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Enactment Date	



OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools. Thriving Students.

# Memo

**To** Board of Education

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

**Board Meeting Date** February 11, 2015

**Subject** Pre-Construction Agreement - McCarthy/Turner Group JV - Fremont High School Replacement Project

**Action Requested** Approval by the Board of Education of an Pre-Construction Agreement with McCarthy/Turner Group JV for Preliminary Services on behalf of the District at the Fremont High School Replacement Project, in an amount not-to exceed \$49,000.00. The term of this Agreement shall commence on February 11, 2015 and shall conclude no later than February 11, 2016.

**Background** McCarthy/Turner Group JV will be developing and implementing community outreach strategy for the new Fremont High School.

**Local Business Participation Percentage** 50.00%

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

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

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

**Recommendation**

Approval by the Board of Education of an Pre-Construction Agreement with McCarthy/Turner Group JV for Preliminary Services on behalf of the District at the Fremont High School Replacement Project, in an amount not-to exceed \$49,000.00. The term of this Agreement shall commence on February 11, 2015 and shall conclude no later than February 11, 2016.

**Fiscal Impact**

Measure J

**Attachments**

- Pre-Construction Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance

**AGREEMENT FOR PRELIMINARY SERVICES (PRECONSTRUCTION SERVICES)  
BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT  
AND  
MCCARTHY TURNER GROUP, A JOINT VENTURE  
FOR THE  
FREMONT HIGH SCHOOL NEW CONSTRUCTION PROJECT, OAKLAND CA**

This Agreement for Preliminary Services (Preconstruction Services) ("Agreement") is made and entered into this 23rd day of December, 2014, between the Oakland Unified School District, a California public school district ("District") and McCarthy Turner Group, a Joint Venture ("Developer") for the purposes of providing preliminary services relating to the design and new construction of the Fremont High School ("Project"). District and Developer may be individually referred to herein as "Party" and collectively referred to herein as "Parties."

**WHEREAS**, the Project will be located at the following school site as more particularly described in **Exhibit "B,"** attached hereto and incorporated herein by this reference ("Site(s)"):

- Fremont High School, located at 4610 Foothill Blvd, Oakland, CA 94601

**WHEREAS**, District and Developer intend to enter into lease/leaseback arrangements for the development of the Project pursuant to Education Code section 17406 ("Lease Agreements") after Developer's performance of its duties and obligations pursuant to this Agreement and pending both the approval of the Plans and Specifications by the California Division of State Architect ("DSA") and after approval by the District and Developer of the Lease Agreements.

**WHEREAS**, the District has selected LCA QKA, JV as the architects/engineers ("Architect(s)") of record for the Project;

**WHEREAS**, Developer desires to provide consulting services to the District with respect to other related services in preparation for the Project's development; and

**WHEREAS**, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

**WHEREAS**, Developer represents that it is specially trained and has the expertise and experience to perform the services set forth in this Agreement; and

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

1. **Scope of Services.** Developer, as the District's development consultant and authorized representative, agrees to perform the services indicated in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services"). In providing the Services pursuant to this Agreement, Developer does not assume any responsibility for design, design errors, omissions or inconsistencies. The duties, responsibilities and limitations of authority of Developer shall not be restricted, modified or extended without written agreement between the District and Developer.

2. **Construction Milestones.** The Parties intend to enter into the Lease Agreements on or about **January 12, 2015**. The Parties expect that the Project shall be completed on or before **February 11, 2016**.
3. **District's Responsibilities.** The District shall provide to Developer information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.
4. **Term.** The term of this Agreement ("Term") shall be Two months (2) months from the date indicated above as the date of this Agreement. The Term may be shortened or lengthened by mutual agreement of the Parties or terminated as indicated herein.
5. **Submittal of Documents.** The Developer shall not commence the Services under this Agreement until the Developer has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

X	Signed Contract
X	Workers' Compensation Certification
X	Fingerprinting/Criminal Background Investigation Certification
X	Insurance Certificates and Endorsements

**6. Termination**

- 6.1. **Termination by Developer.** This Agreement may be terminated by Developer upon fourteen (14) days written notice to District in the event of an uncured substantial failure of performance by District, unless the District has acted to commence cure efforts in any case where a reasonable cure cannot be concluded within the 14 day notice period.
- 6.2. **Termination by District.** This Agreement may be terminated without cause by District upon fourteen (14) days written notice to Developer. In the event of a termination by District, the District shall pay Developer for all fully-documented Services performed and expenses incurred under this Agreement up until the date of notice of termination.

