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Enactment Date	4-1-15



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date 4-1-15
Subject Consultant Service Agreement – Simpson Investigation Services Group – Legal

Action Requested Ratification Of Consultant Service Agreement with the Simpson Investigative Services Group

Background Simpson Investigative Services Group is being retained to investigation allegations of use of force on OUSD campuses.

Discussion The Simpson Investigative Services Group, led by Terry Simpson, a retired Police Chief, is being retained to investigate under the direction and supervision of the District's Legal Department the use of force on OUSD campuses. The term of the Agreement is March 10, 2015 to June 30, 2015, at an amount not to exceed \$30,000.

Recommendation Ratification Of Consultant Service Agreement with The Simpson Investigative Services Group

Fiscal Impact General purpose – Not to exceed \$30,000

Attachments

- Consultant Service Agreement

**CONSULTANT SERVICE AGREEMENT
BETWEEN THE
SIMPSON INVESTIGATIVE SERVICES GROUP
AND THE
OAKLAND UNIFIED SCHOOL DISTRICT**

This Agreement is made at Oakland, California as of March 11, 2015, by and between the **Simpson Investigative Services Group**, a private investigations/consulting sole proprietor business, licensed by the State of California, (hereinafter "Consultant"), and the **Oakland Unified School District Police Department**, (hereinafter "Client")

RECITALS

- A. The Oakland Unified School District seeks to employ an independent Consultant to perform professional services to assist the District Legal Department and Police Department in connection with Internal Administrative Investigations involving Oakland Unified School District Police Department Employees.
- B. Consultant has made a proposal to the Oakland Unified School District to provide such professional services, a copy of which is attached hereto as a part of Exhibit A, the Consultant desires the Oakland Unified School District to retain the Consultant subject to the terms and conditions set forth in this agreement.

AGREEMENTS

The parties agree as follows:

1. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the Client the Scope of Services described in Exhibit A attached hereto and incorporated herein by reference, except as may be modified by subsequent exhibits. Consultant shall provide said services at a time, place and in a manner specified in Exhibit A, except as may be modified by subsequent exhibits.

2. Client Requested Changes in Scope of Services. Client may, by written order, authorize changes to the Scope of Services described in this Agreement. If such changes cause an increase in cost or time required for the performance of the agreed-upon services, an equitable adjustment to the total compensation to be paid to the Consultant and, if necessary, the completion schedule for Consultant's performance under this Agreement shall be made by a written amendment to this Agreement.

3. Consultant Requested Changes in Scope of Services. Consultant shall not be

compensated for work outside the Scope of Services described in this Agreement, unless the changes in the Scope of Services are agreed upon between the Client and Consultant, *prior to the commencement of such services.*

A. Consultant notifies the Client in writing that it believes a change to the Scope of Services is necessary. Such notice shall explain the circumstances giving rise to such belief and shall set forth a proposed course of action, including a breakdown of any proposed adjustment in compensation payable to the Consultant or the completion schedule for Consultant's work resulting therefrom; and

B. Client approves the additional services as being outside the Scope of Services and the amount of compensation and adjustments, if any, to the completion schedule for the Consultant's work; and

C. The parties execute an amendment to this Agreement describing the additional services and compensation therefore together with any necessary adjustment in the completion schedule for the Consultants work.

4. Amount, Time and Manner of Payment for Consultant Services. Client shall pay Consultant for services rendered pursuant to this Agreement in the amounts and at the times and in the manner set forth in Exhibit A. The payments specified in Exhibit A shall be the only payments to be made to Consultant for the services rendered pursuant to this Agreement, unless the Client approves additional compensation for additional service as herein provided. The cost of the services under this Agreement shall not exceed \$30,000. The services shall be completed no later than June 30, 2015. Time is of the essence.

Consultant shall submit all billings for services rendered pursuant to this Agreement to the Client in a manner specified in Exhibit A; or, if no manner be specified in Exhibit A, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to the Client.

