all coverage's above shall be furnished to District before commencing any operations under this Agreement, with complete copies of policies promptly upon District request. Approval of the insurance by District shall not relieve or decrease the liability of Consultant hereunder.
- 11.7 District may, at its sole option, terminate this Agreement immediately, without notice to Consultant and without opportunity to cure the default, in the event of any lapse of required insurance coverage. District may, at its sole option, secure sufficient insurance coverage to replace any required insurance coverage, which has lapsed, and Consultant hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage. Consultant shall be responsible for any and all uninsured losses.
- 11.8 If Consultant is an association, joint venture or partnership, the association, joint venture or partnership shall be insured by any one of the following methods:

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11.8.1 Separate insurance policies issued with the association, joint venture or partnership as named insured; All insurance policies required by this Agreement of one of the

participants to include the association, joint venture or partnership as named insured; The association, joint venture or partnership must be a named insured on all of the policies required by this Agreement.

#### 12 Suspension of Work

12.1 District may, without cause, order Consultant, in writing, to suspend, delay or interrupt the Work, for such periods of time as District may determine, in its sole discretion. Suspension shall be effected by delivery to Consultant of notice of suspension specifying the extent to which performance of the Work under the Agreement is suspended, and the date upon which suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered.

### 13 Termination of Agreement for Cause

13.1 If at any time District believes Consultant may not be adequately performing its obligations under this Agreement or may fail to complete the Work as required by this Agreement, District may terminate the Consultant contract upon seven days written notice to the Consultant. The District may request from Consultant written assurances of performance and a written plan to correct observed deficiencies in Consultant's performance if written notice of the same is provided by District. Failure to provide written assurances, may, in -District's discretion, constitute grounds to declare a default under this Agreement.

### 13.2 In the event of termination by District for cause

- 13.1.1 District shall compensate Consultant for the value of the Work delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back-charges, but District shall not compensate Consultant for its costs in terminating the Work or any cancellation charges owed to third parties;
- 13.1.2 Consultant shall deliver to District possession of the Work in its then condition, including but not limited to, all designs, engineering, Plan and Project records, cost data of all types, drawings and specifications and contracts with vendors and subcontractor or sub-consultants, and all other documentation associated with the work, and all supplies and aids dedicated solely to performing Work which, in the normal course of the Work.

### 14 Termination of Agreement for Convenience

14.1 District may terminate performance of the Work under the Agreement in accordance with this Paragraph in whole, or from time to time in part, whenever District shall determine that termination is in the best interest of District. Termination shall be effected by delivery to Consultant of notice of termination specifying the extent to which performance of the Work under the Agreement is terminated, and the date upon which termination becomes effective, which shall be no less than seven (7) calendar days from the date the notice of termination is delivered. Consultant shall be compensated for professional services rendered to the effective date of termination for convenience. Except as provided in this Agreement, in no event shall District be table for costs incurred by Consultant or subcontractor (or subconsultants) after receipt of a notice of termination.

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#### 15 Proprietary or Confidential Information of District

Consultant understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to Consultant shall be held in confidence and used only in performance of the Agreement, and shall sign the Statement of Confidentiality included herein as part of Appendix C.

### Notices to the Parties

All notices to be given by the partles hereto shall be in writing and effective when served by depositing same in the United States Post Office, postage prepaid and addressed as follows:

Timothy E. White, Assistant Superintendent

Department of Facilities Planning and Management

To District:

16

To Consultant:

Kris Larson

Ninyo and Moore 1956 Webster Street, Suite 400 Oakland, CA 94612

**Oakland Unified School District** 

Oakland, California 94601

955 High Street

#### 17 Ownership of Results/Works for Hire

17.1 Any interest of Consultant or its subcontractors or sub-consultants, in plans, studies, reports, memoranda, computational sheets or other documents prepared by Consultant or its subcontractors or sub-consultants in connection with services to be performed under this Agreement shall become the property of District pursuant to California Education Code Section 39159. Consultant may, however, retain one copy for its files.

