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Introduction Date	June 26, 2024
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Enactment Date	6/26/2024 er



Memo

To Board of Education

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

Board Meeting Date June 26, 2024

Agreement for Material Testing and Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences Consultants –Oakland Technical High School -Solar Storage Plant Initiative Project - Division of Facilities Planning and Management

Action Requested Approval by the Board of Education to Agreement for Material Testing and Special Inspection Services between the **District and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, Alameda, CA**, for the latter to provide materials testing and special inspection services for the **Oakland Technical High School Solar Storage Plant Initiative Project** in the not-to-exceed amount of **\$4,554.00**, which includes a not-to-exceed amount of **\$284.00** for Additional Services, with the work scheduled to commence on **June 27, 2024**, and scheduled to last until **December 31, 2025**, pursuant to the Agreement.

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

LBP (Local Business Participation Percentage) Waived

Recommendation Approval by the Board of Education to Agreement for Material Testing and Special Inspection Services between the District and Ninyo & Moore Geotechnical & Environmental Sciences Consultants, Alameda, CA, for the latter to provide materials testing and special inspection services for the Oakland Technical High School Solar Storage Plant Initiative Project in the not-to-exceed amount of \$4,554.00, which includes a not-to-exceed amount of \$284.00 for Additional Services, with the work scheduled to commence on June 27, 2024, and scheduled to last until December 31, 2025, pursuant to the Agreement.

Fiscal Impact Fund 21, Measure J

Attachments

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



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 24-1459

Department: Facilities Planning and Management

**Vendor Name: Ninyo & Moore Geotechnical &
Environmental Sciences Consultants**

Project No.: 22131

**Project Name: Oakland Technical High School –
Solar Storage Plant Initiative Project**

Contract Term: Intended Start: June 27, 2024

Intended End: December 31, 2025

Total Cost Over Contract Term: \$4,554.00

Approved by: Preston Thomas

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

Local Business Policy? Yes (No if Unchecked)

How was this contractor or vendor selected?

RFP- Q processes vetted this vendor for this project.

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

Provide geotechnical engineering and testing consulting services for Solar Storage Plant Initiative Project.

Was this contract competitively bid? Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

RFP process includes review/scoring of proposals submitted. The District received proposals and interviewed other vendors. Ninyo & Moore Geotechnical & Environmental Sciences Consultants price was fair and reasonable compared to the prices submitted by the other responding architects.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$109,300 or less (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$109,300 (as of 1/1/23)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

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



Department of Facilities Planning and Management

MEMORANDUM

Date: October 25th, 2021
To: Colland Jang
From: Philip Lang, LBU Consultant
Subject: LBU Waiver
Material Testing and Special Inspection Services
for Various Measure Y Bond Program School Sites

As required by the Oakland Unified School District's Local Business Policy, a review of the approved certifying agencies local business databases was conducted to identify potential certified firms for this project.

NAICS Code:

NAICS Code - 541380 Testing Laboratories

- Local Certified Firms
 - LBE (or equivalent) – 2
 - SLBE (or equivalent) – 5
 - Total = 7

- Local Certified + DSA Certified
 - LBE (or equivalent) – 1
 - SLBE (or Equivalent) – 1
 - Total = 2

-

Based on the lack of availability of Small/Local firms and Small/Local DSA Certified firms, it is our recommendation to waive the entire Local Business Enterprise requirement for the above referenced project.

Cc: Kenya Chatman
Tadashi Nakadegawa

Local Business Utilization Program Consultants



AGREEMENT FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES

THIS AGREEMENT FOR MATERIALS TESTING AND SPECIAL INSPECTION SERVICES (“Agreement”) is made and entered into effective **June 27, 2024**, by and between the Oakland Unified School District, a school district duly organized and existing under the laws of the State of California (“OUSD” or the “District”), and Ninyo & Moore Geotechnical & Environmental Sciences Consultants (the “Consultant”), with respect to the following recitals:

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

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

1. **Retention of Consultant.** District retains Consultant to perform, and Consultant agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the materials testing and special inspection services specified in this Agreement. Consultant agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Consultant under this Agreement shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by materials testing and special inspection consultants specially qualified to provide the services required by the District.