5. Client Assistance to Consultant. Except as set forth in Exhibit B, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, information, personnel and administrative assistance which may be required for furnishing services pursuant to this Agreement. Client shall furnish only the facilities, equipment, information, personnel and administrative assistance listed in Exhibit B according to the terms and conditions set forth in Exhibit B. Notwithstanding the foregoing, Client shall cooperate with Consultant and shall provide Consultant, without cost, such assistance as would be necessarily inferred to be a responsibility of Client from other provisions of this Agreement.

6. General Provisions. The general provisions set forth in Exhibit C are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms of conditions of this Agreement, other than those set forth in the Consultant's Proposal

attached as part of Exhibit A, the other terms or conditions shall control insofar as they are inconsistent with the general provisions.

7. Notice to Proceed. Consultant shall not commence the performance of its work under this agreement until it has been given notice by Client to do so. The date upon which said notice is given by the Client shall be the commencement date for the completion schedule which is part of this Agreement.

8. Communications. Any communication required during the administration of this Agreement, including notice of termination or cancellation shall be in writing and addressed to the respective party as follows:

To Client: Jeff Godown
Chief of Police
Oakland Unified School District Police Department
1011 Union Street,
Oakland, Ca 94607
Jeff.godown@ousd.k12.ca.us

Jacqueline P. Minor, General Counsel
Oakland Unified School District
1000 Broadway, Room 398
Oakland, CA 94607
Jacqueline.minor@ousd.k12.ca.us

To Consultant: Terry L. Simpson
Owner/Licensee
Simpson Investigative Services Group
PO Box 23786
Pleasant Hill, Ca 94523-0786
Terry Simpson <sig@att.net>

Notices shall be deemed to have been given under this Agreement when emailed to the party. Any party may change its address set forth above by giving the other party written notice of such change.

9. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

Executed by the parties as of the month, day and year first above stated.

Consultant: Simpson Investigative Services Group

By: Terry Simpson
Owner/Licensee

Oakland Unified School District

Jacqueline P. Minor
Jacqueline P. Minor, General Counsel

[Signature]
President, Board of Education

[Signature]
Superintendent and Secretary, Board of Education

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By:

Exhibit A

CONSULTANT'S PROPOSAL

Internal Administrative Investigations:

1. The Consultant will conduct a comprehensive Internal Affairs Investigations related to internal and external complaints involving employees of the Client. Complaints may be criminal or non criminal in nature.
2. The Consultant will conduct the Investigation in a manner that meets and/or exceeds all standards and regulations of the State of California Police Officer Standards and Training (hereinafter "POST"), and is in compliance with all Federal and State laws related to such Internal Affairs Investigations.
3. The Consultant will conduct Investigations in compliance with the Peace Officers Bill of Rights; and within the guidelines, rules and regulations of Client recognized labor organizations representing employees of the Oakland Unified School District Police Department.
4. The Consultant will provide the Client with a written report and all supporting documents as required by the Client and State and Federal laws. All interviews with persons involved in the investigation will be recorded when allowed by law. The written report and all materials related to the Investigation shall be the property of the Client.
5. The estimated time for project completion will be based on the nature and scope of the Investigation and will be reviewed with the Client prior to the initiation of the investigation.
6. The Consultant will participate if requested by the Client, at any disciplinary hearings, arbitration or court proceedings, that may result from the Investigation findings.
7. Compensation for Internal Affairs Investigations will be compensated at an hourly rate not less than \$150.00 per hour, plus actual expenses supported by receipts related to travel, lodging, and/or meals, pre-approved by the Client prior to the expense being incurred. Personal vehicle mileage shall be compensated at the stated IRS mileage rate at the time the travel takes place.

8. Payment for services and expenses is requested within 30 days of project completion and the submission of invoice or in accordance with normal vender payment schedules deemed appropriate by the Oakland Unified School District.

