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By 

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the State Administrator
May 27, 2009

To: Board of Education

From: Vincent Matthews, Interim State Administrator (Superintendent of Schools)
Timothy E. White, Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services 

Subject: **Agreement for Professional Services - GKK McCarthy - Division of Facilities Planning and Management Project**

ACTION REQUESTED

Approval by the Board of Education of a Professional Services Agreement with GKK McCarthy for Construction Management Services at Division of Facilities, Planning and Management Project, in an amount not-to-exceed \$3,551,140.00. The term of this Agreement shall commence on June 1, 2009 and shall conclude no later than May 31, 2010.

BACKGROUND

The District is in the middle of a five-year, minimum \$500 million capital building program with an annual construction budget in excess of \$75 million. In an effort to assure cost effectiveness and optimal project delivery, the District has chosen to renew its contract with GKK. The established qualifications are that the construction management firm has main offices in Northern California, an outstanding reputation, and has or is in the process of successfully managing building programs in excess of \$100 million in the State of California.

STRATEGIC ALIGNMENT

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

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

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

DISCUSSION

The GKK team includes McCarthy Building Companies Inc. (McCarthy) and The Alley Group and Associates, Inc. (TAG). McCarthy is one of the nation's leading contractors and construction managers having constructed more than three hundred school projects nationwide, totaling more than \$1.5 billion in contract value. TAG is a smaller but experienced, minority owned construction management firm. TAG has managed more than 250 K-12 school projects in both California and Texas, and has provided construction management services to the District since 1997. This relationship will provide continuity and will play a key role in implementing a smooth transition.

The GKK team has proven successful comprehensive program and construction management experience for K-12 projects of similar size and scope to the District's program. The team specializes in K-12 design, construction, and project management. Further, the team's expert at-risk construction management qualifications are advantageous to the District, in that such services provide complex schedule and budget controls. As alluded to above, the team recognizes the need to ascertain continuity and proper transitions and has developed a transition plan that will be implemented to enhance the current services through the transition period. In addition, the team will provide a proactive approach towards maintaining the District's commitment to the community to deliver a responsible capital program through dependability and accountability.

FISCAL IMPACT

The funding source for this project is General Obligation Bond-Measure B

RECOMMENDATION

Approval by the Board of Education of a Professional Services Agreement with GKK McCarthy for Construction Management Services at Division of Facilities, Planning and Management Project, in an amount not-to-exceed \$3,551,140.00. The term of this Agreement shall commence on June 1, 2009 and shall conclude no later than May 31, 2010.

Key code: 9189101805-5825

AGREEMENT FOR PROFESSIONAL SERVICES

WITH

GKK McCarthy

FOR

**Construction & Project Management Services for the
Facilities Department**

OAKLAND UNIFIED SCHOOL DISTRICT

May 5, 2009

AGREEMENT FOR PROFESSIONAL SERVICES

This is an Agreement between OAKLAND UNIFIED SCHOOL DISTRICT, 955 High Street, Oakland, CA 94606 (hereafter "District") and GKK McCarthy, 7060 Knoll Parkway, Suite 300, Pleasanton, CA 94566-3108 (hereinafter "Construction Manager").

RECITALS

WHEREAS, this Agreement sets forth the terms and conditions under which the District shall obtain and Construction Manager will provide professional services pertaining to Construction and Project Management Services for the Facilities Department.

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

Now, THEREFORE, the District and Construction Manager agree as follows:

1 Definitions

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

2 Term of the Agreement

- 2.1 The term of this Agreement shall commence on June 1, 2009 and conclude upon completion of the consulting services described herein, or May 31, 2010 whichever comes first.

3 Services Construction Manager Agrees to Perform

- 3.1 Construction Manager shall achieve the Work described in Appendix "A," "Scope of the Work," attached hereto and incorporated by reference as though fully set forth herein. Unless specifically excepted, the Construction Manager shall complete all services required by this Agreement, as set forth in Appendix A "Scope of Work" and all work of each activity within the times specified.
- 3.2 The Construction Manager shall keep District informed of its progress performing the Work. If

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

4 Compensation

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

5 Taxes

- 5.1 Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Construction Manager.

6 Qualified Personnel

- 6.1 Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Construction Manager. Construction Manager agrees that any studies, testing, inspection, plans, specifications or analyses included in the Work shall be performed or prepared by a licensed professional or supervised by a licensed professional, and that licensed professional shall be in "responsible charge" of the work. Such principals-in-charge shall sign all applicable documents and other items as required.