**7. Compensation to Developer.** District agrees to pay Developer an amount not-to-exceed Forty-nine thousand dollars (\$49,000.00), for the performance of the Services contemplated by this Agreement, as indicated in **Exhibit "C" ("Services: Costs & Schedule")**.

- 7.1. Developer shall be responsible for all costs and expenses including the costs of hiring sub-consultants and other professionals to perform the Services, travel expenses to the Project site as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Developer's staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Developer in performance of the Services contemplated by this Agreement. Developer shall submit the names of all proposed subconsultants and subcontractors to District in writing for the District's prior approval.

- 8. Developer's Insurance.** Developer has in force, and during the term of this Agreement shall maintain in force with the minimum indicated limits, the following insurance: **Commercial General Liability Insurance:** \$1,000,000 for each occurrence and general aggregate with Products and Completed Operations Coverage; **Automobile Liability – Any Auto:** combined single limit of \$1,000,000; **Excess Liability insurance:** \$4,000,000; **Workers Compensation:** Statutory limits; **Employers' Liability:** \$1,000,000; and **Professional Liability (Errors and Omissions):** \$1,000,000. Developer shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Except for the worker's compensation and professional liability insurance policies, the District shall be named as an additional insured on all policies. Developer's policy(ies) shall be primary; any insurance carried by the District shall only be secondary and supplemental. All policies, except for professional liability, shall be written on an occurrence form. Developer shall not allow any sub-consultant, subcontractor, employee, or agent to commence work on this Agreement or any subcontract until the insurance required of Developer, subcontractor, or agent has been obtained.
- 9. Indemnity.** To the furthest extent permitted by California law, Developer shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Developer, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or this Agreement, including without limitation the payment of all consequential damages.
- 10. Independent Developer.** Developer, in the performance of this Contract, shall be and act as an independent Developer. Developer understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Developer shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Developer's employees. In the performance of the work herein contemplated, Developer is an independent Developer or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
- 11. Designated Representatives.** The Developer shall coordinate with District personnel and/or its designated representatives as may be requested and desirable.
- 12. Audit.** Developer shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Developer transacted under this Agreement. Developer shall retain these books, records, and systems of account during the Term of this

Agreement and for five (5) years thereafter. Developer shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Developer and shall conduct audit(s) during Developer's normal business hours, unless Developer otherwise consents.

**13. Confidentiality.** The Developer and all Developer's agents, personnel, employee(s), subconsultants and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Developer understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**14. Performance of Services.**

**14.1. Standard of Care.** Developer shall remain liable to the District in accordance with this Agreement for all damages to the District caused by Developer's failure to perform any of the Services furnished under this Agreement to the standard of care of Developer for its Services, which shall be, at a minimum, the standard of care of a Developer performing similar work for California school districts at or around the same time and in or around the same geographic area of the District.

**14.2. District Approval.** The work completed herein must meet the approval of the District.

**15. Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE).**

Developer shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

**16. Assignment.** The obligations of the Developer pursuant to this Agreement shall not be assigned by the Developer.

**17. Compliance with Laws.** Developer shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances, regulations, and guidelines. Developer shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Developer observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Developer shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Developer's receipt of a written termination notice from the District. If Developer performs any work that is in violation of any laws, ordinances, rules or

regulations, without first notifying the District of the violation, Developer shall bear all costs arising therefrom.

