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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools,
Thriving Students

Memo

To Board of Education

From Gary Yee, Ed.D., Superintendent and Secretary, Board of Education
Vernon Hal, Deputy Superintendent, Business and Operations
Jerry Johnson, Risk Officer

Board Meeting Date May 28, 2014

Subject Approval by the Board of Education of a Contract for Professional Services with Hazelrigg Claims Management Services, Inc., for Workers' Compensation Claims Administration

Action Requested Approval of a three year contract, with two, one-year options to extend, for professional services with Hazelrigg Claims Management Services, Inc., ("Hazelrigg") for Workers' Compensation Claims Administration in an amount not to exceed:
\$571,900 for the period of July 1, 2014 through June 30, 2015;
\$589,100 for the period of July 1, 2015 through June 30, 2016; and
\$606,800 for the period of July 1, 2016 through June 30, 2017.

Background The District's current Workers Compensation Claims Administration contract with JT2 Integrated Resources ("JT2"), in the amount of \$700,000, is set to expire on June 30, 2014. This represents the twelfth consecutive year that JT2 has administered workers compensation claims for the District without substantive consideration of alternative vendors.

Because industry best practices call for the periodic marketing of these programs in order to ensure best prices and service, the District published a Request for Proposals in March of this year.

Following an initial review by the District's Risk Management department, four finalist companies, including JT2, were invited to participate in a panel interview that included District staff from Legal, Procurement, Human Resources and Risk Management, as well as two outside industry experts and the Director of Risk Management for the San Francisco Unified School District.

Hazelrigg's response, and the resulting contract proposed here, represent the unanimous recommendation of that panel.

Discussion The District has no internal staff capacity to administer the claims that are generated by its permissibly self-insured Workers Compensation program. Hazelrigg is an exceptionally well-regarded Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), and Women's Business Enterprise (WBE) devoted to serving self-insured public entity workers' compensation programs. If this contract is approved by the Board, Hazelrigg will set up a District-dedicated claims office at 1000 Broadway in Oakland, the same building



that currently houses the majority of the District's administrative functions.

Hazelrigg will then provide full service Workers' Compensation claim services. Those services include, but are not limited to, initial file set-up on all reported claims, maintenance of proper claims reserves, appearance before the Workers' Compensation Appeals Board, interaction with District Staff in the investigation and resolution of claims, as well as the management of ancillary providers, such as defense attorneys, private investigators, early return-to-work specialists and other related services.

For purposes of performing their services under this contract, Hazelrigg will maintain a Claims Trust Checking Account through which authorized claim expenses will be paid. The \$600,000 initial balance of that Trust Account will be maintained through regular reimbursement/replenishment requests from Hazelrigg to the District, in an amount not expected to exceed \$6 million in Fiscal Year 2014-15.

Recommendation	Approval by the Board of Education of a Professional Services Contract with Hazelrigg Claims Management Services, Inc. to provide Workers' Compensation Claims Administration services. Services will be performed for an initial three year term, commencing July 1, 2014 and ending June 30, 2017, with two one year options to extend, in an amount not to exceed \$1,767,800 over the initial term.
Fiscal Impact	Fund 67 Resource Code 0000, not to exceed \$6,571,900 in Fiscal Year 2014-15, inclusive of both administrative fees under the professional services contract and actual Workers Compensation claim expenses paid.
Attachment	Professional Services Contract, Hazelrigg Claims Management Services, Inc.

WORKERS' COMPENSATION THREE-YEAR TERM ADMINISTRATION SERVICE AGREEMENT

This Agreement is entered into by and between Oakland Unified School District, hereinafter referred to as the "CLIENT" and Hazelrigg Claims Management Services, Inc., a California Corporation, hereinafter referred to as "HCMS".

RECITALS

1. WHEREAS, the CLIENT has elected to self-insure its Workers' Compensation programs in the State of California.
2. WHEREAS, HCMS provides claims administration and managed care services to self-insured employers.
3. WHEREAS, the CLIENT and HCMS have agreed to enter into a Service Agreement effective July 1, 2014.
4. The foregoing recitals are agreed to by the parties.