7 Standard of Care

- 7.1 Construction Manager represents that it is qualified to perform the Work and that it possesses the necessary licenses and/or permits required to perform the Work. Construction Manager represents that it is knowledgeable in preparing the required documents for this type and scope of project and agrees that its work shall conform to the standard of care of that industry.
- 7.2 The granting of any progress payment by District, or the receipt thereof by Construction Manager, or any review, approval or oral statement by any representative of District shall in no way waive or limit

the representations and obligations in this section or lessen the liability of Construction Manager to re-perform or replace unsatisfactory Work. Nothing in this section shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District may have under this Agreement or any applicable law. All rights and remedies of District, whether under this Agreement or other applicable law, shall be cumulative.

8 Indemnification and General Liability

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

9 Liability of District

- 9.1 District's obligations under this Agreement shall be limited to the payment of the compensation provided for in this Agreement. To the furthest extent permitted by law, and notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.
- 9.2 District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by any of its employees, even though such equipment be furnished, rented or loaned to Construction Manager by District. The acceptance or use of such equipment by Construction Manager or any of its employees shall be construed to mean that Construction Manager accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless District from and against any and all claims for any damage or injury of any type,

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

10 Independent Contractor: Payment of Taxes and Other Expenses

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

11 Insurance

11.1 Without in any way limiting Construction Manager's liability under any other section of this Agreement, Construction Manager will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage's:

11.1.1 Workers' Compensation Employers' Liability limits not less than each \$1,000,000 each accident, per disease, and aggregate. Construction Manager's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Construction Manager is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

11.1.2 Construction Manager's right to self-insure is subject to approval by the District. As a condition to such approval, Construction Manager shall submit to the District evidence that Construction Manager maintains sufficient financial resources for said self-insurance.

11.1.3 Commercial General Liability Insurance, written on an occurrence basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities and liability for slander arising out of construction management operations, including subcontractor's or sub-consultant's operations. Said coverage shall include blanket contractual liability coverage, a broad form endorsement, a construction management endorsement, products and completed operations coverage and personal and advertising liability coverage, with per location limits of not less than \$2,000,000 general aggregate and \$1,000,000 each occurrence, subject to a deductible of not more than \$100,000 payable by Construction Manager.

11.1.4 Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable, subject to a deductible of not more than \$100,000 payable by Construction Manager.

11.1.5 Excess liability insurance following the form of the commercial general liability insurance described in subparagraph 11.1.3 above and the comprehensive or business owner's automobile liability insurance described in subparagraph 11.1.4 above with limits of not less than \$9,000,000 each occurrence and aggregate.

- 11.1.6 Professional Liability Insurance with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$100,000 each claim, with no exclusions for claims of one insured against another insured and with tail coverage for a period of five (5) years after the end of the period of performance of the Agreement or the termination of the Agreement.
- 11.2 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
- 11.2.1 Name as Additional Insured District, its Directors, Officers, Employees, Agents, and Representatives.
- 11.2.2 That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- 11.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to District of cancellation, non-renewal or reduction in coverage, and certificates of all policies and endorsements shall be mailed to the following address:
- Timothy E. White, Associate Superintendent
Oakland Unified School District
Department of Facilities Planning and Management
955 High Street
Oakland, California 94601
- 11.4 Insurance shall be provided by an admitted California insurance company with a current Best's Key Rating of A minus (A-) or better, or as approved by the District. Should any of the required insurance be provided under a claims-made form, Construction Manager shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- 11.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- 11.6 Certificates of insurance evidencing all coverage's above shall be furnished to District before commencing any operations under this Agreement, with complete copies of policies promptly upon District request. Approval of the insurance by District shall not relieve or decrease the liability of Construction Manager hereunder.
- 11.7 District may, at its sole option, terminate this Agreement immediately, if after 48 hour notice to Construction Manager Construction Manager fails to cure the default, in the event of any lapse of required insurance coverage. District may, at its sole option, after 48 hour notice whereby Construction Manager has failed to cure default, secure sufficient insurance coverage to replace any

required insurance coverage which has lapsed, and Construction Manager hereby acknowledges its liability to reimburse District for all costs associated with such replacement insurance coverage. Construction Manager shall be responsible for any and all uninsured losses.

