

Board Office Use: Legislative File Info.	
File ID Number	16-0386
Introduction Date	3-9-2016
Enactment Number	16-0353
Enactment Date	3/9/16 <i>o/d</i>



# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
 By: Vernon Hal, Senior Business Officer *VHX*  
 Lance Jackson, Interim Deputy Chief, Facilities Planning and Management *RJ*

**Board Meeting Date** March 9, 2016

**Subject** Independent Contractor Agreement for Professional Services - McCarthy Building Companies, Inc. - Claremont Kitchen & Cafeteria Fire Repair Project

**Action Requested** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services with McCarthy Building Companies, Inc. for Estimating Services on behalf of the District at the Claremont Kitchen & Cafeteria Fire Repair Project, in an amount not-to exceed \$12,000.00. The term of this Agreement shall commence on December 7, 2015 and shall conclude no later than September 30, 2016.

**Background** The scope of the project is to provide estimating services for repair of existing fire damaged cafeteria at the Claremont site.

**Discussion** Estimating services needed in order to make decision over repair of existing facilities or new construction.

**LBP** (Local Business Participation Percentage) 0.0 % (Specialty Service)

**Procurement Method** Emergency - Board approved via resolution declaring Emergency.

**Recommendation** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services with McCarthy Building Companies, Inc. for Estimating Services on behalf of the District at the Claremont Kitchen & Cafeteria Fire Repair Project, in an amount not-to exceed \$12,000.00. The term of this Agreement shall commence on December 7, 2015 and shall conclude no later than September 30, 2016.

**Fiscal Impact** Risk Management

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



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

**Legislative File ID No.** \_\_\_\_\_

**Department:** Facilities Department

**Vendor Name:** McCarthy Building Companies, Inc.

**Project Name:** Claremont Kitchen & Cafeteria Fire Repair

**Annual Cost:** \$ 12,000.00      **Project No.:** 15100

**Contract Term:** Start Date: 12-2-2015      End Date: 12-2-2016

**Approved by:** Tadashi Nakadegawa

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

The vendor was selected from an approved list of contractors that perform special duties.

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

The services provided are estimating for the repair of the Claremont Kitchen & Cafeteria Fire Repair.

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

If No, answer the following:

1) How did you determine the price is competitive?

We have a pre-determined list of costs from our Estimator.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

OAKLAND UNIFIED SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES

Claremont Kitchen & Cafeteria Fire Repair Project

This Independent Contractor Agreement for Professional Services ("Agreement") is made as of the 5th day of January in the year 2016, between the Oakland Unified School District ("District") and McCarthy Building Companies, Inc. ("Contractor") (referred to herein individually as a "Party" and collectively as the "Parties").

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;

WHEREAS, the District is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

WHEREAS, the Contractor agrees to perform the Services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

NOW, THEREFORE, the Parties agree as follows:

- 1. Services. The Contractor shall furnish to the District the services as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services" or "Work"):

The scope of the project is to provide Estimating Services for repair of existing fire damaged cafeteria at Claremont Kitchen & Cafeteria Fire Repair Project.

- 2. Term. Contractor shall commence providing services under this Agreement on December 7, 2015, and will diligently perform as required or requested by District as applicable. The term for these services shall expire on September 30, 2016. This Agreement may be extended upon mutual approval of both parties on an annual basis to the extent permissible under applicable law.

- 3. Submittal of Documents. The Contractor shall not commence the Work under this Contract until the Contractor 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 Agreement x Workers' Compensation Certificate
x Insurance Certificates & Endorsements W-9 Form
N/A Bonds (as requested by District) Other: Fingerprinting
x Debarment Certificate

- 4. Compensation. District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in Exhibit "A," on an hourly basis and a per-item basis, as applicable, and up to a maximum amount not-to-exceed Twelve thousand dollars and no cents (\$12,000.00). District shall pay Contractor only for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Work. Expenses will not be charged on the Work above the maximum not-to-exceed amount of **Zero (\$0.00)**. Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit "B"**.
6. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her 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. Contractor 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 Contractor's employees.
8. **Standard of Care.** Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
9. **Originality of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
11. **Termination.**
  - 11.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner.
  - 11.2. **Without Cause by Contractor.** Contractor may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.
  - 11.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 11.3.1. material violation of this Agreement by the Contractor; or
- 11.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or
- 11.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

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

11.4. Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.

**12. Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, employees, trustees, and volunteers (the "Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "Claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and reasonable attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, to the extent caused by the negligence or willful misconduct of Contractor, its employees or subcontractors. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the Indemnified Parties.

**13. Insurance.**

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

13.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Contractor's performance of any portion of the Services. (Form CG 0001 and CA 0001)

13.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under

this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

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

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

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

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

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

13.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

13.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

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

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

15. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and

regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor 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 Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

16. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
17. **Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
18. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
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 Contractor 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. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
21. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor 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 Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.



22. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any manner which is permissible under the law. The District's evaluation may include, without limitation:
- 22.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
  - 22.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).
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 Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop Work.
25. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
26. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**Oakland Unified School District**

955 High Street  
Oakland, CA 94601  
**Attn: Tadashi Nakadegawa**  
Tel: 510-535-7038

**Contractor**

McCarthy Building Companies, Inc.  
1265 Battery Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94111  
**Attn: Doug Barrows**  
415-397-5151

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

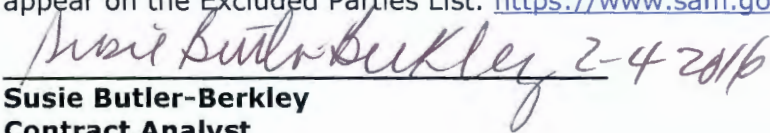
27. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE Program).** Contractor shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance 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.
28. **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.

29. **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 administration offices are located.
30. **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.
31. **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.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

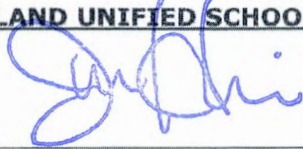
**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:**

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

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

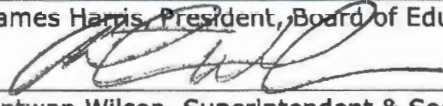
ACCEPTED AND AGREED on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**



James Harris, President, Board of Education

3/10/16  
Date



Antwan Wilson, Superintendent & Secretary, Board of Education

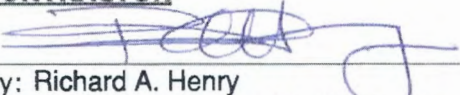
3/10/16  
Date



Lance Jackson, Interim Deputy Chief, Facilities Planning and Management

3/9/16  
Date

**CONTRACTOR**



By: Richard A. Henry  
Its: President, Northern Pacific Division  
McCarthy Building Companies, Inc.

February 3, 2016  
Date

**APPROVED AS TO FORM:**



OUSD Facilities Legal Counsel

2-8-16

Date

File ID Number: 16-0086  
Introduction Date: 3/9/16  
Enactment Number: 16-0353  
Enactment Date: 3/9/16  
By: OR

**Information regarding Contractor:**

Contractor: McCarthy Building Companies, Inc. **FIN** 43-0399290  
License No.: 411173 Employer Identification and/or Social Security Number  
Address: 1265 Battery Street, 3rd Floor  
San Francisco, CA 94111  
Telephone: 415-397-5151  
Facsimile: 415-397-5999  
E-Mail: rhenry@mccarthy.com  
Type of Business Entity:  
 Individual  Sole  
 Proprietorship  
 Partnership  Limited  
 Partnership  
 Limited Liability Company  
 Corporation, State: Missouri  
 Other: \_\_\_\_\_

**NOTE: Federal Code of 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.**

---

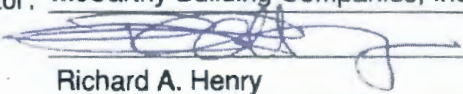
---

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

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

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

Date: February 3, 2016  
Proper Name of Contractor: McCarthy Building Companies, Inc.  
Signature:   
Print Name: Richard A. Henry  
Title: President, Northern Pacific Division

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

**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

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

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

Date: 2-4-2016  
District Representative's Name and Title: Susie Butler-Berkley, Contract Analyst  
Signature: Susie Butler-Berkley

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

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

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

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

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

Date: February 3, 2016

Name of Consultant or Company: McCarthy Building Companies, Inc.

Signature: 

Print Name and Title: Richard A. Henry  
President, Northern Pacific Division

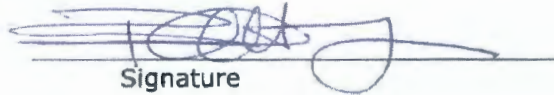
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

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

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Contractor on the 3rd day of February 2016 ~~2014~~ for the purposes of submission of this Agreement.

By:

  
Signature

Richard A. Henry

Typed or Printed Name

President, Northern Pacific Division

Title

**EXHIBIT A**

December 07, 2015

Claremont Cafeteria Fire Repair

Attn: Tadashi Nakadegawa  
Director of Facilities  
Oakland Unified School District

RE: Preconstruction Proposal for Claremont MS Fire Repair

Dear Michael,

McCarthy is pleased to submit our proposal for Estimating Services for above mentioned project:

1. Total Price not to exceed \$12,000.
2. Preconstruction services to assist and develop concept estimate for the Claremont Middle School Cafeteria Fire Repair project. Our estimate will be based on the schematic drawings and narratives Prepared by Susannah Meek Architecture and KPW Structural Engineers.
3. Preconstruction Rates are as follows :

Name	Position	Agreed Billable Rates (\$/hr)
Project Executive	Doug Barrows	\$150.00
Estimator	Matt Richardson	\$125.00
Estimator	Turner Group	\$125.00
Electrical Estimator	Angeline Gleason	\$125.00
MEP Estimator	Tony Fung	\$125.00
Project Admin.	TBD	\$50.00

Should you have any questions, please do not hesitate to contact me.