TERMS AND CONDITIONS

1. Term of Agreement - This Agreement is for a three (3) year contract term effective July 1, 2014 through June 30, 2017, with two, one-year options to extend, unless otherwise terminated as stated in Section 8.
2. Consideration -
 - a. HCMS' service fee for the period July 1, 2014 through June 30, 2015 shall be Five Hundred Seventy-One Thousand and Nine Hundred Dollars (\$571,900) for claims administration, including program development and Risk Management Information System (RMIS). New claims in excess of 250 for each fiscal year will be billed annually at the end of the fiscal year at \$1,350 per indemnity claim, and \$350 per "medical only" claim.
 - b. HCMS' service fee for the period July 1, 2015 through June 30, 2016 shall be Five Hundred Eighty-Nine Thousand and One Hundred Dollars (\$589,100) for claims administration, including program development and Risk Management Information System (RMIS). New claims in excess of 250 for each fiscal year will be billed annually at the end of the fiscal year at \$1,390.50 per indemnity claim, and \$360.50 per "medical only" claim.
 - c. HCMS' service fee for the period July 1, 2016 through June 30, 2017 shall be Six Hundred Six Thousand and Eight Hundred Dollars (\$606,800) for claims administration, including program development and Risk Management Information System (RMIS).

New claims in excess of 250 for each fiscal year will be billed annually at the end of the fiscal year at \$1,432.22 per indemnity claim, and \$371.32 per “medical only” claim.

d. HCMS’ service fee for the period July 1, 2017 through June 30, 2018 (first optional one-year extension) shall be Six Hundred Twenty-Five Thousand Dollars (\$625,000) for claims administration, including program development and Risk Management Information System (RMIS). New claims in excess of 250 for each fiscal year will be billed annually at the end of the fiscal year at \$1,475.18 per indemnity claim, and \$382.45 per “medical only” claim.

e. HCMS’ service fee for the period July 1, 2018 through June 30, 2019 (second optional one-year extension) shall be Six Hundred Forty-Four Thousand Dollars (\$644,000) for claims administration, including program development and Risk Management Information System (RMIS). New claims in excess of 250 for each fiscal year will be billed annually at the end of the fiscal year at \$1,519.44 per indemnity claim, and \$393.93 per “medical only” claim.

f. Existing tail claims will be administered through life of contract at no additional fee.

g. There shall be a one-time data conversion and set-up fee of Twelve Thousand Dollars (\$12,000), payable concurrently with the first installment of the first year service fee. With the first installment of the first year service fee and subsequent contract years, there shall be payable a non-exclusive user read-only license fee of Three Thousand Dollars (\$3,000) for EDS remote data access. It is recognized that the service fee represents the expense of the administering and adjusting all workers’ compensation claims that are active during the contract period, and the fee does not cover the expense involved in processing claims to their ultimate conclusion.

h. The annual service fee shall be paid in quarterly installments in advance of the service period for which it pertains and is payable by the CLIENT upon the appropriate due date as set forth in HCMS’ invoice. Amounts due but unpaid after forty-five (45) days from the due date shall bear interest at the maximum rate permitted by law.

i. HCMS will provide Injury Hotline Coverage services through its affiliate, Medical Management Partners, Inc.

incurred in connection with the services provided under this Agreement or its business as a whole.

e. Arrange and authorize medical examinations to determine the nature and extent of disability.

f. Determine eligibility for temporary disability compensation, in coordination with medical advice, rehabilitation efforts and salary continuation.

g. Determine the extent and degree of permanent disability utilizing as necessary, any medical sources or advisory bodies available. All findings will be reported to the CLIENT before any action is taken.

h. Effect payment, by either check or voucher, of permanent disability compensation and death benefits in accordance with Advisory Ratings, Findings and Award or settlement agreements.

i. Maintain on each claim current estimates of the future anticipated costs of all claims, current estimates of the future anticipated costs of all benefits and expenses, i.e., reserves.

j. Establish and maintain, for a period of five (5) years from the final closure date, a copy of each specific claim file. This claim file shall be the property of the CLIENT and provided upon request.

k. Notify excess insurance carriers in accordance with policy terms and collect reimbursements on the CLIENT's behalf where a loss exceeds the self-insurance retention.

4. Medical Management -

HCMS agrees to arrange the medical control services necessary to ensure high quality treatment for injured employees, and to obtain prompt and complete medical reports necessary to determine the appropriateness of providing benefits. These services shall include, but are not limited to, the following:

a. Establish an MPN network of medical providers, through Arissa Cost Strategies, incorporating the CLIENT's current MPN network. Arissa Cost Strategies charges for building and maintaining the MPN, and the services are billed as an Allocated Loss Adjustment Expense (ALAE) to claim files. This network shall be reviewed periodically for quality, cost, and effectiveness of medical treatment.

b. Monitor treatment of injured employees through review of medical reports, copies of which shall be sent to the CLIENT.