2. **Description of Project.** The project concerning which such materials testing and special inspection services shall be provided (“the Project”) is described as the following: materials testing and special inspection services for the **Oakland Technical High School Solar Storage Plant Initiative Project.**

3. **Term; Basic Services.** The term for performance of the Basic and Additional Services (“Services”) shall be the duration of the Project (“Term”), and Consultant shall complete the Services within the Term. Time is of the essence for performance of the Services under this Agreement. The Project is expected to be complete as of **December 31, 2025**, but may not be completed until later if delays in design or construction arise. Consultant’s “Basic Services” consist of materials testing and special inspection services more specifically described in the attached **Exhibit B**. Consultant shall perform all Basic Services required by this Agreement,

{SR801418}

This Agreement For Materials Testing And Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences Consultants- Oakland Technical High School Solar Storage Plant Initiative Project -\$4,554.00

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

In addition, as a part of its Basic Services, the Consultant shall assist the District in evaluating claims, disputes and other matters in question between the contractor and the District relating to Consultant's work, including but not limited to claims made against the District as a result of Consultant's alleged or claimed errors or omissions, and shall in all instances provide such truthful testimonial assistance as may be required by the District at no cost to the District.

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

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

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

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

- a. Authorize deviations from the construction contract documents;
- b. Avoid conducting any required tests;
- c. Enter the area of responsibility of the contractor's field superintendent;
- d. Expedite the job for the contractor;

- e. Advise on, or issue directions relative to, any aspect of the building technique or sequence unless a specific technique or sequence is called for in the specifications;
- f. Approve shop drawings or samples;
- g. Authorize or advise the District to occupy the Project, in the whole or in part, prior to final acceptance of the Project; or
- h. Interfere in contractor/subcontractor relationships.

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

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

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

4. **Additional Services.** Any services not included in this Agreement but related to the Project shall be considered "Additional Services." Compensation for additional services shall be as described in **Exhibit A** to this Agreement. Consultant shall keep complete records showing all hours worked and all costs and charges incurred for Additional Services. District shall be given reasonable access to those records for audit purposes. Consultant shall provide Additional Services if directed in writing by District to perform specific Additional Services and if sufficient contract funds for Additional Services remain to pay for the directed Additional Services (see **Exhibit A**).

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

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

- a. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;
- b. Claims for damages because of bodily injury, occupational sickness or disease or death of Consultant's employees, agents or invitees;

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

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

Comprehensive General Liability

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

Comprehensive Automobile Liability

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

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

7. **Hazardous Materials.** In the event the District or Consultant becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project, or the substantial risk thereof, each shall have a duty immediately to notify the other in writing.

8. **Compliance with Laws.** Consultant shall be familiar with and shall comply with all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project.

9. Termination.

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

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

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

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

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

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

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

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

[Remainder of Page Left Intentionally Blank]

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

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

15. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

16. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

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

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

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

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

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

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement or understanding. There are no understandings, agreements, representations or warranties, expressed or implied, not specified in this Agreement. Consultant, by the execution of this Agreement, acknowledges that Consultant has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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23. **Warranty of Authority.** The persons signing this Agreement warrant that they are legally authorized to do so on behalf of the respective Parties, and by their signatures to bind the respective Parties to this Agreement.

24. **Attorneys' Fees.** If a party to this Agreement commences a legal action against the other party to enforce a provision of this Agreement or seek damages related to the services provided under this Agreement, the prevailing party in the legal action will be entitled to recover from the other party all of its reasonable litigation expense, costs, and fees actually incurred, including reasonable attorneys' and experts' fees.

25. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

26. **Fingerprinting and Criminal Background Check Certification.** Consultant shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1. Before performing any Services, Consultant shall execute and return the District's Fingerprinting Notice and Acknowledgement form and the required certification (see *Exhibit C*).

Consultant further agrees and acknowledges that if at any time during the Term of this Agreement Consultant learns or becomes aware of additional information which differs in any way from the representations set forth above, or Consultant add personnel who will provide Services under this Agreement, Consultant shall immediately notify District and prohibit any new personnel from interacting with District students until the fingerprinting and background check requirements have been satisfied and District determines whether any interaction is permissible.

27. **Forms.** Prior to performing any Services, Consultant shall prepare, execute, and submit all forms that may be required by law for this Agreement, including but not limited to disabled veteran business enterprises ("DVBE") certification (Education Code §17076.11) and an Iran Contract Act certification (Public Contract Code §2204). If a form is necessary, Consultant shall use the District's versions of these forms, which the District shall make available upon request.

