

Board Office Use: Legislative File Info.	
File ID Number	16-0168
Introduction Date	4-27-2016
Enactment Number	16-0584
Enactment Date	4-27-2016



OAKLAND UNIFIED  
SCHOOL DISTRICT

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer JPH  
Roland Broach, Executive Director, Buildings, Custodial &  
Grounds, Facilities Planning and Management RB

**Board Meeting Date** April 27, 2016

**Subject** Independent Consultant Agreement for Professional Services - Ninyo & Moore - Hillcrest Finishing Kitchen Upgrade Project

**Action Requested** Approval by the Board of Education of Independent Contractor Agreement for Professional Services between District and Ninyo & Moore, Oakland, CA, for the latter to provide geotechnical and environmental services including one soil test boring, geo-hazard study, and written report documenting results in conjunction with the Hillcrest Finishing Kitchen Upgrade Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, upon issuance of Notice To Proceed and/or Board Approval and concluding no later than December 31, 2016 in an amount not to exceed \$14,950.00.

**Background** The scope the project includes geotechnical engineering including soil boring, geo-hazard, assessment, environmental soil assessment, subgrade moisture assessment and written reports.

**Discussion** Geotechnical Report is required to design a new cafeteria building containing a finishing kitchen to serve Hillcrest Elementary and Middle School.

LBP (Local Business Participation Percentage) 100.00%

**Procurement Procedure** Materials, Supplies, Equipment and/or Services under the bid limit. (\$87,500.00)

**Recommendation** Approval by the Board of Education of Independent Contractor Agreement for Professional Services between District and Ninyo & Moore, Oakland, CA, for the latter to provide geotechnical and environmental services including one soil test boring, geo-hazard study, and written report documenting results in conjunction with the Hillcrest Finishing Kitchen Upgrade Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, upon issuance of Notice To Proceed and/or Board Approval and concluding no later than December 31, 2016 in an amount not to exceed \$14,950.00.

**Fiscal Impact**

**Attachments** Measure J  

- Independent Consultant Agreement including scope of work
- Certificate of Insurance
- Consultant Proposal



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

**Legislative File ID No.** 16-0768

**Department:** O USD facilities

**Vendor Name:** Ninyo & Moore

**Project Name:** Hillcrest Finishing Kitchen **Project No.:** 13175

**Contract Term:** Start Date: 2016 Upon Notice to Proceed and/or Board Approval and concluding no later than December 31,

**Annual (if annual contract) or Total (if multi-year agreement) Cost:** \$ 14,950.00

**Approved by:** Tadashi Nakadegawa & Lance Jackson

**Is Vendor a local Oakland Business or have they meet the requirements of the Local Business Policy?** Yes ☒ No ☐

**Why was this Vendor selected?**

This vendor provided a best value proposal and is an Oakland-based company.

**Summarize the services this Vendor will be providing.**

Geotechnical design criteria for a new cafeteria building containing a finishing kitchen to serve Hillcrest Elementary & Middle School. Scope and deliverables includes geotechnical engineering, soil borings, geo-hazard assessment, environmental soil assessment, subgrade moisture assessment and written reports.

**Was this contract competitively bid?** Yes ☒ No ☐

If No, answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☒ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
  - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - ☐ Western States Contracting Alliance Contracts (WSCA)
  - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **"Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**



**INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES  
(Geotechnical Engineering Services)**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **10th day of March, 2016** by and between the **Oakland Unified School District** ("District") and **Ninyo & Moore** ("Consultant"), (individually a "Party" or collectively the "Parties").

**WHEREAS**, The District is authorized by Section 4529.12 of the California Government Code to contract with and employ any persons for the furnishing of architecture, landscape architecture, engineering, environmental services, land surveying, and construction management through a fair, competitive selection process.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope includes geotechnical engineering including soil borings, geo-hazard assessment, environmental soil assessment subgrade moisture assessment and written reports.