- 18. Certificates/Permits/Licenses.** Developer and all Developer's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 19. Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Developer agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Developer agrees to require like compliance by all its subcontractor(s).
- 20. Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Developer's performing of any portion of the Services.
- 21. No Third Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the District or Developer.
- 22. District's Evaluation of Developer and Developer's Employees and/or Subcontractors.** The District may evaluate the Developer in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
  - 22.1.** Requesting that District employee(s) evaluate the Developer and the Developer's employees and subcontractors and each of their performance.
  - 22.2.** Announced and unannounced observance of Developer, Developer's employee(s), and/or subcontractor(s).
  - 22.3.** Developer agrees to remove or re-assign its employees as may be reasonably requested by the District as a result of the District's evaluation. The District shall provide its request in writing, convey the basis for its request and provide reasonable time for Developer to satisfy the District's request.
- 23. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 24. Disputes.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve

the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Developer shall neither rescind the Agreement nor stop performing Services.

- 25. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, addressed as follows:

**District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601

**Attn: Tadashi Nakadegawa**

**Developer:**

McCarthy/Turner Group JV  
1625 Filbert Street  
Oakland, CA 94697

**Attn: Doug Barrows**

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

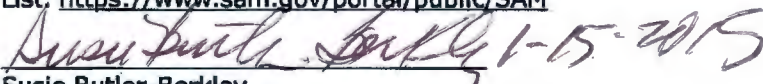
- 26. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 27. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
- 28. Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 29. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 30. Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
- 31. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 32. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a



party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

- 33. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 34. Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 35. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 36. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 37. Lease Agreements.** In no event shall either party be obligated to enter into the Lease Agreements. District reserves the right to enter into the Lease Agreements with parties other than Developer. Developer has not received any assurances or guarantee that Developer will be awarded the Lease Agreements or any other contract related to the Project. District shall not be responsible to Developer for any claims or damages resulting from District's failure to enter into the Lease Agreements with Developer.
- 38. Ownership of Product.** It is mutually agreed that all materials prepared by Developer under this Agreement will be the property of the District and Developer shall have no property rights therein whatsoever. Developer hereby irrevocably assigns, conveys, and transfers to District any and all of Developer's right, title, and interest to any copyrights associated with the materials that will be prepared pursuant to the Agreement. Immediately upon termination of this agreement and District's written request, the District shall be entitled to, and Developer shall deliver to District, all data, drawings, specifications, reports, estimates, summaries, and other such materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not Developer's privileged information, (the "Termination Material") as defined by law, or Developer's personnel information.

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

  
Susie Butler-Berkley  
Contract Analyst

**ACCEPTED AND AGREED** on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
James Harris, President, Board of Education Date

\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education Date

\_\_\_\_\_  
Timothy White, Deputy Chief, Facilities Planning and Management Date

**DEVELOPER**

\_\_\_\_\_  
~~Richard A. Henry~~ 1/9/15  
Richard A. Henry, Managing Partner Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
OUSD Facilities Legal Counsel 1.16.15  
Date

**Information regarding Developer:**

Developer: McCarthy Turner A Joint Venture

License No.: 975912

Address: 1625 Filbert Street  
Oakland, CA 94607

Telephone: 415-397-5151

Facsimile: NA

E-Mail: NA

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

\_\_\_\_\_  
Employer Identification and/or Social Security Number

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

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

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

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

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

Date: 1-9-2015

Name of Developer or Company: McCarthy Turner A Joint Venture

Signature: 

Print Name and Title: Richard A. Henry, Managing Partner

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

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

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

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

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

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

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

- The installation of a physical barrier at the worksite to limit contact with pupils.
- \_\_\_\_\_ Continual supervision and monitoring of all Developer's on-site employees of Developer by an employee of Developer, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- \_\_\_\_\_ Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**

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

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a representative of the Developer entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Developer.