Exhibit B

CLIENT ASSISTANCE TO CONSULTANT

B-1. General Assistance of Client. To permit Consultant to render the services required hereunder, Client shall, at its expense and in a timely manner, do the following:

A. Appoint a staff member of Client to act as Project Coordinator between the Client, the Consultant and any third party involved in the Project who may be involved in Consultant's performance of services under this Agreement.

B. Provide the Consultant with all existing relevant information about the Project in the possession of Client, although it is primarily the Consultant's responsibility to compile all required background information;

C. Promptly review any and all documents and materials submitted to Client by Consultant;

D. Promptly notify Consultant of any fault or defect in the Project known to the staff of Client that may be directly relevant to the performance of Consultant's services hereunder; and

E. Promptly notify Consultant of any proposed or actual changes to the Project known by the Clients staff that would affect the ability of the Consultant to meet performance time lines.

Exhibit C

GENERAL PROVISIONS

The General Provisions of this Agreement are as follows:

C-1. Delivery of Work Product to Client. All work product of Consultant which consists of written information which Client will cause to be published in written form either for its own internal use or for dissemination to the public, including both preliminary and final drafts of such work product, shall be delivered to Client in both printed or typewritten form (as provided in this Agreement) and/or such other format(s) as may be agreed to by Client and Consultant, per Exhibit A.

C-2. Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Client. Client shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, Client shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

C-3. Consultant Not Agent. Except as Client may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Client in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Client to any obligation whatsoever.

C-4. Time and Personnel Devoted to Work. Consultant shall devote such time and personnel (including sub-consultants) to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement in accordance with the completion schedule for said work, if any, which is a part of this Agreement.

C-5. Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. If Consultant has designated a Project Manager for the performance of its work under this Agreement as a part of its proposal, then Consultant shall not employ any other person in the capacity of Project Manager without the prior written consent of the Client, which consent shall not be unreasonably withheld. If Consultant has not designated a Project Manager in its proposal, it shall appoint a person to serve as such not later than five (5) days following the date of this Agreement and shall concurrently give Client notice of said appointment and the identity of the person so appointed. If at any time during the term of this Agreement, the Client desires the removal of the person or persons assigned by Consultant to perform services pursuant to this Agreement,

Consultant shall remove any such person or persons immediately upon receiving notice from Client of the desire of Client for the removal of such person or persons.

C-6. Professional Standards for Consultant. Consultant shall adhere to accepted professional standards as set forth by relevant professional associations and shall perform all services required under this Agreement in a manner consistent with generally accepted professional procedures and standards for such services. In addition, Consultant shall perform all services required pursuant to this Agreement in the manner and according to generally accepted standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices his or her profession. All products of whatsoever nature which Consultant delivers to Client pursuant to this Agreement shall be prepared in a substantial, first class and defect-free manner and conform to the generally accepted industry or professional standards which are applicable to such work product.

C-7. Sub-consultants Employed by Consultant. Consultant agrees that it will employ, or utilize the personnel, including any sub-consultants, reasonably necessary in its discretion to perform the Scope of Services required of it by this Agreement. In no event shall such personnel or sub-consultants be employees of or contractors to either the party or parties who are either; (a) the owners of the property or properties directly affected by the Project, or (b) the applicant or applicants, if any, requesting the Client to render a decision relative to the Project.

All of the services required of the Consultant hereunder shall be performed by the Consultant or sub-consultants retained by Consultant as herein provided. Consultant may engage sub-consultants as it may deem necessary to the performance of its services hereunder: (a) without the prior approval of Client if the sub-consultant and the Scope of Services to be performed by that sub-consultant was identified in Consultant's proposal, or (b), with the prior written approval of Client if otherwise. Any such sub-consultants shall be paid by the Consultant from the funds payable to Consultant pursuant to the provisions of, and in no event shall Client be responsible for the payment of such sub-consultants.