- 1.1. The Services shall be performed on the following project(s) / site(s) ("Project")  
**Hillcrest Elementary School Finishing Kitchen Upgrade Project:**

- **Geotechnical Engineering Services**
- **One soil test boring**
- **Geo-hazard Study**
- **Written report documenting the results**

- 1.2. The Consultant's Services at any one of the sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Consultant's Services at other site(s). The provisions of this Agreement shall apply to the Consultant's Services at each site, without regard to the status of the remaining Project component(s). Consultant shall invoice for each inspection and test separately and for each site separately and District shall compensate Consultant for each site separately on a proportionate basis based on the level and scope of Services completed for each site.

2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the following:

**Upon issuance of Notice to Proceed and/or Board Approval and concluding  
no later than December 31, 2016.**

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

_____	Signed Agreement
_____	Workers' Compensation Certification
_____	Debarment Certification
_____	Fingerprinting/Criminal Background Investigation Certification
_____	Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District

agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Fourteen thousand, nine hundred fifty dollars and no cents (\$14,950.00)** District shall pay Consultant according to the following terms and conditions:

- 4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
  - 4.2. Consultant shall prepare a separate invoice for each site, if Consultant performs Services at more than one site. The itemized invoice shall reflect the hours spent by the Consultant in performing its Services pursuant to this Agreement.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Services for District, except as follows:
  - 5.1. NA
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's Work, District being interested only in the results obtained.
7. **Local, Small Local And Small Local Resident Business Enterprise Program (L/SL/SLRBE).** Consultant shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

In light of the fifty percent (50%) L/SL/SLRBE participation requirement for formally bid professional service contracts, good faith effort documentation is not necessary.
8. **Designated Representatives / Labor Compliance Program.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program. If Consultant employs subcontractor(s), Consultant shall ensure that its contract(s) with its subcontractor(s) include language notifying the subcontractor(s) of the District's Labor Compliance Program, if any.
9. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:



## 10. NA

## 11. **Performance of Services.**

- 11.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 11.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 11.3. **District Approval.** Work completed pursuant to this Agreement must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 11.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

12. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

13. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

## 14. **Audit.**

- 14.1. Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering

the Agreement.

## **15. Termination.**

- 15.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice was mailed, whichever is sooner.
- 15.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for Services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of Services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 15.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 15.3.1. material violation of this Agreement by the Consultant; or
  - 15.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
  - 15.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

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

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

## **17. Insurance.**

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



below.

**17.1.1. Commercial General Liability and Automobile Liability Insurance.**

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

**17.1.2. Workers' Compensation and Employers' Liability Insurance.**

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

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

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

**17.2. Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

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

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

17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation



Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

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

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

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law.

19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

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

21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement, including without limitation all licenses required to perform professional engineering services and geotechnical testing services.

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

23. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

24. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.

25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires



school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

26. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
27. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 27.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
- 27.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
28. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
29. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.
30. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
31. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**If to District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
ATTN: Tadasha Nakadegawa  
Telephone: (510) 5357038\_

**If to Contractor:**

Ninyo & Moore  
1956 Webster Street, Ste. 400  
Oakland, CA 94612  
Attention: Peter Connolly  
Telephone: (510) 343-3000

**With a copy to:**



Orbach Huff Suarez & Henderson LLP 1901 Harrison Street, Suite 1630 Oakland, CA 984612 Attention: Catherine G. Boskoff Telephone: (510) 999-7908	
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Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

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

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

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

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

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

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

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

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

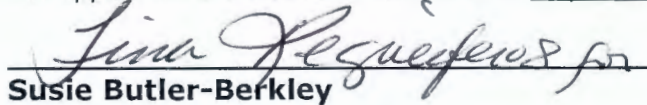
**40.Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

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

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

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:**

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

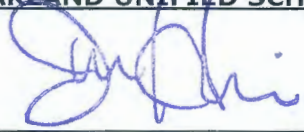


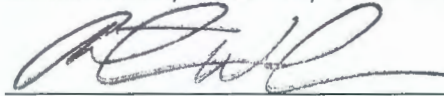
**Susie Butler-Berkley**  
**Contract Analyst**




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

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
James Harris, President, Board of Education  
4/28/16  
Date