11.8 If Construction Manager is an association, joint venture or partnership, the association, joint venture or partnership shall be insured by any one of the following methods:

11.8.1 Separate insurance policies issued with the association, joint venture or partnership as named insured; All insurance policies required by this Agreement of one of the participants to include the association, joint venture or partnership as named insured; The association, joint venture or partnership must be a named insured on all of the policies required by this Agreement.

11.9 District shall require each trade contractor, if any, to name Construction Manager as a primary insured on the trade contractor's general liability policies.

12 Suspension of Work

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

12.2 Construction Manager shall be compensated for all reasonable standby costs associated with or as a result of suspension.

13 Termination of Agreement for Cause

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

13.2 In the event of termination by District for cause,

13.1.1 District shall compensate Construction Manager for the value of the Work delivered to District upon termination as determined in accordance with the Agreement, subject to all rights of offset and back-charges, but District shall not compensate Construction Manager for its costs in terminating the Work or any cancellation charges owed to third parties;

13.1.2 Construction Manager shall deliver to District possession of the Work in its then condition, including but not limited to, all designs, engineering, Plan and Project records, cost data of all types, drawings and specifications and contracts with vendors and subcontractor or sub-consultants, and all other documentation associated with the work, and all supplies and aids dedicated solely to performing Work which, in the normal course of the Work.

14 Termination of Agreement for Convenience

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

14.2 In addition to the provisions of this Agreement, Construction Manager shall also be paid a reasonable termination fee, which shall be consideration for full and complete compensation for anticipated profits on the balance of the Agreement, post-termination employee salaries, post-termination administration expenses, post-termination overhead and unabsorbed overhead, and other expenses which are associated with this termination. If termination occurs when the basic services performed have reached less than 50% completion, the termination fee shall be determined as 12% of the balance of the fee remaining. If termination occurs when the basic services performed have reached more than 50% completion, the termination fee shall be determined as 8% of the balance of the fee remaining.

15 Proprietary or Confidential Information of District

Construction Manager understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, Construction Manager may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Construction Manager agrees that all information, not already in the public domain, disclosed by District to Construction Manager shall be held in confidence and used only in performance of the Agreement, and shall sign the Statement of Confidentiality included herein as part of Appendix C.

16 Notices to the Parties

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

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

To Construction Manager: Charlie Merrick
GKK McCarthy
2355 Main Street, Suite 220
Irvine, CA 92614

17 Ownership of Results/Works for Hire

17.1 Any interest of Construction Manager or its subcontractors or sub-consultants, in plans, studies,

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

- 17.2 District agrees to indemnify and hold Construction Manager harmless from any claim or liability arising out of any reuse or modification of the documents, or use of incomplete documents by District without written authorization of the Construction Manager. However, in the case of a contract termination for cause, this paragraph shall not apply to the extent necessary for District to complete the Project.
- 17.3 Any and all artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Construction Manager or its subcontractors or subconsultants specifically for services performed under this Agreement shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of OUSD. In the event that it is ever determined that any works created by Construction Manager or its subcontractors or subconsultants under this Agreement are not works for hire under U.S. law, Construction Manager hereby assigns all copyrights to such works to OUSD. With the prior written approval of OUSD's Assistant Superintendent, Construction Manager may retain and use copies of such works for reference and as documentation of its experience and capabilities.
- 17.4 The provisions of this paragraph notwithstanding, Construction Manager shall retain all ownership, right, title and interest in a) all internal documents produced in the regular course of Construction Manager's business, such as memoranda, correspondence, payroll reports, requisition documents and daily logs; b) all proprietary systems and work product not developed or produced by Construction Manager specifically for OUSD on this Project as part of the services provided by Construction Manager; and c) all computer software or other information systems customized for OUSD's use by Construction Manager for use in the Project.

18 Audit and Inspection of Records

- 18.1 Construction Manager shall maintain all drawings, specifications, calculations, cost estimates, cost analyses, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, and documents of any sort prepared by or furnished to Construction Manager during the course of performing the Work and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. Upon at least 48 hours prior notice, all such records shall be available to OUSD upon request at reasonable times and places. Monthly records of Construction Manager's personnel costs, consultant costs, and reimbursable expenses pertaining to both Basic Services, or Additional Services shall be kept on a generally recognized accounting basis; and shall be available to OUSD upon request at reasonable times and places. Construction Manager shall not destroy any Project records until after advising OUSD and allowing OUSD to copy, accept and, or store the records.