- c. Work closely with doctors to return employees either to full or modified duty.
- d. Audit all medical bills prior to payment to determine whether they are reasonable, necessary and directly related to the injury or illness.
- e. Establish standards to determine the physical capacity of the employee to return to work.
- f. Make all necessary arrangements for consultations and examinations by qualified physicians for the review of the employee's medical condition in the event the employee files for disability retirement.
- g. Administer and process all lifetime medical cases.
- h. Medicare-Set-Aside – HCMS will provide all the reporting requirements of Section 111 (“Medical Secondary Payer”) of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA). Gould & Lamb has been selected to be the MMSEA account manager / reporting agent for HCMS’ clients. HCMS will collect the CLIENT’s required data in our claims system and transfer it to our designated reporting agent to meet the MMSEA reporting requirements. There is no additional charge for the reporting and Medicare eligibility query process. Gould & Lamb’s charges for Medicare Set-Aside and conditional payment lien negotiation services are treated as pass through, allocated expenses to the claim file.

5. Management Information System -

- a. Maintain claims and cost data as well as estimates of future claim liability on an individual claim basis.
- b. Provide management information service to the CLIENT as needed and as agreed upon by both parties.
- c. HCMS will retain sole right of ownership to its programs. However, the CLIENT will have a right to the data. In the event of a cancellation of HCMS’ service, the CLIENT is entitled to a complete history file (electronic data) of all claims and payment information, as well as a complete format of the electronic data, and all written records maintained by HCMS on behalf of the CLIENT.

6. Responsibilities of the CLIENT -

- a. The CLIENT shall report all workers' compensation claims and provide all information available in a timely manner, cooperate and assist in the investigation of claims as may be necessary to administer its claims.
- b. The CLIENT shall maintain a balance in the account administered by HCMS sufficient to pay all workers' compensation benefits, costs and expenses.
- c. The CLIENT agrees that HCMS retains ownership of its programs, processes, forms and methods and will not use or disseminate them without written consent of HCMS.

7. Claims Payment Fund -

- a. The parties agree that HCMS will pay claims expenses from a fund established by the CLIENT and funded by the CLIENT. The CLIENT will maintain the fund at an amount sufficient to cover the expense of workers' compensation claims. HCMS agrees to make its records available to the CLIENT for audit purposes at all times.
- b. Claims expenses are defined as medical, temporary or permanent disability, allocated claims expense, rehabilitation expense claim, and all other workers' compensation benefits payable to the injured employees or dependents of the injured employees.
- c. Allocated claims expense includes such costs as legal fees, court costs, court reporters, expert witnesses, investigation, photocopy, subpoena, photographic, fees to undercover operatives, depositions, bill review, utilization review, and certain special costs as may be required or as approved by the CLIENT.

8. Termination -

- a. Either party may terminate this Agreement by providing written notice ninety (90) days in advance to the other. In the event of termination, HCMS will be obligated to provide all data, records and information developed with respect to the CLIENT's business, including all loss records, to the CLIENT or its designated agent on the date established by the CLIENT. HCMS will provide the records in good condition and will assist in any transition as may be desired by the CLIENT.
- b. The CLIENT may, at its option, designate HCMS to continue to manage all claim files with injury dates prior to the termination date of

this Agreement, for a fee of 17.5% of paid claims, or on a time and expense basis at a rate agreed to by the parties.

9. Insurance Coverage -

a. Blanket Fidelity Bond

HCMS shall maintain a blanket fidelity bond or equivalent insurance in the amount not less than One Million Dollars (\$1,000,000.00), with an insured or approved corporate surety covering any and all principals, officers and employees involved in performance of the Agreement and the trust fund (imprest) account.

b. Errors and Omissions Insurance

HCMS shall maintain Errors and Omissions Insurance in the amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Aggregate.

c. Public Liability and Property Damage Insurance

HCMS shall maintain commercial general liability insurance in the amount not less than One Million Dollars (\$1,000,000.00) which shall be primary over any other insurance carried by the CLIENT. Certificate of insurance shall name the CLIENT as an additional insured.

10. General Conditions -

a. HCMS shall indemnify, hold harmless and defend the CLIENT, its agents, employees, successors, officers and directors from and against any and all loss, damage, fines, liability, costs and expenses, including reasonable attorney fees and costs that the CLIENT may become obligated to pay due directly to the negligent, or otherwise wrongful acts or omissions of HCMS, its agents, employees, officers or directors. The CLIENT agrees to notify HCMS immediately in writing of any claim, demand, notice of liability or action.

b. The CLIENT shall indemnify, hold harmless and defend HCMS, its agents, employees, assigns, successors, officers and directors against any and all loss, damage, fines, liability, costs and expenses, including reasonable attorney fees and costs that HCMS may become obligated to pay due directly to the negligent acts or omissions of the CLIENT, its agents, employees, officers or directors.

c. The services to be rendered by HCMS are to be within the standards for administration of workers' compensation claims. In the event the CLIENT directs HCMS to follow a specific course of action in the handling of any claim, it shall indemnify, hold harmless and defend