28. **Sanctions in Response to Russian Aggression.** The District requires the Consultant to comply with the Governor's March 4, 2022, Executive Order N-6-22 ("Order") relating to any existing sanctions imposed by the United States government and the State of California in response to Russia's actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

DISTRICT: OUSD

Benjamin Davis 6/27/2024
Date
Benjamin Davis, President,
Board of Education

Kyla Johnson-Trammell 6/27/2024
Date
Kyla Johnson-Trammell,
Superintendent & Secretary, Board of Education

Preston Thomas 5-30-24
Date
Preston Thomas, Chief Systems
and Services Officer, Facilities Planning
and Management

**NINYO & MOORE GEOTECH-
NICAL & ENVIRONMENTAL
SCIENCES CONSULTANTS**

Signature
Ransom Hennefer
Title

Ransom Hennefer, Principal Engineer

Date
5/30/2024

Approved As to Form *James Traber* 5/30/24
OUSD Facilities Legal Counsel
Date

EXHIBIT A

Payments

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

For Basic Services, Consultant's total compensation shall not exceed \$4,270.00, which is Consultant's estimate of the maximum total cost of its Basic Services on the Project, based on its April 9, 2024, fee estimate. Consultant acknowledges that the not-to-exceed fee for Basic Services, above, includes contingency compensation in the foreseeable event that more time and costs may be necessary to complete the Basic Services.

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

The total price under this Agreement for Basic and Additional Services shall not exceed \$4,554.00. Consultant will not be compensated for any Basic or Additional Services required as a result of its wrongful acts or omissions.

Not-to-Exceed Fee | Oakland Technical High School

Table 1 - Breakdown of Estimated Fee for Oakland Technical High School Pad Mounted Battery Energy Storage System				
Reinforced Concrete				
Field Technician	Sampling and Tagging of Reinforcing Steel	4 hours @	\$ 95.00 /hour	\$ 380.00
Field Technician	Batch Plant Inspection, Sampling and Testing of Concrete (Slump & Temperature)	8 hours @	\$ 95.00 /hour	\$ 760.00
Reinforcing Steel	Tensile and Bend Test in the Laboratory	2 tests @	\$ 55.00 /test	\$ 110.00
Compression Tests	5 Concrete Cylinders / 50 Cubic Yards (4"x 8" Cylinders)	5 tests @	\$ 30.00 /test	\$ 150.00
Subtotal				\$ 1,400.00
Post-Installed Anchors				
Special Inspector	Post-Installed Anchor, Anchor Rods and Anchor Bolts Installaton Inspection	8 hours @	\$ 95.00 /hour	\$ 760.00
Field Technician	Torque or Pull testing of Post-Installed Anchors	8 hours @	\$ 95.00 /hour	\$ 760.00
Subtotal				\$ 1,520.00
Reimbursables				
Field Vehicle Usage		28 hours @	\$ 12.00 /hour	\$ 336.00
Field Equipment Usage		28 hours @	\$ 13.00 /hour	\$ 364.00
Subtotal				\$ 700.00
Project Management				
Project Manager	Meetings, Concrete Mix Design Review, Project Coordination & Progress Report Preparation	2 hours @	\$ 140.00 /hour	\$ 280.00
Principal Engineer	Project Oversight, Consultation and Final Verified Report (DSA 291)	2 hours @	\$ 185.00 /hour	\$ 370.00
Subtotal				\$ 650.00
Contingency 10%				\$ 284.00
TOTAL ESTIMATED FEE				\$ 4,554.00

Assumptions:

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

EXHIBIT B

Scope of Services

{SR801418}11

This Agreement For Materials Testing And Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences
Consultants- Oakland Technical High School Solar Storage Plant Initiative Project -\$4,554.00

April 9, 2024
P08OAK02-00735

Ms. Kenya Chatman
Executive Facilities Director
Department of Facilities Planning and Management
OAKLAND UNIFIED SCHOOL DISTRICT
955 High Street
Oakland, CA 94601

SUBJECT: PROPOSAL FOR MATERIALS TESTING AND SPECIAL INSPECTION FOR PAD MOUNTED BATTERY ENERGY STORAGE SYSTEMS FOR OAKLAND TECHNICAL HIGH SCHOOL AND CASTLEMONT HIGH SCHOOL

Dear Ms. Chatman:

Ninyo & Moore Geotechnical & Environmental Sciences Consultants (Ninyo & Moore) is pleased to present our qualifications and fee proposal to the Oakland Unified School District (the District) for materials testing and special inspection services for pad mounted battery energy storage systems for Oakland Technical High School and Castlemont High School. We have read and understand the schedule of activities and scope of work for the project and assembled our proposal based on the RFP/Q and documents available by request, including the project's drawings and DSA 103-22s. Thank you for considering our firm and team, scope of work, and fees, which we prepared to give the best value and outcome to the District.