C-8. Licenses; Permits; Etc. of Consultant. Consultant represents and warrants to Client that Consultant has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice Consultant's profession. Consultant shall also ensure that all sub-consultants are similarly licensed and qualified. Consultant and all sub-consultants shall also obtain a business license from Client before it commences its services under this Agreement.

Consultant represents and warrants to Client that Consultant shall, at Consultant's sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice Consultant's profession at the time the services are rendered.

C-9. Confidentiality. Consultant shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relating to the work of Consultant on this Project without the prior written consent of Client. If Client gives Consultant written

authorization to make any disclosures, Consultant shall do so only within the limits and to the extent of that authorization. Consultant may be directed or advised by the Client's Attorney on various matters relating to the performance of its work on the Project or on other matters pertaining to the Project, and in such event, Consultant agrees that it will treat all communications between itself, its employees and its sub-consultants as being communications which are within the attorney-client privilege.

C-10. Excusable Delays; Notice to Other Party of Delay. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party; provided that each party shall promptly notify the other party of such a condition which may cause such delay when it occurs and shall, to the best of its ability, provide the other party with an estimate of amount of delay in its performance under this Agreement that may result from the occurrence of said condition. Notice shall be presumptively deemed to be reasonable if given within seven (7) calendar days of the event which causes the delay.

C-11. Termination of Work by Client for Its Convenience. Client shall have the right to terminate this Agreement at any time for its convenience by giving notice of such termination to the Consultant, in the event Client shall give such notice of termination, Consultant shall cease rendering services upon receipt of said notice given as required in this Agreement. If Client terminates this Agreement:

A. Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photographing, storing on floppy computer disks and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

B. Client shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.

C. If Client terminates the Agreement for convenience before Client issues the Notice to Proceed to Consultant or before Consultant commences any work hereunder, whichever last occurs; Client shall not be obligated to make any payment to Consultant. If Client terminates this Agreement after Client has issued the Notice to Proceed to Consultant and after Consultant has commenced work under this Agreement, Client shall pay Consultant the reasonable value of services rendered by Consultant pursuant to this Agreement prior to the termination of the Agreement.

Client shall not in any manner be liable for Consultant's actual or projected lost profits had Consultant completed the services required by this Agreement, hi this regard, Consultant shall furnish to Client such financial information, as in the judgment of the Client, is necessary to determine the reasonable value of the services rendered by Consultant prior to termination, in the event of a dispute as to the reasonable value of the services rendered by Consultant prior to termination and the parties are

unable to agree upon said amount within sixty (60) days following the giving of the notice of termination by the Client, such dispute may, upon the request of either party to this Agreement, be resolved by arbitration conducted in accordance with the provisions of this Exhibit.

C-12. Non-Performance. In its performance of its work under this Agreement, Consultant shall not discriminate against any person because of the race, religion, creed, color, national origin, ancestry, disability or physical handicap, medical condition, marital status or sex of such person.

C-13. Ownership of Information. All professional and technical information developed under this Agreement and all worksheets, reports, information stored on computers, CD's, zip drives or tapes and related data shall become the property of Client irrespective of where located or stored and Consultant agrees to deliver all such documents and information to Client, without charge and in whatever form it exists, on the completion of the Consultant's services hereunder. Consultant shall have no ownership interest in such documents and information.

C-14. Insurance Coverage. During the term of this Agreement, the Consultant shall maintain in full force and effect policies of insurance set forth herein and will provide the Client with written proof of said insurance. Consultant shall maintain coverage as follows:

A. **General Liability.** \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required per occurrence limit.

B. **Worker's Compensation Insurance (Employer's Liability).** Workers' Compensation insurance as required by the State of California and Employers' Liability insurance.

Workers' Compensation: As required by the State of California.

Employers' Liability: \$ 1,000,000 each accident, \$ 1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease.

C. **Errors and Omissions Liability.** \$2,000,000 per occurrence or as appropriate to the consultant's profession.