19 Subcontracting/District Employees/Assignment

- 19.1 Construction Manager has specified the use of the following sub-consultants and subcontractors in the performance of the Work under this Agreement:

<u>Area of Responsibility</u>	<u>Firm</u>
Project Management	The Alley Group
Project Management	Acumen
Project Management	YHLA
Project Management	Baines
Project Management	A2V
Project Management	Cordoba
Project Management	RGM

19.2 Except as provided in Paragraph 19.1, Construction Manager is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by District in a written instrument executed and approved in the same manner as this Agreement. Construction Manager shall not substitute subcontractors or sub-consultants unless approved by written instrument executed and approved in the same manner as this Agreement. Construction Manager shall be responsible for payment to its subcontractors and District shall have no obligation to Construction Manager's subcontractors.

20 Compliance with Americans with Disabilities Act

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

21 Disputes

21.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to District's Assistant Superintendent and a principal of the Construction Manager, who shall make a good faith effort to resolve the matter. Construction Manager shall continue its Work throughout the course of any and all disputes. Nothing in this Paragraph shall allow Construction Manager to discontinue work during the course of any dispute and Construction Manager's failure to continue work during any and all disputes shall be considered a material breach of this Agreement. Construction Manager also agrees that should Construction Manager discontinue work due to a dispute or disputes, District may terminate this Agreement.

21.2 As a precondition to litigation, the parties must first participate in non-binding mediation pursuant to the mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified mediators.

22 This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Alameda County, California.

22.1 Two copies of this Agreement shall be executed. One copy shall be retained by District and one copy shall be given to the Construction Manager.

23 Compliance With Laws

23.1 Construction Manager shall comply with all applicable laws in the performance of the Work, which are in effect at the time the Construction Manager is performing its Work, regardless of whether such laws are specifically stated in this Agreement. Construction Manager further agrees that, consistent with the Standard of care set forth herein, the plans, drawings, specifications, designs and any other product of its services will comply with that standard of care in their compliance with the applicable laws and Codes.

24 Entire Agreement; Modifications of Agreement

24.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement.

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

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

25 Hazardous Substances

25.1 Construction Manager assumes no responsibility or liability relating to any hazardous substances on the Project site including its existence, removal, transportation, or disposal.

26 Miscellaneous

26.1 Any provision or portions thereof of this Agreement prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be valid and binding agreement enforceable

in accordance with its terms. If any provisions or portions of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of such performance, shall not be a waiver of any right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

IN WITNESS WHEREOF, Construction Manager has executed this Agreement, and the District, by its State Administrator, who is authorized to do so, has executed this Agreement.

CONSTRUCTION MANAGER: GKK McCarthy

By: Randy Hoen
Title: Program Director

Dated: May 5, 2009

OAKLAND UNIFIED SCHOOL DISTRICT

By: Neil Gallo 5/14/09
~~Alicia Spearman~~, President, Board of Education

By: Edgar Rakestraw, Jr. 5/14/09
Edgar Rakestraw, Jr., District Secretary

By: Timothy E. White 5/5/09
Timothy E. White.
Assistant Superintendent, Division of Facilities, Planning & Management, Buildings and Grounds and Custodial Services

Approved as to form:

Danielle Hough
Cate Boskoff, Facilities Attorney

Dated: 5.7.09

- Attachments: Appendix A
Appendix B
Appendix C
Appendix D

APPENDIX A

SCOPE OF WORK

Construction Manager will provide Construction and Project Management Services for the Oakland Unified School District.

SCOPE OF BASIC SERVICES:

A. Program Management

Construction Manager agrees to furnish skill and judgment and to perform the Program, Project and Construction Management services in the most expeditious and economical manner consistent with the interests of the District and in accordance with District procedures and policies. In performing its Work under this Agreement, Construction Manager does not assume any of the Architects' responsibilities, including any need to carefully review for design errors, omissions or inconsistencies. Construction Manager will work under the immediate direction of the District, but retain its status as an independent contractor:

Responsibilities include:

1. Work with the District toward the establishment of program procedures that interact with all necessary District departments for the successful completion of the District's building program.
2. Provide management expertise, i.e., monitoring performances of Design Professionals, Consultants, and Contractors.
3. Work with District Staff, Architects, Contractors, and all required agencies for the successful completion of all modernization and new construction projects.
4. Develop procedures to establish accountability of the building program.
5. Assist the District, as necessary, in all transition phases (temporary housing, relocation, project phasing, move in plan, etc.).
6. Assist the District in coordination of documentation, prepare progress/status reports, and permit processing, and approvals by involved public agencies. The Construction Manager will submit status/progress reports on a regular basis to the District for review. Construction Manager will schedule document sequences and the time frame for each individual project and the building program as a whole.
7. Assist in development of a working relationship with the Division of State Architect, Office of Public School Construction, and all other agencies (as required), in support of the District Plan.
8. Prepare applications and required reports pertinent to the Modernization and New Construction Projects to the appropriate government agencies, including but not limited to making or facilitating all necessary submittals to the appropriate government agencies.

9. Prepare and implement a document control plan to be delivered to the District in writing for District review and approval. The Construction Manager shall be responsible for maintaining all records of submittals, permits, training, warranty information, RFI's and change orders, closeout documents, meetings, transmittals, schedules, sign-in sheets and field notes throughout the Project.
10. Review all contracts related to the Project for consistency of terminology, division of responsibilities , and coordination.
11. Work with the District to evaluate and make recommendation for payment, Non-payment, or deductions in connection with all consultant's pay requests.
12. Provide technical expertise in scheduling to assist school district in responding to inquiries, maintaining the project schedule, and resolving issues.
13. Advise the District immediately of any contract related problems that are beyond the construction manager's ability to resolve.

B. Pre-Construction Phase

1. Assist the District with the selection and contract negotiation of Design Professionals.
2. Assist the District in the preparation of a Program Management Plan and a Construction Procedures Manual.
3. Develop a Management Information System (MIS). The Construction Manager shall develop the MIS to assist in establishing communications between the District, Construction Manager, Design Professional, Contractor and other parties on the Project.
4. Management of Design Professionals. The Consultant shall monitor design professionals to obtain the program goals and objectives, establish project schedules, monitor the progress of the Design Professionals, and review the design documents for program compliance. In addition, the Consultant shall facilitate coordination review by the District's various departments and establish regular meetings with the Design Professional Teams.
5. Work with the District Staff and Architects to develop contracting strategies that are in the best interest of the District.
6. Interface with District Architects in developing a Master Schedule which shall include:
 - a) Major or Significant Activities (tasks).
 - b) Project Milestones. The schedule should include milestones for Design Submittals, Design Completion, Design Acceptance, and Posting of Invitation for Bid (IFB) Notice, Bid Opening, Construction Contract(s) Award, and Notice(s) to Proceed, Substantial Completion (s) and Final Completion. Other milestones will be incorporated if deemed necessary by the District.
 - c) Estimated Start Dates and Completion Dates.
 - d) Activity Duration. Durations should incorporate sufficient time to accommodate the normal anticipated delays due to weather, late delivery of supplies, etc.

e) Constraints and Dependencies. Dependencies between A/E Consultant, all Contractors, Construction Manager, and City tasks shall be clearly shown.

7. Perform Constructability reviews of the construction drawings and specifications. The objective of this review is to perform an interdisciplinary coordination review detecting possible conflicts between disciplines, a Constructability review to ensure that conflicts or problems do not exist with regard building components, and to reconcile that requested changes have been made prior to bid.
8. Assist the District and Architect in the definition of bid alternates based on the final estimate.
9. Assist the District in preparation and review of front end bid documents and general conditions of construction. Work with District Architects and Legal Counsel in developing project-specific special conditions including provisions of contract time, completion, phasing, bid alternates, separate contracts, and preliminary project schedules.
10. Assist the District with the procurement and installation of interim housing units.

C. Bid/Award Phase

1. Generate bidder interest by maintaining contact with the area construction industry and providing information regarding the projects to potential bidders.
2. Contact potential bidders to attend pre-bid job walks.
3. Coordinate with the District in preparing and placing public advertisements of project bids.
4. Coordinate and expedite, in conjunction with Architect, the preparation and delivery of bid documents and addenda to bidders.
5. Conduct, in conjunction with Architect, project pre-bid conferences.
6. Coordinate responses to bidders' inquiries with Architect. Review any addendum for time, cost and construction impact and prepare related recommendations.
7. Assist the District in the opening and evaluation of bid, and recommendations to the State Administrator regarding contract awards.
8. Coordinate issuance of Notices to Proceed.

