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Enactment Number	13-0435
Enactment Date	2-27-13 lf



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Tony Smith, PH.D., Superintendent
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date February 27, 2013

Subject Independent Consultant Agreement for Professional Services - WHM Incorporated - Carter Baseball Scoreboard Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with WHM Incorporated for Electrical Engineering Services on behalf of the Carter Baseball Scoreboard Project, in an amount not-to exceed \$2,200.00. The term of this Agreement shall commence on February 27, 2013 and shall conclude no later than June 30, 2013.

Background A new baseball stadium scoreboard has been donated by the community for the Field of Dreams at Carter MS (International High School). The District is providing the services of an Electrical Engineering for the electrical work required for the scoreboard.

Local Business Participation Percentage 0.00%

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 Independent Consultant Agreement for Professional Services with WHM Incorporated for Electrical Engineering Services on behalf of the Carter Baseball Scoreboard Project, in an amount not-to exceed \$2,200.00. The term of this Agreement shall commence on February 27, 2013 and shall conclude no later than June 30, 2013.

Fiscal Impact

Developers Fee Fund

Attachments

- Independent Consultant Agreement including scope of work

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

Carter Baseball Scoreboard

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 24th day of January, 2013 by and between the Oakland Unified School District, Oakland, California ("District") and WHM Incorporated ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

Services. The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

**The scope of the project is to provide electrical consulting services
For the installation of the baseball scoreboard at Carter MS (Field of
Dreams) pursuant to Division of State Architect requirements.**

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Two thousand, two hundred dollar and no cents (\$2,200.00)**. District shall pay Consultant according to the following terms and conditions:
- 4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant 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 Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant 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. Consultant 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 Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor 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.

7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant 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 Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant 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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records,

and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant 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 Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. Termination.

12.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

12.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 12.3.1. material violation of this Agreement by the Consultant; or
- 12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant'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 shall cease, 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 this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant 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 Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of,

connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

14. Insurance.

14.1. The Consultant 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.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

14.1.2. **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 Consultant 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.

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

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

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

14.2.1. 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."

14.2.2. 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.

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

14.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

14.3. **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.

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

16. **Compliance with Laws.** Consultant 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. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant 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 Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Consultant and all Consultant'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.

18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant 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 Consultant 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 Consultant 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 Consultant's performing of any portion of the Services.

21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **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.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant 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.
27. **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:

District:

Oakland Unified School District
955 High Street
Oakland, CA 94601
ATTN: **Tadashi Nakadegawa,**
Director of Facilities

Consultant:

Tiffany L. Kane
WHM Incorporated
1605 School Street
Moraga, CA 94556

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.

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 administrative 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. 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.

33. 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.

34. 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.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

36. 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.

37.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.

38.Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.


OAKLAND UNIFIED SCHOOL DISTRICT OR THE DISTRICT VERIFIES THAT THE CONTRACTOR DOES NOT APPEAR ON THE EXCLUDED PARTIES LIST AT www.epls.gov/epls/search.do.

Susie Butler-Berkley, 2-5-2013

Susie Butler-Berkley
Contract Analyst

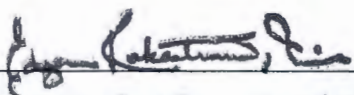
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

OAKLAND UNIFIED SCHOOL DISTRICT



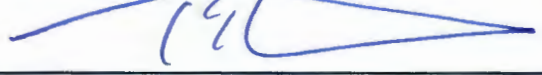
David Kakashiba, President, Board of Education

Date: 2/28/13



Edgar Rakestraw, Jr., Secretary, Board of Education

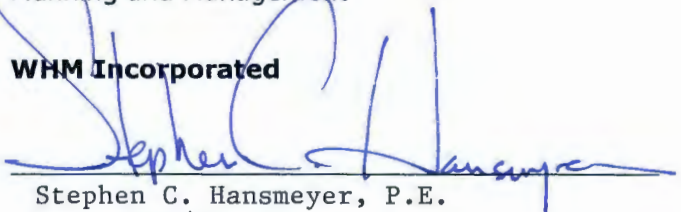
Date: 2/28/13



Timothy White, Associate Superintendent Facilities Planning and Management

Date: _____

WHM Incorporated



Stephen C. Hansmeyer, P.E.
Principal/President

1/29/13

APPROVED AS TO FORM:



Catherine Boskoff, Facilities Counsel

Date: 2.6.13

File ID Number: 13-0339
Introduction Date: 2-27-13
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By: lf

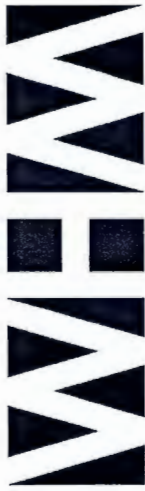


EXHIBIT A

WHM Incorporated, Engineering Consultants, 1605 School Street Moraga, CA 94556
Tel (925) 376-2902 Fax (925) 376-2904

January 10, 2013

Mr. Donald Chew
Project/Construction Manager
Oakland Unified School District
955 High Street
Oakland, CA 94801

Re: Carter Middle School
Scoreboard Electrical Installation

Dear Don,

We are pleased to submit our revised fee proposal for consultation and engineering services for the subject project.