HCMS from and against any loss, cost or expense, including reasonable attorney fees and costs, incurred in any claim for damages related to that course of action. Notwithstanding anything to the contrary herein, HCMS shall not be held responsible or liable for any obligations pursuant to agreements or contracts between third parties and the CLIENT.

d. Penalties and self-imposed increases resulting from the failure of the CLIENT to provide timely notice of claims (within seven days of the CLIENT's knowledge of injury) or such other employer obligations as awarded or imposed pursuant to Labor Code Section 5814 and Labor Code Section 4650 "d"; are and shall be the sole responsibility of the CLIENT. The CLIENT agrees to indemnify, defend and hold HCMS harmless from the imposition of such penalties and self-imposed increases. Penalties and self-imposed increases resulting from and against the acts of HCMS as claim administrator are and shall be the sole responsibility of HCMS. HCMS also agrees to indemnify, defend and hold the CLIENT harmless from and against the imposition of such penalties.

e. The parties understand the administration of a self-insured workers' compensation program requires the exchange of confidential medical information between the CLIENT and HCMS in order to ensure the prompt delivery of benefits and to evaluate the accommodation of work restrictions, either on a temporary or permanent basis. The CLIENT acknowledges the provisions of Labor Code Section 3762 and agrees that the CLIENT's designated employees responsible for the administration of the CLIENT's workers' compensation program shall maintain the confidentiality required and abide by the restriction on dissemination of claimants' medical information, records and reports. The CLIENT designated employees shall not disseminate medical information of claimants in violation of Labor Code Section 3762. HCMS makes no representations whether any particular disclosure or dissemination of medical information reports or records by or between HCMS and the CLIENT's designated employees is or is not prohibited by Labor Code Section 3762, California Code of Civil Procedure Section 56 et.seq., or any other provision of State or Federal law governing the privacy and confidentiality of medical information. In the event that a claim is made as a result of the release of confidential medical information by HCMS, the CLIENT authorizes HCMS to pay all attorney fees and costs incurred in defense of the claim as an allocated expense.

f. **DISPUTE RESOLUTION:** Notwithstanding anything in this Agreement to the contrary, prior to the initiation of any litigation, disputes between the District and HCMS regarding this Agreement, including, any alleged violation, misinterpretation, or misapplication of this Agreement, shall first be resolved using the dispute resolution process identified in this paragraph.

In the event of a dispute, the party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party (the designated representatives must be an employees(s) of First Student or the District); (2) a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within ten (10) business days from receipt of the notice of dispute the representatives from HCMS shall meet with representatives from the District in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the State Mediation and Conciliation Service ("SMCS") is unable or refuses to provide a mediator the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator). The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the request for appointment.

The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the District and HCMS.

Neither party may commence a civil action related to the matters submitted to mediation until after the completion of the initial mediation session, or 60 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. If, following the mediation, the dispute remains unresolved, HCMS shall proceed with the claims presentation process under Government Code section 900 et. seq. as a prerequisite to initiating litigation, if applicable. Either party may file equitable remedies such as injunctive relief while proceeding through mediation in order to preserve the status quo

g. Subject to Paragraph f above, the CLIENT agrees that any action to enforce the terms of this agreement or resulting from a dispute between the parties shall be filed in the County of Alameda, California.

h. Subject to Paragraph f above, any controversy arising out of this Agreement between the parties shall be resolved under the provisions of the California laws pertaining to arbitration. The arbitration shall be conducted under the auspices according to the rules of the American Arbitration Association. The arbitrator as to payment thereof, if any, shall set the attorney fees. In the event either party incurs attorney's fees, arbitrator costs or other expenses in any action brought to enforce rights hereunder, the prevailing party shall be paid by the other party, a reasonable amount therefore to be fixed by the arbitrator in any such action.

i. This Agreement represents the entire agreement between the parties and may only be modified pursuant to a writing signed by both parties.

j. Should any provision of this Agreement be declared unconstitutional, invalid or unenforceable, such provision shall be severed and all remaining provisions of this Agreement shall remain enforceable to the fullest extent permissible by law.

k. The waiver by either party of any breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

l. Each party executing this Agreement represents and warrants that it is authorized to do so.

m. Each party acknowledges that it has had ample opportunity to seek legal advice with respect to the negotiations of this Agreement, and this Agreement shall be interpreted as if drafted by both parties.

**Hazelrigg Claims Management Services, Inc
District**

By: *Arlene Hazelrigg*

Name: Arlene Hazelrigg
President

Oakland Unified School

By: *[Signature]*

Name: David Kakishiba
President, Board of Education



By: *[Signature]*
Dr. Gary Yee
Superintendent & Board Secretary

Approved as to Form

[Signature]
Jacqueline P. Minor
General Counsel

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