Unmatched Expertise. Ninyo & Moore's unique qualifications for the specific project includes ongoing services for the District's battery pad at Oakland High School as well as the Megapack 2 Energy Storage System materials testing and inspection projects for Tesla.

DSA Experience. Ninyo & Moore is one of the largest geotechnical, environmental, and materials testing and special inspection firms in the western United States specializing in education facilities. Over the past five years, Ninyo & Moore has provided materials testing and special inspection services at 1,600+ K-12 schools and community colleges on DSA-approved projects. Our firm thoroughly understands the DSA close-out and certification process. Additionally, our in-house laboratory is accepted by the Division of the State Architect (DSA) through their Laboratory Evaluation and Acceptance (LEA) program (No. #219).

Unparalleled Service, Experience, and Project Team. Our staff works seamlessly between the District and DSA. The District will be armed with the expertise Ninyo & Moore has gained from working on the exact same storage system and appurtenances for the designer and manufacturer, public works, and K-12 projects. Project Manager, Ransom Hennefer, PE, GE, ACI, ICC, will manage the Ninyo & Moore team, with supervision and aide from Principal-in-Charge, Peter Connolly, PE, GE. Both are California-licensed civil and geotechnical engineers and authorized to speak on behalf of Ninyo & Moore and execute contract documents. Our management team is supported by our excellent field technicians and laboratory staff who will perform the services as described in the District's RFQ and our scope of work.

District Agreement. Ninyo & Moore received a copy of the District's Agreement attached as EXHIBIT A to the RFQ/P. Ninyo & Moore has reviewed the indemnity provision in EXHIBIT A and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, Ninyo & Moore has no objections to the use of the Agreement.


Conflict of Interest. Ninyo & Moore certifies that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), no that any such person will be employed in the performance of any/all contact(s) without immediate divulging of this fact to the District.

We look forward to the further discussing this opportunity with the District.

Sincerely,

NINYO & MOORE


Ransom Hennefer, PE, GE, ACI, ICC
Project Manager
510.343.3000 x 15304
rhennefer@ninyoandmoore.com
RH/eb


Peter Connolly, PE, GE
Principal Engineer
510.343.3000 x 15207
pconnolly@ninyoandmoore.com



Ninyo & Moore Geotechnical and Environmental Sciences Consultants

Branch Office - Alameda

Mr. Ransom Hennefer
Project Manager/Point-of-Contact

1301 Marina Village Parkway
Suite 110
Alameda, CA 94501

510.343.3000 x 15304 DIRECT

510.343.3000 PHONE

510.343.3001 FAX

rhennefer@ninyoandmoore.com

EXHIBIT C

Fingerprinting Notice and Acknowledgement Form

{SR801418}12

This Agreement For Materials Testing And Special Inspection Services- Ninyo & Moore Geotechnical & Environmental Sciences
Consultants- Oakland Technical High School Solar Storage Plant Initiative Project -\$4,554.00

FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT
FOR ALL CONTRACTS EXCEPT WHEN CONSTRUCTION EXCEPTION IS MET
(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:


1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the Department of Justice as described in Education Code section 45125.1(a).

(Education Code §45125.1(h).)

I, as Principal Engineer *[insert "owner" or officer title]* of Ninyo & Moore
[insert name of business entity], have read the foregoing and agree that Ninyo & Moore
[insert name of business entity] will comply with the requirements of Education
Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: May 30, 2024

Name: Ransom Hennefer

Signature:  _____

Title: Principal Engineer

ATTACHMENT A

Violent and Serious Felonies

Under Education Code sections 45122.1 and 45125.1, no employee of a contractor or subcontractor who has been convicted of or has criminal proceedings pending for a violent or serious felony may come into contact with any student. A violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
- (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
- (9) Any robbery.
- (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
- (12) Attempted murder.
- (13) A violation of Section 18745, 18750, or 18755.
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of

Section 220.

- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215.
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
- (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.