### 8 Audit and Inspection of Records

- 18.1 Consultant shall maintain all calculations, cost analyses or estimates, quantity takeoffs, statements of construction costs, schedules and all correspondence, internal memoranda, papers, writings, and documents of any sort prepared by or furnished to Consultant during the course of performing the Work, for a period of at least five years following final completion and acceptance of the Plan.
- 19 Subcontracting/District Employees/Assignment
  - 19.1 Consultant has not specified the use of any sub-consultants and subcontractors in the performance of the Work under this Agreement, other than the sub-consultants listed herein:

#### none.

19.2 Except as provided in Paragraph 19.1, Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by District in a written instrument executed and approved in the same manner as this Agreement. Consultant shall not substitute subcontractors or sub-consultants unless approved by written instrument executed and approved in the same manner as this Agreement.

### 20 Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement. Consultant shall not discriminate in its employment and hiring practices because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in California Government Code Section 12940.

### 21 Disputes

- 21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to District's Project Manager and a principal of the Consultant, who shall make a good faith effort to resolve the matter. Consultant shall continue its Work throughout the course of any and all disputes. Nothing in this Paragraph shall allow Consultant to discontinue work during the course of any dispute and Consultant's failure to continue work during any and all disputes shall be considered a material breach of this Agreement. Consultant also agrees that should Consultant discontinue work due to a dispute or disputes, District may terminate this Agreement.
- 21.2 As a precondition to litigation, the parties must first participate in non-binding mediation pursuant to the mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified mediators.
- 22 This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County, California.
  - 22.1 Four copies of this Agreement shall be executed. Three copies shall be retained by District and one copy shall be given to the Consultant.

#### 23 Compliance With Laws

23.1 Consultant shall comply with all applicable laws in the performance of the Work, which are in effect at the time the Consultant is performing its Work, regardless of whether such laws are specifically stated in this Agreement. Consultant further agrees that, consistent with the

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Standard of care set forth herein, the plans, drawings, specifications, designs and any other product of its services will comply with that standard of care in their compliance with the applicable laws and Codes.

#### 24 Entire Agreement; Modifications of Agreement

- 24.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement.
- 24.2 The District may, at any time, by written order, make changes within the scope of the work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Appendix C, or in the time of required performance as forth in Appendix C, or both. In the event that Consultant encounters any unantlcipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, consultant shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. Such notice shall be given to the District prior to the time that Consultant performs work or services related to the proposed adjustment in compensation. Any and all pertinent changes shall be expressed in written supplement to the Agreement prior to implementation of such changes. Changes in the work made pursuant to this Article and extensions of time necessary by reason thereof shall not in any way release the performance standards required of Consultant pursuant to the terms of this Agreement.

24.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of District and the Consultant.

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Agreement for Professional Services (ver 1/26/05) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00. IN WITNESS WHEREOF, Consultant has executed this Agreement, and the District, by its State Administrator, who is authorized to do so, has executed this Agreement.

CONSULTANT;/Ninyo and/Moore Vature Mt m. P.G. By:

Dated: 10/28/08

Title: Senior Environmental Geologist

OAKLAND UNIFIED SCHOOL DISTRICT

Dated: 12/0/08

Dated: 12008

Dated:

David Kakishiba, President, Bbard of Education

By: Care Calcotty Edgar Rakestraw, Jr., District Secretary

1.15 45/08

By: \_\_\_\_\_\_Timothy E. White. Assistant Superintendent, Division of Facilities, Planning & \_\_\_\_\_\_ Management, Buildings and Grounds and Custodial Services

Approved as to form:

By:

Cate Boskoff, Facilities Counsel

Attachments: Appendix A Appendix B Appendix C Appendix D . . . . .

Dated: 11.30.0)

Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

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## APPENDIX A

SCOPE OF WORK

The scope of the project includes a review of requirements related to Title 5 of the California Code of Regulations. The objective of this assessment is to evaluate whether past or current activities have resulted in "recognized environmental conditions" as defined in ASTM E 1527-05, and other environmental concerns as described in the SFPD Advisory 00-01 and regulatory code referenced therein. (See attached proposal)

END OF APPENDIX A

Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

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## APPENDIX B

## COMPENSATION AND PAYMENT:

As full compensation for services (as outlined in Appendix A) performed, Consultant shall be paid a not to exceed fee of ten thousand, six hundred dollars and no cents (\$10,600.00) for the Downtown Educational Complex.