  
Antwan Wilson, Superintendent & Secretary, Board of Education  
4/28/16  
Date

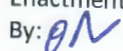
  
Roland Broach, Executive Director, Buildings, Custodial & Grounds  
Facilities Planning and Management  
3-24-16  
Date

**APPROVED AS TO FORM:**

  
OUSD Facilities Legal Counsel  
3-24-16  
Date

**CONSULTANT**

  
Title Terence K. Wang, P.E., G.E.  
March 16, 2016  
Date

File ID Number: 16-0768  
Introduction Date: 4-27-2016  
Enactment Number: 16-0584  
Enactment Date: 4-27-2016  
By: 

**Information regarding Consultant:**

Consultant: Ninyo & Moore

License No.: A697063

Address: 1956 Webster Street, Suite 400  
Oakland, Ca. 94612

Telephone: 510-343-3000

Facsimile: 510-343-3001

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

Type of Business Entity:

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

33-0269828 :

Employer Identification and/or Social  
Security Number

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



### **WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

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

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

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

Date: March 16, 2016

Name of Consultant or Company: Ninyo & Moore

Signature: 

Print Name and Title: Terence K. Wang, P.E., G.E.

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)

## **FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

☒ **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: March 16, 2016

District Representative's Name and Title: Terence K. Wang, P.E., G.E.

Signature: 

☐ The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

☐ Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

\_\_\_\_\_ The installation of a physical barrier at the worksite to limit contact with pupils.

\_\_\_\_\_ Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

\_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

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

District Representative's Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a


Independent Consultant Agreement(Geotechnical Engineering Services) – OUSD-Ninyo & Moore-Hillcrest Finishing Kitchen Upgrade Project



representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: March 16, 2016

Name of Consultant or Company: Ninyo & Moore

Signature: 

Print Name and Title: Terence K. Wang, P.E., G.E.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Ninyo & Moore [Type name of Consultant] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 16th day of March 2016 for the purposes of submission of this Agreement.

By:



Signature

Terence K. Wang

Typed or Printed Name

P.E., G.E.

Title

## **EXHIBIT "A"**

### **GEOTECHNICAL TESTING**

#### **DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

The Consultant shall perform the following professional engineering and geotechnical testing services:

- Perform all geotechnical testing services for the Project required by Title 24 of the California Code of Regulations.
- Research and review of previous geotechnical investigation and geologic/fault reports for the site and vicinity
- Geologic reconnaissance of the site
- Subsurface exploration of the site
- Laboratory testing of selected soil samples obtained during drilling
- Geologic hazards evaluation
- Site surface, subsurface, and groundwater conditions
- Geologic and seismic conditions at the sites in accordance with California Geological Survey (CGS Note 48) and the Division of State Architect (DSA) requirements
- Identify potential seismic hazards and liquefaction potential
- Provide site specific seismic design parameters as per current California Building Code
- Provide site specific Design Response Spectrum (2% on 50 years)
- Corrosion and chemical attack potential of soils
- Soil criteria for foundation design, including soil bearing pressure, embedment depths, and resistance to lateral loads
- Estimated foundation settlements and differential settlements
- Concrete floor slab on grade design recommendations including thickness, reinforcement, base, vapor barrier, and compaction
- Earthwork construction including site preparation, over-excavation, fill placement, and compaction
- General assessment and recommendations for use of on-site materials for construction
- Preliminary asphalt concrete and concrete pavement sections based on assumed traffic indices for parking areas, drive aisles, delivery areas, fire access lanes, reinforcement, base, and compaction for TI- 5,6, and 7
- Recommendations and/or validation of base requirements for permeable pavers
- Anticipated excavation conditions and temporary excavations
- Underground utility trench backfill recommendations
- Recommendations regarding demolition of existing structures
- Compaction and base requirements for site walls and improvements
- Percolation test at proposed planters and parking lots
- Provide values for tie-back anchors
- Provide values for caissons and/or piles
- Provide values for passive pressure for design of light pole/ flag pole footings in areas outside of building pad where soil compaction may not occur.
- Document removal and re-compaction test areas and depths
- Observe and test compaction of subgrades to receive AC pavement and/or Portland cement concrete
- Provide onsite compaction testing for AC pavement areas
- Perform required laboratory tests on retained samples from on-site and/or imported materials for fill placement as required on the soils report.
- Observe, inspect, sample, and test all structural concrete placed at the project site including the placement of all reinforcing steel
- Observe and inspect all structural steel erection including welding
- Upon completion of Project, prepare a DSA 291 and a DSA 293