Date: \_\_\_\_\_  
Name of Developer or Company: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_

1/9/15  
\_\_\_\_\_  
McCarthy Turner A Joint Venture  
\_\_\_\_\_  
*Richard A. Henry, Managing Partner*

**Exhibit "A"**  
**Scope of Services**

**Pre-Construction Services**

Developer shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following:

**1. General Services.**

- 1.1. Developer shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
- 1.2. Developer shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Developer.
- 1.3. Developer shall assist the Architect with making formal presentations to the governing board of District.
- 1.4. Developer shall prepare and update the preliminary Project schedule.
- 1.5. Developer shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
- 1.6. Developer shall assist District with City land use issues;
- 1.7. Developer shall assist District with DSA review, input, and timeframe for same;
- 1.8. Developer shall provide review and comment upon geotechnical / soils investigation and report;
- 1.9. Developer shall provide review and comment upon survey of the Project site;
- 1.10. Developer shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.

**2. Review of Design Documents.**

- 2.1. Developer shall review Project design and budget with the District and the Architect during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents Phase to:

- 2.1.1. Developer shall provide recommendations on site use and

improvements, selection of materials, building systems and equipment and methods of Project delivery;

2.1.2. Developer shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

2.1.3. Developer shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and

2.1.4. Developer shall provide plan review.

2.1.5. Value-engineering. Developer shall prepare a value-engineering report for District review and approval that:

2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

2.1.5.2. Provides detailed estimate for proposed value-engineering items;

2.1.5.3. Defines methodology or approaches that maximize value; and

2.1.5.4. Identifies design choices that can be more economically delivered.

2.1.6. Constructability Review. Developer shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:

2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;

2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;

2.1.6.3. Back-checks design drawings for inclusion of modifications;

2.1.6.4. Provides the District with written confirmation that:

2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and

2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

2.2. Confirm Modifications to Design Drawings. If the District accepts Developer's comments, including the value-engineering and/or constructability review comments, Developer shall review the design documents to confirm that those comments are properly incorporated into the final design documents.

2.3. Building Information Modeling. In evaluating design documents, Developer shall utilize all available sources, including but not limited to any Building Information Modeling ("BIM") produced by or at the Architect's direction.

### **3. Budget of Project Costs.**

3.1. At each stage of plan review indicated above, Developer shall update and refine the budget of the Guaranteed Project Cost based on the most recent sent of design documents. Developer shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Developer will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

3.2. In each budget of the Guaranteed Project Cost, Developer shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:

- 3.2.1. Overhead and profit;
- 3.2.2. Supervision;
- 3.2.3. General conditions;
- 3.2.4. Layout & Mobilization (not more than 1%)
- 3.2.5. Submittals, samples, shop drawings (not more than 3%);
- 3.2.6. Bonds and insurance (not more than 2%);
- 3.2.7. Close-out documentation (not less than 3%);
- 3.2.8. Demolition;
- 3.2.9. Installation;
- 3.2.10. Rough-in;
- 3.2.11. Finishes;
- 3.2.12. Testing;
- 3.2.13. Punchlist and acceptance.



Developer shall indicate its willingness and ability to enter into the Lease Agreements to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Lease Agreements.

**4. Construction Schedule and Phasing Plan.**

Developer shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Developer shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Developer shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

**5. Construction Planning and Bidding.**

- 5.1. Developer shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Developer's subcontractors.
- 5.2. Developer shall diligently review the drawings and specifications to reasonably eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, in order to significantly reduce change order requests by subcontractors attributed to design errors or omissions of Architect.
- 5.3. Developer shall diligently review all of the construction documents, including but not limited to all drawings and specifications, against ambiguities, conflicts, or omissions, and guarantee to the District that the total project shall be built for the available construction budget where the aggregate of all trade Developer bids, including authorized alternatives, shall be less than, but close to, the construction budget within the construction duration identified in Facilities Lease.
- 5.4. Developer shall conduct pre-bid conferences. Developer shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all Subcontractors.
- 5.5. Developer shall prepare appropriate subcontractor bid packages.