D. Construction Phase

1. Conduct, in conjunction with the *District* and Architect, the project pre-construction conference.
2. Coordinate all schedules, scope of work, individual project phasing, etc. with individual site principals.
3. Distribute and maintain files of all project documents, drawings, contracts, change orders, contractor submittals, shop drawings, and correspondence.

4. Serve as the District' representative working with other District consultants including the Architects for the administration of the construction contract(s) as provided under the general conditions of each project.
5. Establish and implement procedures for contractor submittals, change orders, payment requests, requests for information (RFI) and document control. Maintain RFI, submittal and change order logs.
6. Conduct regular job-site progress meetings; transcribing and distributing meeting minutes. .
7. Coordinate any lead and/or asbestos abatement activities.
8. Secure a copy of each contractor's safety plan.
9. Coordinate coordinating the activities of the District's Inspector of Record (IOR) for each project and other technical inspection and testing agencies. File and distribute, as appropriate, all inspection reports.
10. Receive and review the contractor's detailed construction schedule for conformance to the master schedule and other contract requirements. Distribute the approved schedule to the District, Architect, and other involved parties.
11. Update and distribute master construction schedule based on progress of the contractors(s).
12. Receive and review the contractor's monthly schedule updates. Identify, with the contractor, any current or potential delays to the completion schedule, and require contractor corrective action including submittal of recovery schedule where appropriate.
13. Review, on a monthly basis, the progress of construction with the contractor, Architect, and IOR. Observe work in place and stored materials. Evaluate the percentage complete of each activity shown on the contractor's construction schedule. Evaluate contractors' pay requests and make recommendation to District.
14. Receive and review the contractors' schedules of values for compliance with contract requirements.
15. Assist and coordinate with the Architect, IOR, and Contractor punch list inspections for substantial and final completion. Verify contractor completion and corrective action for punch list items.
16. Evaluate and negotiate contractor change order requests for time and cost and make recommendations for District action.
17. Perform an evaluation of all contractor claims in association with the District Architect and make appropriate recommendation for District action and/or response.

E. Contract Close-out Phase

1. Receive and review, in conjunction with Architect, operations and maintenance manuals, warranties and guarantees as required under the contract.
2. Receive and review, in conjunction with Architect, project "record drawing" (as-built).
3. Coordinate and schedule training sessions for District personnel and verify that the contractor's obligation in providing this training is fulfilled.
4. Assist the District, as necessary, with move-in process for each project.

5. In conjunction with the Architect and the IOR, conclude all corrective action and make a final review of the project. Report to the District indication whether the work is acceptable under the contract documents, and a recommendation regarding final payment and notice of completion.
6. Assist the Architect and other consultants, in preparing and submitting the final project accounting and closeout reports including all DSA, CDE, SAB, and OPSC forms.
7. Assist the District in organizing post-occupancy evaluations.
8. Assist the District in post-closeout organizing or project files.

END OF APPENDIX A

APPENDIX B

COMPENSATION AND PAYMENT:

As full compensation for services (as outlined in Appendix A) performed, Construction Manager shall be paid a not to exceed fee of **three million, five hundred fifty one thousand, one hundred forty dollars and no cents (\$3,551,140.00)** for the GKK McCarthy including all reimbursable, based on billing rates outlined below. The total amount of the fee shall be increased only after both parties have entered into a properly executed modification to this agreement.

REIMBURSABLE EXPENSES:

Expenses incurred for OUSD's purposes only by Consultant while rendering services under this Agreement shall be reimbursed as follows:

1. Reimbursable Expenses not requiring prior written approval by the Owner for reimbursement include, (providing the Owner does not purchase and provide the reimbursables to the Consultant) and are limited to the following.
 - a) Printing and reproduction expenses at cost.
 - b) Mileage beyond a 50 mile radius of consultant's office, in connection with the performance of Basic and/or Additional Services, at the rate of \$0.505 per mile.
 - c) Photographs
 - d) Office supplies, labels, postage stamps, local phone calls.
 - e) Long-distance telephone calls made for services under this Agreement.
 - f) Facsimile transmissions.
 - g) Postage or delivery service for printed documents.
 - h) Express/overnight mailings.
 - i) Unique presentation or printed material only and specifically requested by Owner, including presentation models, Mylar/reproducible sets, additional Owner check sets, and presentation supplies beyond that which the Consultant typically uses.
 - j) Printing and reproduction expenses for Consultant and sub consultant for coordination check sets or reviews.
 - k) Office facilities/rent, utilities, furniture and equipment.