Regards,

Doug Barrows  
Project Director  
McCarthy Building Companies  
1265 Battery Street 3<sup>rd</sup> Floor  
San Francisco, CA 94111





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/29/2016

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

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

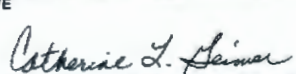
<b>PRODUCER</b> Aon Risk Services Central, Inc. St. Louis MO Office 8182 Maryland Ave. St. Louis, Mo. 63105 Attn: Sue Schwartz	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (314) 721-5100		FAX (A/C, No): (314) 719-5126
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> McCarthy Building Companies, Inc. / Div. 730 1265 Battery, 3rd Floor San Francisco, CA 94111	<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 Pittsburgh		19445
	<b>INSURER C :</b>		
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		

**COVERAGES**      **CERTIFICATE NUMBER:** 503252      **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"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Per Project/Location Aggre  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	X		51PKG8897611	4/1/2015	4/1/2016	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 <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS  <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		51PKG8897611	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED \$      RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
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	51WC8897511	4/1/2015	4/1/2016	<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)      Master 1XS  
 RE: Claremont Kitchen & Cafeteria Fire Repair Project  
 Oakland Unified School District and the State and their representatives, employees, trustees, officers, and volunteers are included as Additional Insureds on the General Liability and Automobile Liability policies on a primary basis when required by written contract.

<b>CERTIFICATE HOLDER</b>  Oakland Unified School District 955 High Street Oakland, CA 94601	<b>CANCELLATION</b>  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  
--	---

© 1988-2014 ACORD CORPORATION. All rights reserved.

**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."

503252

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: 51PKG8897611

Named Insured: McCarthy Building Companies, Inc. / Div. 730

Endorsement Effective Dated: 4/1/2015

  
President

**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**

503252

**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 Building Companies, Inc. / Div. 730**

Policy Number: **51PKG8897611**

**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.

503252

**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 Building Companies, Inc. / Div. 730

Policy Number: 51WCI8897511



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/29/2016

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

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

**PRODUCER**  
Construction Risk Solutions, LLC.  
11311 McCormick Road, Ste 450  
Hunt Valley MD 21031-8622

**CONTACT NAME:** Certificate Administrator  
**PHONE (A/C, No, Ext):** 443-798-7499 **FAX (A/C, No):** 443-798-7290  
**E-MAIL ADDRESS:** certificates@thecrsteam.com

**INSURER(S) AFFORDING COVERAGE** **NAIC #**  
INSURER A : Indian Harbor Insurance Company 36940

**INSURED**  
McCarthy Building Companies, Inc. / Div. 730  
1265 Battery  
3rd Floor  
San Francisco CA 94111

**INSURER B :**  
**INSURER C :**  
**INSURER D :**  
**INSURER E :**  
**INSURER F :**

### COVERAGES

**CERTIFICATE NUMBER:** 1996625023

**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	
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	<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						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Professional			CEO742006002	4/1/2015	4/1/2016	Each Claim Aggregate	\$1,000,000 \$1,000,000

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

Re: Claremont Kitchen & Cafeteria Fire Repair Project

### CERTIFICATE HOLDER

**CANCELLATION** 30 days/10 days for non-payment

Oakland Unified School District  
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



cc  
2/22/16

# INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES ROUTING FORM

### Project Information

<b>Project Name</b>	Claremont Kitchen & Cafeteria Fire Repair	<b>Site</b>	987
---------------------	---	-------------	-----

### Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

<b>Attachment Checklist</b>	<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

<b>Contractor Name</b>	McCarthy Building Companies, Inc.	<b>Agency's Contact</b>	Doug Barrows				
<b>OUSD Vendor ID #</b>	V060871	<b>Title</b>	Project Manager				
<b>Street Address</b>	1265 Battery Street, 3 <sup>rd</sup> Floor	<b>City</b>	San Francisco	<b>State</b>	CA	<b>Zip</b>	94111
<b>Telephone</b>	415-397-5151	<b>Policy Expires</b>					
<b>Contractor History</b>	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					
<b>OUSD Project #</b>	15100						

### Term

<b>Date Work Will Begin</b>	12-7-2015	<b>Date Work Will End By</b> (not more than 5 years from start date)	9-30-2016
-----------------------------	-----------	---	-----------

### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$12,000.00
<b>Pay Rate Per Hour (if Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
0111	Risk Management	9879270804	5826	\$12,000.00

### 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.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	Date Approved			2/8/16
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	Date Approved			2-8-16
3.	<b>Interim Deputy Chief, Facilities Planning and Management</b>				
	Signature	Date Approved			
4.	<b>Senior Business Officer</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			