A. SCOPE OF WORK

1. Site visit and survey of existing scoreboard.
2. Provide electrical plans showing:
 - a. Scoreboard grounding requirements.
 - b. Required wiring modification for connection of scoreboard to portable generator.
 - c. Note that generator is supplied by district and not specified on electrical documents.
3. Provide electrical specifications including materials and installation requirements.
4. Coordinate drawings with your office and DSA requirements.

B. CONSTRUCTION ADMINISTRATION

1. Review submittals and/or shop drawings.
2. Final walk-through and report.

C. INFORMATION REQUIRED FROM THE ARCHITECT

1. Owner/Architect shall provide backgrounds in AutoCAD format and a hard copy plot of each plan.
2. WHM has communication software and drawing files can be transferred electronically to CAD@whmnc.com.

D. WORK NOT INCLUDED

1. Solicit bids, evaluate and/or purchase any electrical materials or equipment.
2. Preparing shop drawings for equipment installation and field verifying of dimensions required for equipment fabrication.

E. PROJECT TEAM

WHM Inc. will provide Stephen C. Hansmeyer, P.E., Principal-in-Charge, and Tiffany L. Kane, Project Manager, as key staff in producing the work.

F. EXTRA SERVICES

Extra work due to changes in scope beyond our control to include equipment or facility rearrangement that dictate redesign or redrawing in part or entirety of the project drawings will be billed at the following hourly rates:

Principals	\$140.00 per hour
Staff Engineer	100.00 per hour
Designer	78.00 per hour
CAD Drafter	73.00 per hour
Clerical	57.00 per hour

G. PRINTING COSTS

Reimbursable expenses such as Xerox vellums, multiple sets of prints, CAD plots, requested messenger services or overnight delivery, etc., will be billed to you at our cost.

H. FEE AND TERMS OF PAYMENT

We propose to furnish the work as outlined above for the following fee:

Time and Materials not to exceed \$2,200.00

Terms of Payment

Regular monthly invoices will be submitted based on the work complete and with a maximum amount as indicated under "Base Fee". Invoices will be submitted by WHM Inc. to Oakland Unified School District.

I. CONTRACT CANCELLATION

Should our services be canceled for any reason whatsoever before completion of work under this contract, the work completed to date will be billed based on the number of hours expended to date, at the rates quoted under "Extra Work" not to exceed the fees quoted herein.

J. CONTRACT DELAY

In the event the design work is started and stopped due to reasons beyond our control causing a delay of 4 months or greater, the fees quoted herein will be increased at a rate of 6% per year to cover increased operating costs due to inflation and loss of job efficiency caused by lack of job continuity.

K. INSURANCE

WHM Inc. maintains as minimum coverage the following insurance:

1. Errors and omissions insurance coverage in the amount of \$1,000,000 for liability in connection with the work.
2. Comprehensive/commercial general liability insurance in the amount of \$1,000,000.

L. ACCEPTANCE

Your acceptance of this proposal will constitute an agreement between WHM Inc. and Oakland Unified School District and will be our authorization to proceed with work on this project as defined under SCOPE OF WORK.

Thank you for your interest in our firm. We look forward to working with you on this project.

Sincerely,

Tiffany L. Kane

Tiffany L. Kane
Electrical Designer

Stephen C. Hansmeyer

Stephen C. Hansmeyer, P.E.
Principal

SCH/tlk

Accepted: _____
Date: _____

Information regarding Consultant:

Consultant: WHM Inc.

License No.: E-17369

Address: 1605 School Street
Moraga, CA 94556

Telephone: 925-376-2902

Facsimile: 925-376-2904

E-Mail: cad@whminc.com

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: CA
- Limited Liability Company
- Other: _____

94-2407160;
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:

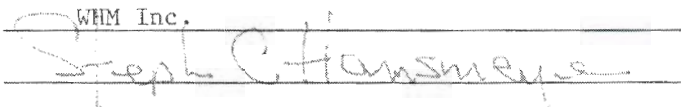
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. 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 his 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 5, 2013

Proper Name of Consultant: WHM Inc.