**Exhibit "B"**  
**Maps of Project Site**

**Exhibit "C"**  
**Services: Costs & Schedule**

**Fremont High School Preconstruction Services Unit Rates**

	<u>Unit Rate</u>
Project Director	\$170
Preconstruction Director	\$140
Estimator	\$80
Project Manager	\$125
MEP Director	\$125
Community Engagement Coordinator	\$125
Superintendent	\$125
Scheduler	\$90
Design/BIM Manager	\$105
Preconstruction Coordinator (Admin)	\$55



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/20/2014

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

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

<b>PRODUCER</b> Aon Risk Services Central, Inc. St. Louis MO Office 8182 Maryland Ave. St. Louis, Mo. 63105 Attn: Sue Schwartz	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (314) 721-5100		FAX (A/C, No): (314) 719-5126
	<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURER A:</b> Arch Insurance Company			11150
<b>INSURER B:</b> National Union Fire Ins Co of PA			51908
<b>INSURER C:</b>			
<b>INSURER D:</b>			
<b>INSURER E:</b>			
<b>INSURER F:</b>			

**COVERAGES**

CERTIFICATE NUMBER: 393750

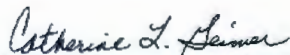
REVISION NUMBER:

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 type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	X	51PKG8897610	4/1/2014	4/1/2015	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	X	51PKG8897610	4/1/2014	4/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	X	X	29157227	4/1/2014	4/1/2015	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	51WC18901601	7/31/2013	7/31/2014	<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

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) hv Turner, A JV 7/31/13-14 WC& 4/1 Master Job #6217; La Escuelita Educational Center Phase 2 - Met West HS Bldg & CDC Bldg, 314 East 10th Street, Oakland, CA 94606  
 The District, its Board members, employees and agents, and the State of California are included as Additional Insureds on the General Liability and Automobile Liability policies on a primary and non-contributory basis when required by written contract. The Excess Liability policy follows form. Waiver of subrogation is included on all policies when required by written contract and permissible by law.

**CERTIFICATE HOLDER****CANCELLATION**

<b>Oakland Unified School District</b> Attn: Timothy White 955 High Street Oakland, CA 94601	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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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED-AUTOMATIC STATUS WHEN REQUIRED BY A  
CONSTRUCTION AGREEMENT WITH YOU - COMPLETED OPERATIONS -  
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

Section II - Who is an "Insured" is amended to include as an insured any person or organization when you have agreed in writing in a contract or agreement that such person or organization is an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of:

- i) "your work" at the location designated; or
- ii) The "products completed operations hazard."

393750

Coverage afforded to these additional insured parties will be primary to, and non-contributory with, any other insurance available to that person or organization.

All other terms and conditions of this Policy remain unchanged.

Issued By: **Arch Insurance Company**

Endorsement Number:

Policy Number: **51PKG8897610**

Named Insured: **McCarthy Turner, A Joint Venture**

Endorsement Effective Dated: **4/1/2014**



President

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

**CONTRACTORS WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO  
US**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Name of Person or Organization: ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER.

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition ( Section IV – Commercial General Liability Conditions) is amended by the addition of the following:

1. If we recover any amount as a result of our exercise of these rights, the amount recovered will be divided as follows:
  1. Any insured or other insurer that paid amounts in excess of the limits of coverage that apply under this policy will be reimbursed for any payments we have made.
  2. We will then be reimbursed for any payments we have made.
  3. Then, if any amount remains, any insured or other insurer who paid amounts before the limits of coverage for this policy applied will be reimbursed for the actual amount paid.

Expenses incurred in obtaining a recovery of any payment we make under this policy from someone other than us will be divided in the same ratio as the recovery is shared. However, if we bring legal action against any other party on our own or try to obtain recovery and fail to do so, we will pay all expenses we incur.

2. We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products and completed operations hazard". This waiver applies only to the person(s) or organization(s) shown in the Schedule above.