A serious felony is any felony listed in subdivision (c) Section 1192.7 of the Penal Code. Those felonies are presently defined as:

- (1) Murder or voluntary manslaughter; (2) Mayhem; (3) Rape; (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) Lewd or lascivious act on a child under the age of 14 years; (7) Any felony punishable by death or imprisonment in the state prison for life; (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) Attempted murder; (10) Assault with intent to commit rape, or robbery; (11) Assault with a deadly weapon or instrument on a peace officer; (12) Assault by a life prisoner on a non-inmate; (13) Assault with a deadly weapon by an inmate; (14) Arson; (15) Exploding a destructive device or any explosive with intent to injure; (16) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) Exploding a destructive device or any explosive with intent to murder; (18) Any burglary of the first degree; (19) Robbery or bank robbery; (20) Kidnapping; (21) Holding of a hostage by a person confined in a state prison; (22) Attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) Any felony in which the defendant personally used a dangerous or deadly weapon; (24) Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug,

as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) Grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

ATTACHMENT B

Form for Certification of Lack of Felony Convictions

Note: This form must be submitted by the owner, or an officer, of the contracting entity before it may commence any work or services, and before it may be present on District property or be within the vicinity of District pupils.


Entity Name: Ninyo & Moore
Date of Entity’s Contract with District: June 27, 2024
Scope of Entity’s Contract with District: Materials Testing & Special Inspection Services

I, Ransom Hennefer [insert name], am the Principal Engineer [insert “owner” or officer title] for Ninyo & Moore [insert name of business entity] (“Entity”), which entered a contract on June 27, 2024, with the District for Inspection Services.

I certify that (1) pursuant to Education Code section 45125.1(f), neither the Entity, nor any of its employees who are required to submit fingerprints and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1; and (2) the Entity is in full compliance with Education Code section 45125.1, including but not limited to each employee who will interact with a pupil outside of the immediate supervision and control of the pupil’s parent or guardian having a valid criminal background check as described in Education Code section 44237.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: May 30, 2024

Signature: 
Typed Name: Ransom Hennefer
Title: Principal Engineer
Entity: Ninyo & Moore

APPENDIX B /// INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/26/2023

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 have ADDITIONAL INSURED provisions or 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).

PRODUCER AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549 License#: 6003745 NINY&MO-01	CONTACT NAME: Jennifer Aguirre PHONE (A/C, No, Ext): 510-465-3090 FAX (A/C, No): E-MAIL ADDRESS: DesignProCerts@AssuredPartners.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Travelers Property Casualty Company of America</td> <td>25674</td> </tr> <tr> <td>INSURER B : Admiral Insurance Company</td> <td>24856</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Travelers Property Casualty Company of America	25674	INSURER B : Admiral Insurance Company	24856	INSURER C :		INSURER D :		INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														

INSURED
 Ninyo & Moore Geotechnical & Environmental Sciences Consultants
 5710 Ruffin Road
 San Diego CA 92123

COVERAGES **CERTIFICATE NUMBER:** 1108610576 **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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> OCP GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	6308986R247	10/3/2023	10/3/2024	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	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	8107N033091	10/3/2023	10/3/2024	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 \$	Y	Y	CUP9J428527	10/3/2023	10/3/2024	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB6P428399	5/1/2023	5/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liab. & Contractor's Pollution Liab.		Y	EO00006094101	10/3/2023	10/3/2024	Per Claim 5,000,000 Annual Aggregate 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Umbrella Liability policy is a follow-form to underlying General Liability/Auto Liability/Employers Liability.
 EVIDENCE OF INSURANCE --

CERTIFICATE HOLDER **CANCELLATION 30 Day Notice of Cancellation**

SPECIMEN CERTIFICATE	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

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DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Oakland Technical High School - Solar Storage Plant Initiative Project	Site	301
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	Ninyo & Moore	Agency's Contact	Ramson Hennefer				
OUSD Vendor ID #	003087	Title	Principal				
Street Address	1301 Marina Village Parkway, Suite 110	City	Alameda	State	CA	Zip	94501
Telephone		Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	22130						

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	06-27-2024	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	12-31-2025
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$4,554.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9655/9896	Fund 21 Measure Y	210-9655-0-9896-8500-6289-305-9180-9906-9999-22131	6289	\$4,554.00

Approval and Routing (in order of approval steps)

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

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities Planning and Management				
	Signature <i>Kenya Chatman</i> (PO)	Date Approved	5-30-24		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature <i>James Traber</i>	Date Approved	5/30/24		
3.	Chief Systems and Services Officer, Facilities Planning and Management				
	Signature <i>[Signature]</i>	Date Approved	5-30-24		
4.	Chief Financial Officer				
	Signature	Date Approved			
	President, Board of Education				

5.	Signature	Date Approved	
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