Signature: 

Print Name: Stephen C. Hansmeyer

Title: President

(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 awarding body prior to performing any Work under this Contract.)

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Consultant certifies that it has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

_____ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, 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 Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

XX Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its sub-consultants' employees is

Name: Tiffany L. Kane

Title: Project Manager

_____ The Work on the Contract is at an unoccupied school site and no employee and/or sub-consultant or supplier of any tier of Contract shall come in contact with the District pupils.

Consultant's responsibility for background clearance extends to all of its employees, Sub-consultants, and employees of Sub-consultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

Date: February 5, 2013

Proper Name of Consultant: WHM Inc.

Signature: Stephen C. Hansmeyer

Print Name: Stephen C. Hansmeyer

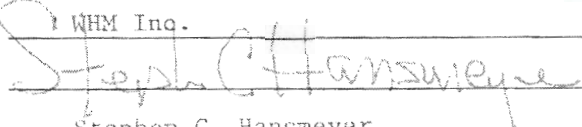
Title: President

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: February 5, 2013

Proper Name of Consultant: WHM Inc.

Signature: 

Print Name: Stephen C. Hansmeyer

Title: President

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is **not** made part of this Agreement.

(PLEASE SEE THE ATTACHED PROPOSAL FROM _____)



CERTIFICATE OF LIABILITY INSURANCE

OP ID: RB

DATE (MM/DD/YYYY)

01/29/2013

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 InsPro- Jim Lohmann x105-(A&E) Insurance Services 4020 Moorpark Avenue, #104 San Jose, CA 95117 Rhonda Buck	Phone: 408-241-0014 Fax: 408-241-0037	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: WHMIN-2	FAX (A/C, No):
	INSURED WHM, Inc. 1605 School Street Moraga, CA 94556		INSURER(S) AFFORDING COVERAGE INSURER A : U.S. Specialty Insurance Co. INSURER B : Continental Casualty Co. INSURER C : The Hartford INSURER D : INSURER E : INSURER F :

COVERAGES

CERTIFICATE NUMBER:

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 INSR	SUBR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			2057568085	11/01/2012	11/01/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			2057568085 2057568085	11/01/2012 11/01/2012	11/01/2013 11/01/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	57WECLM5562	06/30/2012	06/30/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	PROFESSIONAL LIABILITY			USS 12 22869	04/16/2012	04/16/2013	PER CLAIM \$ 1,000,000 AGGREGATE \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required)
 Oakland Unified School District and its directors, officers, employees, agents and representatives are additional insured as required by written contract with respect to operations of the named insured per form SB300176B attached.

CERTIFICATE HOLDER**CANCELLATION**

OAKLA-4

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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
**DESIGN ONE LIABILITY EXTENSION WITH OFFICE POLLUTION LIABILITY
COVERAGE**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

SCHEDULE OF LIMITS FOR OFFICE PREMISES LIMITED POLLUTION LIABILITY COVERAGE

Each Pollution Incident Limit \$
Pollution Liability Aggregate Limit \$

(If no entries appear in the above Schedule, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Table of Endorsement Contents

Item # Topic Name

- | | |
|--|---|
| Changes to Section A. Coverages | |
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| Changes to Section B. Exclusions | |
| 2. | Extended Property Damage Coverage |
| 3. | Contractual Liability for Personal and Advertising Injury |
| Changes to Section C. Who Is An Insured | |
| 4. | Additional Insureds: State or Political Subdivisions – Permits, State or Political Subdivisions, Controlling Interest, Managers or Lessors of Premises, Mortgagee, Assignee or Receiver, Co-owner of Insured Premises, Lessor of Equipment |
| 5. | Fellow Employee First Aid |
| 6. | Retired Partners, Members, Directors, and Employees |
| 7. | Participation in Professional Joint Ventures |
| 8. | Blanket Additional Insured with Products-Completed Operations Coverage and Blanket Waiver of Subrogation |
| 9. | Amendment – Aggregate Limits of Insurance (Per Project) |
| Changes to Section F. Definitions | |
| 10. | Extended Bodily Injury |
| 11. | Contractual Liability – Railroads |
| 12. | Office Premises - Limited Pollution Liability Coverage |

1. Enhanced Supplementary Payments

The values shown in paragraph 1.f., **Coverage Extension – Supplementary Payments**, of **Section A. Coverages** are amended as follows:

- A.** The amount shown in paragraph (b) for bail bonds is amended from \$1,000 to \$3,000.
- B.** The amount shown in paragraph (d) for actual loss of earnings because of time off work is amended from \$250. per day to \$300. per day.