Work to be billed monthly on a time and material basis in conformance with the rate schedule on Appendix D.

#### REIMBURSABLE EXPENSES:

Reimbursable expenses, if any, will be included in the basic compensation amount, and there shall be no additional reimbursable expenses paid as a part of this contract.

## END OF APPENDIX B

12

Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

#### APPENDIX C

#### **PROJECT SCHEDULE:**

The Consultant shall complete the scope of services and deliver to the District all closeout files, reports, evaluations and documents according to the following schedule:

September 23, 2008 to December 31, 2008

#### PROJECT BUDGET:

The budget established for this scope of work is NOT TO EXCEED ten thousand, six hundred dollars and no cents (\$10,600.00). The Consultant shall advise the District in writing at any time during the progress of the work if there is any indication that the cost of the project will exceed the above budget.

#### CONFIDENTIALITY AGREEMENT

This Confidentiality agreement is between Ninyo and Moore (hereinafter referred to as "Consultant"), and the Oakland Unified School District (hereinafter referred to as "District"), in anticipation of consulting services for the Downtown Educational Complex.

Consultant agrees to keep confidential and not disclose to anyone other than the State Administrator, his/her designee, and authorized personnel in the District's Facilities Planning & Management and Legal Departments, information obtained by or provided to Consultant pursuant to consultant's anticipated or actual work. Consultant further agrees to have each employee, independent contractor or sub-consultant retained or hired by Consultant agree to these confidentiality provisions and sign a copy of this Agreement prior to performing any work.

Upon conclusion of any services performed by Consultant, Consultant agrees to return to the Director of Facilities Planning & Management of the District all documents obtained by or provided to consultant, along with any documents created by Consultant as a part of consultant's work.

Consultant and District agree that this agreement is being entered into in advance of any actual work being performed in this agreement does not create any interest expectation in any work to be performed.

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Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

Voth M. hu, P.G. Date: 10/28/08 Date: Date: Date: Date:

## END OF APPENDIX C

14

Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

#### APPENDIX D

## CONSULTANT'S BILLING RATES & DIRECT COSTS:

Cost of labor services shall be as follows:

Task	Total
Task 1 - Historical Data Review	\$2,400.00
Task 2 - Agency File Review	\$1,200.00
Task 3 – Site Reconnaissance	\$1,600.00
Task 4 - Report Preparation	\$5,400.00
TOTAL	\$10,600.00

All rates stated herein will remain in effect through December 31, 2008. Comparable rates, reflecting prevailing industry standards, will be annually renegotiated if the contract period extends past December 31, 2008.

#### END OF APPENDIX D

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Agreement for Professional Services (ver 1/26/06) with Ninyo and Moore for Title 5 California Code Services for Downtown Educational Complex \$10,600.00.

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PRODUCER Dealey, Renton & Associates P. O. Box 12875 Oakland, CA 94804-2675 510 465-3090 Christine Silan			ONLY AN HOLDER.	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						
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	1958 Webster Street, Oakland, CA 94612	, Suite 400	INSURER D: INSURER E:						
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GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified School District, its Dirctors, Offiers, Employees. Agents, and Representatives.

Insurance is primary per policy form.

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Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation.

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## **ROUTING FORM**

**Downtown Educational** Complex

Check contract title: X Professional Services Contract Amendment to PCS

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This Form is NOT a Contract. Complete this form and a Contract. Forward these documents to the Program Manager who will approve the IFAS Requisition. See Professional Services Contract Instruction for further information.

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Address	1956 Webs	56 Webster Street, Suite 400			Title Proje		Project M	ct Manager		
City	Oakland							-547-7771		
State	CA	Zip Code	94612	Ver	Vendor #					
Tax ID/Soc				OU	OUSD Project # 07047					
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THIS FORM IS NOT A CONTRACT

Prepared By: Susie Butler-Berkley

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# AMENDMENT NO. 6 TO INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

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