In addition, the Consultant shall perform geotechnical observations and testing services during construction of the Project, and shall include, without limitation:

- Risk Assessments per Title 5 of the California Code of Regulations
- Other Geohazard Assessments
- Health Risk Assessments including Toxic Air Emissions
- Geohazard Studies
- Railroad Risk Studies
- Pipeline/Water Storage Tank Risk Studies
- Electromagnetic Field Management Plans
- Hazardous waste site investigations
- Safety assessments
- Air emissions assessments
- Groundwater and soil vapor extraction / remediation systems
- Site visits to monitor the contractor's earthwork construction activities
- Observations and testing during site grading, installation of underground utilities, setting sub-grade and installing aggregate base, and foundation excavations
- Engineering consultations
- Project management of geotechnical concerns
- Consultant shall prepare and present a final report to the District within 30 days before / after the District's recording of a notice of completion

Consultant shall present drafts and final reports for action/information by the District's Board of Education.

**Exhibit "B"**  
**Prices for Services**

**EXHIBIT A**

November 18, 2015  
Opportunity No. 08OAK02-00137B

Mary Ledezma  
Oakland Unified School District  
955 High Street  
Oakland, California 94601

Subject: Proposal for Consulting Services  
Oakland Unified School District Cafeteria Building  
Hillcrest Elementary School  
Oakland, California  
OUSD Project No. 13175

Dear Ms. Ledezma:

Ninyo & Moore is pleased to submit this proposal to provide geotechnical and environmental consulting services for the new finishing kitchen at the Hillcrest Elementary School located at 30 Marguerite Drive in Oakland, California. Based upon the information provided to us, we understand that the project will consist of a new building with a footprint of about 6,000 square feet. The building will be constructed at one of two proposed sites on the campus.

The purpose of our environmental consulting services will be to perform an environmental site assessment for waste classification and worker safety for the proposed improvements. The purpose of our geotechnical consulting services will be to assess the geologic hazards on site, evaluate the subsurface conditions, and provide geotechnical recommendations for the design and construction of the proposed improvements. Optional scope items are also proposed for consideration to develop additional information to assist with project planning.

**SCOPE OF SERVICES**

Based on our understanding of the project, we propose the following scope of services:

**Task 1 - Environmental Site Assessment and Screening Report**

- Prepare a site specific Health and Safety Plan which addresses the activities to be conducted by Ninyo & Moore.
- Background evaluation of the facility and surrounding properties to help determine potential recognized environmental conditions (RECs). The evaluation will include a review of an Environmental Database Report (EDR), which lists multiple regulatory databases from



federal, state and local agencies. We will also review on-line state and local regulatory databases to evaluate RECs for site and surrounding properties.

- Soil and asphalt samples will be collected from two boring locations on site. One asphalt sample will be collected from each of the two paved boring locations during removal of the asphalt prior to soil sample collection. Two soil samples will be collected from each boring location at depths of 1.0 and 2.5 feet below ground surface (bgs). The soil samples will be collected using a hand auger, placed into 8-ounce glass jars, and stored in a cooler with ice for transportation to the laboratory.
  - The soil samples will be delivered via courier under chain of custody to a State of California certified environmental laboratory. The four soil samples will be combined by the laboratory into two composite samples. The composite samples will be created by combining the soil samples collected from each boring at 1.0 and 2.5 feet bgs, creating one composite sample per boring. The composite samples will be analyzed for CAM 17 Metals using EPA Method 6010B.
  - The two asphalt samples will be shipped to a State of California certified environmental laboratory under chain-of-custody where they will be analyzed for asbestos by California Air Resources Board Method 435 with 1,000 point count for man-made materials on a 24-hour turn-around-time.
- Preparation of an Environmental Screening Report. The report will include a discussion of background evaluation findings, soil sampling methodology, conclusions including soil and asphalt classification for disposal purposes, and recommendations. A sample location figure will also be included in the report.