2. Extended Property Damage

Exclusion 1.a., **Expected or Intended Injury, of Section B. Exclusions Applicable to Business Liability Coverage**, is deleted and replaced with the following:

This insurance does not apply to:

- a.** "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury"

or "property damage" resulting from the use of reasonable force to protect persons or property.

3. Contractual Liability for Personal and Advertising Injury

Exclusion 1.p.(5) of Section B. Exclusions Applicable to Business Liability Coverage, is deleted.

4. Additional Insureds

Section C. Who Is An Insured is amended to include the following additional insureds, subject to the provisions stated below:

A. State or Political Subdivisions – Permits

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
2. This insurance does not apply to:
 - a. "Bodily injury," "property damage," "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

B. State or Political Subdivisions

A state or political subdivision subject to the following provisions:

1. This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:
 - a. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. The construction, erection, or removal of elevators.
2. This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury," "property damage" or personal and advertising injury" arising out of operations performed for the state or municipality.

C. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

1. Their financial control of you;
2. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

D. Managers or Lessors of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

E. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

F. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

G. Lessor of Equipment

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their written contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded, these additional insureds, the following additional exclusions apply:

This insurance does not apply:

1. To any "occurrence" which takes place after the equipment lease expires; or
2. To "bodily injury," "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs A. through G. above does not apply to "bodily injury" or "property damage" included within the "products-completed-operations hazard."

5. Fellow Employee First Aid

Paragraph 2.a.(1)(d) of **Section C. Who Is An Insured** is deleted and replaced with the following:

However none of these "employees" is an insured for:

- (d) "Bodily injury" or "personal and advertising injury" arising out of his or her providing or failing to provide professional health care services. However this restriction does not apply to first aid administered by an "employee" who is not an employed doctor or nurse.

6. Retired Partners, Members, Directors, and Employees

Paragraph 2. of **Section C. Who Is An Insured** is amended to include the following as insureds:

Individual persons who are retired partners, members, directors or employees are also insureds, but only for "bodily injury," "property damage," "personal and advertising injury" that results from services performed for you under your direct supervision.

7. Participation in Professional Joint Ventures

A. The following paragraph 5. is added to **Section C. Who Is An Insured**:

5. You are also an insured for your participation in a past or present joint venture that is not named on the Declarations, but only if such joint venture meets all of the following criteria:
 - a. Each and every one of your co-venturers are architectural, engineering or surveying firms;
 - b. The joint venture has no direct employees; and
 - c. The joint venture does not own, rent or lease any real or personal property.

However, you are insured only for the conduct of your business within such a joint venture. You are not insured for liability arising out of the acts or omissions of other co-venturers, nor of their partners, members or employees.

This insurance is excess over any other insurance available to such a joint venture, whether primary, excess, contingent, or on any other basis.

B. The last paragraph of **Section C. Who Is An Insured** is deleted and replaced by the following:

Except as provided in 5. above, no person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

8. Blanket Additional Insured with Products-Completed Operations Coverage and Blanket Waiver of Subrogation

The following is added to **Section C., - Who is an Insured**:

- A. The Businessowners Liability Coverage form is amended to include as an insured, any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement, but the written contract or written agreement must be:
 1. Currently in effect or becoming effective during the term of this policy; and
 2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."
- B. The insurance provided to the additional insured is limited as follows:
 1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.
 2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.

3. The coverage provided to the additional insured within this endorsement and section titled Liability and Medical Expenses Definitions – "Insured Contract" (Section F., item 9.), within the Businessowners Liability Coverage Form, does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.
4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services, including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as a construction manager; or
 - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
5. This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:
 - a. The construction or demolition work while you are acting as a construction or demolition contractor. This exclusion does not apply to work done for or by you at your premises.

C. Businessowners General Liability Conditions – Duties in the Event of Occurrence, Offense, Claim or Suit (Section E.2.) of the Businessowners Liability Coverage Form is amended to add the following:

An additional insured under this endorsement will as soon as practicable:

1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;
2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and

4. Agree to make available any other insurance which the additional insured has for a loss we cover under this coverage part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

D. Other Insurance (Section H.2. and H.3.) of the Businessowners Common Policy Conditions are deleted and replaced with the following:

2. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing to the additional insured's own coverage. This insurance is excess over any other insurance to which the additional insured has been added as an additional insured by endorsement.
3. When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit" if no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

E. Transfer of Rights of Recovery Against Others To Us (Section K.2.) of the Businessowners Common Policy Conditions is deleted and replaced with the following:

2. We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement 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 within the "products-completed operations hazard."