- l) Computer hardware and/or software.
- m) All CAD costs, including plotting and operations costs.

2. Invoices submitted by Consultant for Reimbursable Expenses shall include the following:

- a) All invoices shall clearly indicate dollar value, purpose of charge, recipients, and any authorization if necessary for each separate expense.

All invoices for Reimbursable Expenses shall be at cost of service, plus a 5% mark-up or surcharge beyond the cost of service and applicable taxes. However, reimbursable and Work outlined in the Scope of Services shall not exceed the contract amount of **three million, five hundred fifty one thousand, one hundred forty dollars and no cents (\$3,551,140.00)**.

END OF APPENDIX B

APPENDIX C

This Confidentiality Agreement is between **GKK/McCarthy**(hereinafter referred to as "Construction Manager"), and the Oakland Unified School District (hereinafter referred to as "District"), in anticipation of Construction & Project Management Services for the Facilities Department.

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

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

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

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

_____ Date: _____

PROJECT SCHEDULE:

The Construction Manager shall complete the scope of services and deliver to the Owner all documents, reports and other deliverables per the following schedule:

June 1, 2009 thru May 31, 2010

PROJECT BUDGET:

The budget established for this scope of work is **NOT TO EXCEED three million, five hundred fifty one thousand, one hundred forty dollars and no cents (\$3,551,140.00)**. The Construction Manager shall advise the District in

writing at any time in the progress of the work if there is any indication that the cost of the project will exceed the above budget. The District reserves the right to reduce or increase the contract compensation in accordance with a reduction or increase in the scope of work, if any occurs.

END OF APPENDIX C

APPENDIX D

CONSTRUCTION MANAGER'S BILLING RATES & DIRECT COSTS:

Hourly Rates and Projected Billing Schedule for Personnel

The following hourly rate schedule shall be used to determine the cost for services provided by Construction Manager for work described in this Contract.

Cost of labor services shall be as follows:

NAME	TITLE	HOURS	RATE	TOTAL	Local Business Status
Al Anderson	Project Director	1780.0	\$135.00	\$240,300.00	LBE
Saya Nhim	Project Engineer	1780.0	\$107.00	\$190,460.00	LBE
Alisa Harrell	Admin Support	1780.0	\$60.00	\$106,800.00	LBE
Doug Barrows	Project Director	120.0	\$137.00	\$16,440.00	
Kevin Newlon	Senior Project Manager	1780.0	\$135.00	\$240,300.00	
Ephriam Bahru	Project Engineer	1780.0	\$107.00	\$190,460.00	
Matt Carpenter	Project Engineer	1780.0	\$107.00	\$190,460.00	
Sylvester Kwofie	File Room Coordinator	1780.0	\$60.00	\$106,800.00	
Randy Horn	Program Director	1780.0	\$137.00	\$243,860.00	
Rocky Borton	Senior Project Manager	1780.0	\$135.00	\$240,300.00	
John Esposito	Project Manager- Fire Alarm/Elevator/Fire Sprinkler	1780.0	\$135.00	\$240,300.00	
Jamie Ramos	DSA Close Out Coordinator	1780.0	\$75.00	\$133,500.00	
Mari Bruckman	Project Coordinator	1780.0	\$60.00	\$106,800.00	
Javan Nabili	Master Plan Updating/Budget Validation	700.0	\$125.00	\$87,500.00	
Ben Murray	Scheduler / Estimator	1780.0	\$125.00	\$222,500.00	SLRBE
Yui Hay Lee	Master Planning	800.0	\$125.00	\$100,000.00	SLRBE
William Newby	Project Engineer	1780.0	\$107.00	\$190,460.00	SLRBE
Attu McKinney/YHLA/Others	Outreach Liason/Effort and Support	1200.0	\$125.00	\$150,000.00	SLRBE
Gary Yeo	Design Manager	1780.0	\$125.00	\$222,500.00	LBE
Various	Constructability Reviews	800.0	\$125.00	\$100,000.00	LBE
Eric Scheuremann	Project Manager	1780.0	\$130.00	\$231,400.00	
BASIC SERVICES:				\$3,551,140	

Small/Local Business Enterprise % :	24.2%	\$860,060.00
Small Local Resident Business Enterprise % :	18.7%	\$662,960.00
	42.9%	

END OF APPENDIX D