#### **Task 2 - Geotechnical Evaluation and Limited Geologic Hazards Assessment (GHA)**

- Review of readily available geologic and seismic literature pertinent to the project area including geologic maps and reports, regional fault maps, seismic hazard maps, and aerial photography.
- Perform a site reconnaissance to observe the general site conditions and to mark the proposed locations for subsurface exploration.
- Coordinate with Underground Service Alert to locate the underground utilities in the vicinity of the proposed soundings.
- Obtain a boring permit from the Alameda County Public Works Agency.
- Perform a subsurface exploration consisting of two (2) hollow stem auger borings and two (2) hand auger borings. The hollow stem auger borings will be drilled to depths of up to approximately 35 feet using a truck-mounted drill rig. The actual depth of the borings will be influenced by the subsurface conditions encountered. A representative of Ninyo & Moore will log the subsurface conditions exposed in the boring, and collect bulk and relatively undisturbed samples for laboratory testing. The borings will be backfilled with grout in compliance with the drilling permit.

- Soil cuttings will be collected in suitable containers and hauled to an appropriate landfill for disposal.
- Perform laboratory tests on selected soil samples to evaluate in-situ soil moisture and density, shear strength, Expansion Index, and soil corrosivity, as appropriate for the subsurface materials encountered.
- Compile and analyze the field and laboratory data and the results of our geologic review to evaluate the following:
  - Subsurface conditions encountered at the site including stratigraphy, depth to groundwater if encountered, and published historic groundwater depth.
  - Geologic and seismic hazards present on site including potential for liquefaction, corrosion, and settlement.
  - Suitability for the proposed construction from a geotechnical standpoint in light of the potential seismic and geologic hazards.
  - Earthwork and compaction requirements, including subgrade preparation, underground utility installation, and suitability of the on-site soils for subgrade and use as fill material.
  - Recommendations for measures to mitigate the effect of the relevant geologic and seismic hazards on the proposed improvements, as appropriate.
  - Design parameters for structure foundations including allowable bearing capacity lateral load resistance, foundation embedment depth, and estimated settlement.
  - Soil type and seismic coefficients for seismic design conforming to the 2013 California Building Code and Chapter 11 of the American Society of Civil Engineers (ASCE) standard 7-10.
- Prepare a geotechnical report presenting the findings and conclusions from our evaluation, and our geotechnical recommendations for design and construction of the proposed improvements.

**Task 3 – Supplemental GHA with Site-Specific Ground Motion Assessment (Optional)**

Perform a site-specific ground motion hazard assessment consistent with Section 21.2 of ASCE standard 7-10 to provide a geologic hazards assessment that conforms with the requirements of Note 48 (revised October 2013) by the California Geological Survey (CGS).

**Task 4 – Geophysical Survey (Optional)**

Perform a geophysical survey utilizing the Refraction Micro Tremor (ReMi) technique to evaluate the variation of seismic shear wave velocity with depth and perhaps justify a reduction in the seismic design criteria based on a site-specific ground motion hazard assessment.



#### **Task 5 – Supplemental Moisture Testing and Subgrade Recommendations (Optional)**

- Perform supplemental laboratory testing on a soil sample provided to evaluate in-place soil moisture content.
- Provide recommendations to mitigate wet and unstable subgrade conditions that may be encountered during construction.

#### **ASSUMPTIONS**

The following assumptions have been made in preparing our scope of services:

- Right-of-entry will be provided and our subsurface exploration may be performed during typical weekday construction hours. Weekend or night work will not be needed.
- Access to the sampling locations will not be an issue or Ninyo & Moore personnel will be accompanied by District personnel.
- We assume that our subsurface exploration program can be performed in 1/2 day on the same day as the subsurface exploration at the Piedmont Elementary School kitchen building. Unforeseen field conditions that impact the execution of the scope of work described above will be brought to the client's attention. Associated costs will be discussed with client.
- The limited geologic hazards assessment proposed as part of Task 2 presumes that the project will meet the exemptions listed in the Division of the State Architect (DSA) Interpretation of Regulations (IR) A-4 and that a geologic hazards assessment conforming to CGS Note 48 will not be needed. If the project does not meet the exemptions listed in DSA IR A-4 then the site-specific ground motion hazard assessment listed in Task 3 will be needed.
- Once mobilized to the site for field activities, no delays or work stoppages beyond the control of Ninyo & Moore will occur, allowing our sampling to be completed within 1 work day.
- Material samples for environmental analyses can be obtained using a hand auger to the proposed depths.
- Environmental laboratory analyses will be performed on a 5 to 7 day turn-around-time.
- No Waste Extraction Tests will be needed for purposes of waste classification.

#### **SCHEDULE**

Ninyo & Moore is prepared to begin our services upon receipt of written authorization. We anticipate that our field exploration will be completed within 4 weeks of notice-to-proceed,

assuming that there are no delays due to rig availability, permit processing, or inclement weather. We anticipate that our laboratory testing will be completed about 2 weeks after the exploratory boring and our reports will be issued about 2 weeks after completion of laboratory testing (approximately 8 weeks after receipt of the notice-to-proceed).

#### FEE

We propose to perform the scope of services described above, subject to the listed assumptions, on a lump-sum basis. Our fee for the base scope of services will be **\$10,800 (Ten Thousand Eight Hundred Dollars)**. A summary of our fee with the optional scope items is presented in the following table. These fees include subcontractor costs and permit fees, but do not include costs associated with post-report consultation or attendance at meetings. These services can be provided upon request on a time-and-materials basis accrued in accordance with our current Schedule of Fees.

Task	Base Scope	Base + Optional
Task 1 - Environmental Site Assessment and Screening Report	\$ 2,900	\$2,900
Task 2 - Geotechnical Evaluation and Limited GHA	\$ 7,900	\$7,900
Task 3 - Supplemental GHA and Site-Specific Ground Motion Assessment		\$1,400
Task 4 - Geophysical Survey		\$2,300
Task 5 - Supplemental Moisture Testing and Subgrade Recommendations		\$450
<b>Total Fee:</b>	<b>\$ 10,800</b>	<b>\$ 14,950</b>

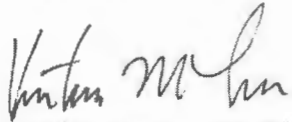
If the scope of services and proposed fees contained in this proposal are acceptable, please provide the appropriate written authorization for our services at your earliest convenience.

An integral part of our project involvement is review of construction plans after design and before start of construction, and observation and testing during construction. The scope and budget of these follow-on services will be provided upon request.

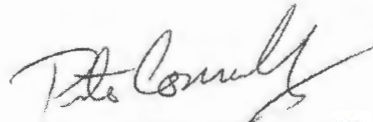


We appreciate the opportunity to submit this proposal, and look forward to working with you on this project.

Respectfully submitted,  
**NINYO & MOORE**



Kris M. Larson, PG, QSD  
Principal Geologist



Peter C. Connolly, PE, GE  
Principal Engineer

JAC/KML/PCC/vmp

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

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/23/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>Dealey, Renton &amp; Associates</b> <b>P. O. Box 12675</b> <b>Oakland, CA 94604-2675</b> <b>510 465-3090 Mandy Guo</b>	<b>CONTACT NAME:</b> Doris A. Chambers <b>PHONE (A/C, No, Ext):</b> 510 465-3090 <b>FAX (A/C, No):</b> 510 452-2193 <b>E-MAIL ADDRESS:</b> dchambers@dealeyrenton.com														
<b>INSURED</b> <b>Ninyo &amp; Moore Geotechnical &amp; Environmental Sciences Consultants</b> <b>1956 Webster Street, Suite 400</b> <b>Oakland, CA 94612</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td><b>INSURER A : Travelers Property Casualty Co</b></td> <td><b>25674</b></td> </tr> <tr> <td><b>INSURER B : American Automobile Ins. Co.</b></td> <td><b>21849</b></td> </tr> <tr> <td><b>INSURER C : Evanston Insurance Company</b></td> <td><b>35378</b></td> </tr> <tr> <td><b>INSURER D :</b></td> <td></td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	<b>INSURER A : Travelers Property Casualty Co</b>	<b>25674</b>	<b>INSURER B : American Automobile Ins. Co.</b>	<b>21849</b>	<b>INSURER C : Evanston Insurance Company</b>	<b>35378</b>	<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
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<b>INSURER F :</b>															