9. Amendment- Aggregate Limits of Insurance (Per Project)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Coverage **A.1.**, and for all medical expenses caused by accidents under Coverage **A.2.**, which can be attributed only to ongoing operations at a single construction project:
 1. A separate Construction Project General Aggregate limit applies to each construction project. The Construction Project General Aggregate limit is equal to the amount of the General Aggregate limit shown in the Declarations.
 2. The Construction Project General Aggregate limit is the most we will pay for the sum of all damages payable under Coverage **A.1.**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and for medical expenses payable under Coverage **A.2.** regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits."
 3. Any payments made under Coverage **A.1.** for damages or under Coverage **A.2.** for medical expenses shall reduce the Construction Project General Aggregate limit for the applicable construction project. Such payments shall not reduce the General Aggregate limit shown in the Declarations nor shall they reduce any Construction Project General Aggregate limit applicable to other construction projects.
 4. The limits shown in the Declarations for Liability and Medical Expenses, Damage to Premises Rented to You, and Medical Expenses continue to apply. However, instead of being subject to the General Aggregate limit shown in the Declarations,

such limits will be subject to the applicable Construction Project General Aggregate limit.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences," and for all medical expenses caused by accidents, which cannot be attributed only to ongoing operations at a single construction project:
 1. Any payments made under Coverage **A.1.** for damages or under Coverage **A.2.** for medical expenses shall reduce the amount available under the General Aggregate limit or the Products/Completed Operations Aggregate limit, whichever is applicable; and
 2. Such payments shall not reduce any Construction Project General Aggregate limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products/Completed Operations Aggregate limit, and not reduce the General Aggregate limit nor any Construction Project General Aggregate limit.
- D. If a construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of the Limits Of Insurance section not otherwise modified by this endorsement shall continue to apply as stipulated.

10. Extended Bodily Injury

Definition 3. "**Bodily Injury**," of **Section F., Definitions**, is deleted and replaced with the following:

3. "**Bodily Injury**" means bodily injury, sickness or disease, mental injury or mental anguish sustained by a person, including death resulting from any of these.

11. Contractual Liability - Railroads

With respect to operations performed within 50 feet of railroad property, the definition of "insured contract" in **Section F., - Definitions** is replaced by the following:

8. "**Insured Contract**" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - a. Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in paragraph (1) above and supervisory, inspection, architectural or engineering activities.

12. Office Premises Limited Pollution Coverage

This Office Premises Limited Pollution Coverage section of the Architects, Engineers and Surveyors Extension endorsement modifies several portions of the Businessowners Liability Coverage Form. These modifications apply only to the coverage provided by this section of the endorsement.

A. The following paragraph 3. is added to **SECTION A. COVERAGES:**

3. Office Premises Limited Pollution Coverage

a. Insuring Agreement

(1) We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" which directly results from a covered "pollution incident" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "pollution incident" and settle any claim or "suit" that may result. But:

(a) The amount we will pay for damages is limited as described in **SECTION D. LIMITS OF INSURANCE** as amended by this endorsement; and

(b) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

(c) We have no duty to defend "suits" seeking damages not covered by this endorsement.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under paragraph 1.e. **Coverage Extension – Supplementary Payments** of **SECTION A.** as amended by this section of the endorsement.

(2) We will also reimburse you for "preventive remedial expense" that directly results from a covered "pollution incident" to which this insurance applies.

We will reimburse you up to \$25,000 per annual policy period for all "preventive remedial expense" directly resulting from all covered "pollution incidents," subject to a deductible of \$5,000 per covered "pollution incident." This annual limit is in addition to the per incident deductible, and is in addition to the Pollution Liability Aggregate Limit

described in **SECTION D. LIMITS OF INSURANCE** as amended by this endorsement.

This "preventive remedial expense" coverage does not apply to expenses that are covered by any other insurance available to the insured.

- (3) This insurance applies to "bodily injury," "property damage" or "preventive remedial expense" at, on or from "your office premises" only if:
- (a) The "bodily injury" directly results from a "pollution incident" that happens entirely above-ground at or from "your office premises"; or
 - (b) The "property damage" occurs off of "your office premises" and directly results from a "pollution incident" that happens entirely above-ground at or from "your office premises"; or
 - (c) The "preventive remedial expense" directly results from a "pollution incident" that happens entirely above-ground on "your office premises" and does not result in any covered "bodily injury" or "property damage"; and
 - (d) The "pollution incident":
 - (i) is demonstrable as commencing and ending within 72 hours;
 - (ii) is accidental;
 - (iii) "commences during the policy period"; and
 - (iv) happens in the "coverage territory."
- (4) "Commences during the policy period" means that the first emission, discharge, release or escape of the "pollutant" or "pollutants" from which the "bodily injury" or "property damage" arises is demonstrable as having occurred during this policy period.
- (5) All "bodily injury" or "property damage" resulting from one "pollution incident" shall be deemed to have occurred only at the

commencement date of the covered "pollution incident."