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All other terms and conditions of this Policy remain unchanged.

Issued By: **Arch Insurance Company**

Endorsement Number:

Policy Number: **51PKG8897610**

Named Insured: **McCarthy Turner, A Joint Venture**

Endorsement Effective Dated: **4/1/2014**

  
President

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

**WAIVER OF TRANSFER OF RIGHTS FOR RECOVERY  
AGAINST OTHERS TO US ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GARAGE COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

TRUCKERS COVERAGE FORM

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident", provided that the "accident" arises out of operations contemplated by such contract. The waiver only to the person or organization designated in such contract.

All other terms and conditions of this Policy remain unchanged.

344900

Policy Number: **51PKG8897610**

Named Insured: **McCarthy Turner, A Joint Venture**

Endorsement Effective Date: **4/1/2014**

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

**NOTICE OF CANCELLATION – CERTIFICATE HOLDERS**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

**Schedule**

393750

**Re:**

Oakland Unified School District

*All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.*

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: **McCarthy Turner, A Joint Venture**

Policy Number: **51PKG8897610**



**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

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

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

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

<b>Person or Organization</b>	<b>Schedule</b>	<b>Job Description</b>	
Any person or organization for whom the Named Insured has agreed by written contract to furnish this Waiver.			393750
		Job #6217; La Escuelita Educational Center Phase 2 - Met West HS Bldg & CDC Bldg, 314 East 10th Street, Oakland, CA 94606	

344902

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

**NOTICE OF CANCELLATION –CERTIFICATE HOLDERS**

The person(s) or organization(s) listed or described in the Schedule below have requested that they receive written notice of cancellation when this policy is cancelled by us. We will mail or deliver to the Person(s) or Organization(s) listed or described in the Schedule a copy of the written notice of cancellation that we sent to you. Such copies of the notice will be mailed within 60 days, except 10 days for non-payment of premium, of the effective date of the cancellation, to the address or addresses of certificate holders as provided by your broker or agent.

393750

**Schedule**

Re: Oakland Unified School District

*All certificate holders where written notice of the cancellation of this policy is required by written contract, permit or agreement with the Named Insured and whose names and addresses will be provided by the broker or agent listed in the Declarations Page of this policy for the purposes of complying with such request.*

This notification of cancellation of the policy is intended as a courtesy only. Our failure to provide such notification to the person(s) or organization(s) shown in the Schedule will not extend any policy cancellation date nor impact or negate any cancellation of the policy. This endorsement does not entitle the person(s) or organization(s) listed or described in the Schedule below to any benefit, rights or protection under this policy.

Any provision of this endorsement that is in conflict with a statute or rule is hereby amended to conform to that statute or rule

All other terms and conditions of this policy remain unchanged.

Insured Name: McCarthy Turner, A Joint Venture

Policy Number: 51WCI8901601





## PRE-CONSTRUCTION AGREEMENT ROUTING FORM

Project Information			
Project Name	Fremont High School Replacement	Site	302
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information			
Contractor Name	McCarthy/Turner JV	Agency's Contact	Doug Barrows
OUSD Vendor ID #	V051065	Title	Project Manager
Street Address	343 Sansome Street, 14 <sup>th</sup> Floor	City	SF State CA Zip 94104
Telephone	415-397-5151	Policy Expires	4-1-2015
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 #	13158		

Term			
Date Work Will Begin	2-11-2015	Date Work Will End By <small>(not more than 5 years from start date)</small>	2-11-2016

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$49,000.00
Pay Rate Per Hour (if Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9350	Measure J	3029905810	6252	\$49,000.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
	Division Head	Phone	510-535-7038	Fax 510-535-7082
1.	Director, Facilities Planning and Management			
	Signature	Date Approved	1/16/15	
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Date Approved	1-16-15	
3.	Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved	1/16/15	
4.	Chief Operations Officer, Board of Education			
	Signature	Date Approved	1/22/15	
5.	President, Board of Education			
	Signature	Date Approved		