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> OCP GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	X	6308986R247	10/03/2015	10/03/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	8108986R247	10/03/2015	10/03/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	X	CUP8986R247	10/03/2015	10/03/2016	EACH OCCURRENCE \$9,000,000 AGGREGATE \$9,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		X	WZP81025302	05/01/2015	05/01/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	<b>Professional Liab &amp; Contractor's Pollution Liab.</b>			MAX7PL0001977	10/03/2015	04/03/2017	<b>\$5,000,000 per Claim</b> <b>\$5,000,000 Annl Aggr.</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**GENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.**

**REF: Hillcrest Elementary School Finishing Kitchen Upgrade/Hillcrest Elementary School Finishing Kitchen Upgrade. GENERAL LIABILITY/AUTOMOBILE LIABILITY ADDITIONAL INSURED: Oakland Unified School District, District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers. Commercial General Liability is primary and non-contributory and includes severability of (See Attached Descriptions)**

## CERTIFICATE HOLDER

## CANCELLATION

**Oakland Unified School District**  
**Attn: Juanita White**  
**955 High Street**  
**Oakland, CA 94601-0000**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



## DESCRIPTIONS (Continued from Page 1)

interests per policy form. Waiver of Subrogation applies to Commercial General Liability, Automobile Liability and Workers Compensation. Notice of Cancellation: It is understood and agreed that in the event of cancellation of the policy for any reason other than non-payment of premium, 30 days written notice will be sent to the certificate holder by mail. In the event the policy is cancelled for non-payment of premium, 10 days written notice will be sent to the above.



POLICY NUMBER: 6308986R247

COMMERICAL GENERAL LIABILITY  
ISSUE DATE: 10/03/2015

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

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

### SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S): Oakland Unified School District  
Attn: Juanita White  
955 High Street  
Oakland, CA 94601-0000

### PROJECT/LOCATION OF COVERED OPERATIONS:

NAME OF PERSON OR ORGANIZATION CONTINUATION: Oakland Unified School District, District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers.

### PROVISIONS

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

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

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

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

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

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that 'contract or agreement requiring insurance' to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):  
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

## COMMERICAL GENERAL LIABILITY

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

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

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

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

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

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

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

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

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

Insured: Ninyo & Moore Geotechnical &

Policy Number: WZP81025302

Effective Date: 05/01/2015

**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 % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE**

**Person or Organization**

**Job Description**

NAME OF PERSON OR ORGANIZATION CONTINUATION: Oakland Unified School District, District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers.

Oakland Unified School District

Attention: Juanita White

55 High Street

Oakland, CA 94601-0000

Countersigned by



Authorized Representative





## INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES ROUTING FORM

Project Information			
Project Name	Hillcrest Finishing Kitchen Upgrade	Site	127
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Ninyo & Moore	Agency's Contact	Peter Connolly				
OUSD Vendor ID #	V058012	Title	Project Manager				
Street Address	1956 Webster Street Suite 400	City	Oakland	State	CA	Zip	94612
Telephone	510-343-3000	Policy Expires	10-3-16				
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #	13175						

Term			
Date Work Will Begin	4-27-2016	Date Work Will End By (not more than 5 years from start date)	12-31-2016

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$14,950.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office <u>before</u> completing requisition.				
Resource #	Funding Source	Org Key	Object Code	Amount
9350	Measure J	1279905890	6252	\$14,950.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
	Division Head	Phone	510-535-7038	Fax 510-535-7082
1.	Director, Facilities Planning and Management			
	Signature	Date Approved	3-24-16	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved	3-25-2016	
3.	Interim Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved	3-25-16	
4.	Senior Business Officer			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		