- (6) The insured's responsibility to pay damages because of "bodily injury" or "property damage" must be determined in a "suit" on the merits in the "coverage territory" or in a settlement we agree to.
- (7) Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services, or death resulting from the "bodily injury."

B. SECTION B. EXCLUSIONS is deleted and replaced by the following:

This insurance does not apply to:

- a. "Bodily injury," "property damage" or "preventive remedial expense" expected or reasonably foreseeable from the standpoint of the insured.
 - b. "Bodily injury," "property damage" or "preventive remedial expense" arising out of a "pollution incident" which is a repeat or resumption of a previous "pollution incident" involving the same pollutant from essentially the same source within the previous twelve (12) months, at the same premises.
 - c. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
 - d. Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
 - e. "Bodily injury" to:
 - (1) An employee of the insured arising out of and in the course of:
 - (i) employment by the insured; or
 - (ii) performing duties related to the conduct of the insured's business.
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.
- This exclusion applies:
- (1) Whether the insured may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- f. "Property damage" to
- (1) A "waste facility" to which waste from the operations of an insured is consigned;
 - (2) Property you own, rent, or occupy now or at any time in the past;
 - (3) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
 - (4) Property loaned to an insured; or
 - (5) Personal property in care, custody or control of an insured.

Paragraph (2) of this exclusion f. does not apply to "preventive remedial expense" at property you own, rent or occupy now.

- g. "Bodily injury" at or from a "waste facility" to which waste from the operation of an insured is consigned.
- h. "Bodily injury," "property damage" or "preventive remedial expense" arising out of a "pollution incident" at or from a "waste facility" which is on "your office premises."
- i. "Bodily injury" or "property damage" included within the "products-completed operations hazard."
- j. "Bodily injury" or "property damage" arising out of the ownership or operation of any offshore facility as defined in the Outer Continental Shelf Lands Act Amendment of 1978 or the Clean Water Act of 1977 as amended 1978 or any deepwater port as defined in the Deepwater Port Act of 1974 as amended or as may be amended.
- k. "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire at any premises, site or location which is or was at any time owned or occupied by or rented or loaned to any insured.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- l. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto," rolling stock or watercraft owned or operated by or rented or loaned to any

insured. Use includes operation and "loading or unloading."

This exclusion does not apply to "bodily injury" or "property damage" arising out of parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured.

- m. "Bodily injury" or "property damage" arising out of the emission, discharge, release or escape of drilling fluid, oil, gas or other fluids from any oil, gas, mineral, water or geothermal well.
- n. "Bodily injury," "property damage" or "preventive remedial expense" arising out of a "pollution incident" which results from or is directly or indirectly attributable to failure to comply with any applicable statute, regulation, ordinance, directive or order relating to the protection of the environment and promulgated by any governmental body, provided that failure to comply is a willful or deliberate act or omission of:
- (1) The insured; or
 - (2) You or any of your members, partners, executive officers or managers of limited liability companies.
- o. "Bodily injury," "property damage" or "preventive remedial expense" arising out of acid rain.
- p. Any loss, cost or expense arising out of any request, demand or order by a governmental authority that any insured or others test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the affects of "pollutants" at any site which is included on an EPA or state environmental agency priority clean-up list prior to the "pollution incident."
- q. "Bodily injury," "property damage" or "preventive remedial expense" arising out of a "pollution incident" which results from failure of air or waste water pollution control equipment.
- r. "Bodily injury," "property damage" or "preventive remedial expense" resulting from the "hazardous properties" of "nuclear material."

As used in this exclusion:

"Hazardous properties" includes radioactive, toxic, or explosive properties;

"Nuclear material" means "source material," "special nuclear material," or "by-product material";

"Source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

- s. "Bodily injury," "property damage" or "preventive remedial expense" arising out of a "pollution incident" from any insured's premises that was used by that insured for the storage, disposal, processing or treatment of waste materials and was:
- (1) Sealed off, closed, abandoned or alienated prior to the effective date of this policy; or
 - (2) Sealed off or closed subject to statute, ordinance or governmental regulation or directive requiring maintenance or monitoring during or after sealing off or closure.
- t. "Bodily injury," "property damage" or "preventive remedial expense" arising out of waste derived from medical services, procedures, testing or research, and which could potentially transmit disease.
- u. Any multiple, punitive or exemplary damages or fines or penalties. However, if a "suit" is brought against the insured with respect to a claim for acts or alleged acts falling within the coverage hereof, seeking both compensatory and punitive or exemplary damages, then we will afford a defense to such action, without liability for such punitive or exemplary damages.
- v. "Bodily injury," "property damage" or "preventive remedial expense" arising out of:
- (1) the actual, alleged or threatened exposure at any time to asbestos or any loss, cost, or expense that may be awarded or incurred by reason of a claim or "suit" for such injury or damage; or
 - (2) complying with a governmental direction or request to test for, monitor, clean-up, remove, contain, or dispose of asbestos.

Asbestos means the mineral in any form whether or not the asbestos was at any time:

- (1) Airborne as a fiber, particle, or dust;

- (2) Contained in or formed a part of a product, structure, or other real or personal property;
- (3) Carried on clothing;
- (4) Inhaled or ingested; or
- (5) Transmitted by any other means.

w. "Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

x. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

However, this exclusion does not apply to liability for damages because of "property damage" that is not otherwise excluded by this coverage, **Office Premises Limited Pollution Coverage**, unless the request, demand, order or statutory or regulatory requirement or claim or "suit" is solely by or on behalf of a governmental authority.

C. Paragraph 1.f.(1)(c) of **Coverage Extension – Supplementary Payments**, of **SECTION A. COVERAGES** is deleted and replaced by the following:

- (3) Expenses incurred by the insured for first aid to others at the time of a "pollution incident" for "bodily injury" to which this insurance applies.

D. **SECTION C. WHO IS AN INSURED** is amended as follows:

1. The following subparagraph d. is added to paragraph 4. of **SECTION C. WHO IS AN INSURED**:

- d. Coverage **4., Office Premises Limited Pollution Coverage**, does not apply to "bodily injury" or "property damage" arising out of "pollution incidents" that occurred before you acquired or formed the organization.
2. The following additional paragraph is added at the end of **SECTION C. WHO IS AN INSURED**:
- No person or organization identified as an insured on any endorsement now or hereafter attached to this Coverage Part is an insured with respect to **COVERAGE 4., Office Premises Limited Pollution Coverage**, unless that endorsement specifically references **Office Premises Limited Pollution Coverage** by name.

E. SECTION D. LIABILITY AND MEDICAL PAYMENTS LIMITS OF INSURANCE is deleted and replaced by the following:

LIMITS OF INSURANCE

1. The Limits of Insurance described in this endorsement's Schedule of Limits for Office Premises Limited Pollution Coverage, and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits."
2. The Pollution Liability Aggregate Limit is the most we will pay for all damages because of all "bodily injury" and "property damage" directly resulting from all "pollution incidents" to which **Office Premises Limited Pollution Coverage** applies.
3. Subject to 2. above, the Each Pollution Incident Limit shown in the Schedule is the most we will pay for the sum of all damages because of "bodily injury" and "property damage" directly resulting from any one "pollution incident" to which **Office Premises Limited Pollution Coverage** applies.
4. The Limits of Insurance of this **Office Premises Limited Pollution Coverage** apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of

the preceding period for purposes of determining the Limits of Insurance.

5. The Limits of Insurance for this **Office Premises Limited Pollution Coverage** are separate from and not subject to the General Aggregate Limit for **COVERAGE 1. Business Liability**.
 6. The Limits of Insurance for this **Office Premises Limited Pollution Coverage** shall not be amended by any endorsement attached to this policy which does not specifically reference **Office Premises Limited Pollution Coverage**.
- F. SECTION E. BUSINESSOWNERS GENERAL LIABILITY CONDITIONS** is amended as follows:

1. Condition **2.a.** is replaced by the following:
 2. **Duties In The Event of Pollution Incident, Claim or Suit.**
 - a. You must see to it that we are notified as soon as practicable of a "pollution incident" that may result in a claim. To the extent possible, notice should include:
 - (1) How, when, and where the "pollution incident" took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any release, and of any injury or damage arising out of the "pollution incident."
2. The following Condition is added:

Remediation of Insured's Premises

 - a. Except for "preventive remedial expense" as described in paragraph **4.a.(2)** of **SECTION A. COVERAGES**, this policy's **Office Premises Limited Pollution Coverage** doesn't provide coverage for clean-up of "your premises." If a "pollution incident" happens on "your premises" that poses imminent and substantial danger of "bodily injury" or "property damage" to which this insurance applies, you must promptly take at your own expense all reasonable steps to curtail or prevent covered "bodily injury" or "property damage" from happening.
 - b. If, in defiance of the intent of this policy, we are ever compelled by court or governmental order to pay to clean up

part or all of "your premises," you agree to reimburse us for all such costs.

With respect to your duties under this Condition, if a dispute arises between you and us with respect to payment and/or reimbursement for any expenses for testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of "pollutants" associated with "your premises," the matter shall be resolved by arbitration, and such arbitration shall be governed by the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereover.

If a dispute subject to arbitration hereunder should arise, either party may make a demand for arbitration by filing a demand in writing with the other. There shall be three arbitrators, one named in writing by each of the parties within ten (10) days after the demand for arbitration is given and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) are empowered by both parties to proceed ex parte. Arbitration shall take place in Chicago, Illinois and the hearing before the arbitrator(s) of the matter to be arbitrated shall be at the time and place within said city as is selected by the arbitrator(s). The arbitrator(s) shall select such time and place promptly after his/her (or their) appointment and shall give written notice thereof to each party at least 20 days prior to the date so fixed. At the hearing, any relevant evidence may be presented by either party, and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence may be admitted or excluded in the sole discretion of the arbitrator(s). Said arbitrator(s) shall hear and determine the matter and shall execute and acknowledge their award in writing and cause a copy thereof to be delivered to each of the two parties. The decision of any two arbitrators shall be final, binding and conclusive.

The submission of a dispute to the arbitrator(s) may be rendered by any Court having jurisdiction. If three arbitrators are selected under the foregoing procedure but two of the three fail to reach an agreement in the determination of the matter in question, the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is finally reached by two of the three arbitrators selected. The costs of such arbitration shall be borne equally by the parties or in such proportions as the arbitrator(s) shall determine.

Each party shall appoint and pay for any counsel appointed to represent it in such arbitration, unless otherwise provided in law.

This Section is not to be construed to give a right of action against us by a claimant not otherwise provided by law.

G. SECTION H. OTHER INSURANCE of the Businessowners Common Policy Conditions is amended to add the following paragraph **4.:**

4. This condition does not apply to coverage afforded under Insuring Agreement **a.(2)** of Coverage **4. Office Premises Limited Pollution Coverage.**

H. SECTION F. LIABILITY AND MEDICAL EXPENSES DEFINITIONS is amended to include the following definitions:

"Commences during the policy period" means that the first emission, discharge, release or escape of the "pollutant" or "pollutants" from which the "bodily injury" or "property damage" arises is demonstrable as having occurred during this policy period.

"Pollution incident" means the emission, discharge, release, or escape of "pollutants," provided that such emission, discharge, release, or escape results in the injurious presence of "pollutants" in or upon land, the atmosphere, interior of a building or any water course, body of water or ground water. A series of related emissions, discharges, releases or escapes of "pollutants" will be deemed to be one "pollution incident."

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

"Waste facility" means any site to which waste is delivered for storage, disposal, processing or treatment, whether or not such site is licensed by a governmental authority to perform such storage, disposal, processing or treatment.

"Your office premises" means "locations" you own, rent or occupy for general office purposes. "Your office premises" does not mean storage yards, nor land held for speculation or development, even if such yards or land adjoin your office building. "Your office premises" does not mean premises you live in. For the purpose of this definition, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
Project Name	Carter Baseball Scoreboard	Site	Carter High School
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	WHM Incorporated	Agency's Contact	Tiffany L. Kane		
OUSD Vendor ID #	V057378	Title	Project Manager		
Street Address	1605 School Street	City	SF	State	CA Zip 94556
Telephone	925-376-2901	Policy Expires			
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
OUSD Project #	07142				

Term			
Date Work Will Begin	2-27-2013	Date Work Will End By <small>(not more than 5 years from start date)</small>	6-30-2013

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$ 2,200.00
Pay Rate Per Hour <small>(If Hourly)</small>	\$	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
0000	Developer Fee	3539000890	6215	\$2,200.00

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.					
1.	Division Head	Charles Love	Phone	510-535-7081	Fax 510-535-7082
	Capital Program Contract & Accounting Manager				
	Signature		Date Approved	2-6-13	
2.	General Counsel, Department of Facilities Planning and Management				
	Signature		Date Approved	2-6-13	
3.	Associate Superintendent, Facilities Planning and Management				
	Signature		Date Approved		
4.	President, Board of Education				
	Signature		Date Approved		