

Board Office Use: Legislative File Info.	
File ID Number	13-0132
Committee	Facilities
Introduction Date	1-23-13
Enactment Number	13-0245
Enactment Date	1-23-13 <i>gf</i>



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** January 23, 2013

**Subject** Amendment No. 1, Independent Consultant Agreement for Services - Simplex Grinnell- District-wide Fire Alarm Maintenance Project

**Action Requested** Approval by the Board of Education of Amendment No. 1, Independent Consultant Agreement for Services with Simplex Grinnell for Fire Alarm Maintenance Services on behalf of the District at District-wide Fire Alarm Maintenance Project, in an amount not-to exceed \$200,000.00 increasing previous contract amount from \$500,000.00 to a not to exceed amount of \$700,000.00 and revising the end date from January 2, 2012 through December 31, 2012 to March 1, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

**Background** This amendment is to provide backup to the present contract in order to avoid service interruption.

**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 Amendment No. 1, Independent Consultant Agreement for Services with Simplex Grinnell for Fire Alarm Maintenance Services on behalf of the District at District-wide Fire Alarm Maintenance Project, in an amount not-to exceed \$200,000.00 increasing previous contract amount from \$500,000.00 to a not to exceed amount of \$700,000.00 and revising the end date from January 2, 2012 through December 31, 2012 to March 1, 2013. All remaining portions of the agreement shall remain in full force and effect as originally stated.

**Fiscal Impact**

Developer Fee Funds

**Attachments**

- Independent Contractors Agreement for Services including scope of work



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

### AMENDMENT NO. 1 TO INDEPENDENT CONSULTANT CONTRACT

This Amendment is entered into between the Oakland Unified School District (OUSD) and **Simplex Grinnell**. OUSD entered into an Agreement with CONTRACTOR for services on **January 2, 2012**, and the parties agree to amend that Agreement as follows:

<p>1. <b>Services:</b>      <input type="checkbox"/> The scope of work is <u>unchanged</u>.      <input checked="" type="checkbox"/> <b>The scope of work has <u>changed</u>.</b></p> <p><b>If scope of work changed:</b> Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary. <u>Attach revised scope of work.</u></p> <p>The CONTRACTOR agrees to provide the following amended services: <b><u>The scope of the project is to provide additional fire alarm repairs and supplementing District's fire alarm maintenance technicians in maintaining the District's fire alarm system.</u></b></p>
<p>2. <b>Terms (duration):</b>      <input type="checkbox"/> The term of the contract is <u>unchanged</u>.      <input checked="" type="checkbox"/> <b>The term of the contract has <u>changed</u>.</b></p> <p><b>If term is changed:</b> The contract term is extended by an additional <b><u>2 months, and 1 day</u></b>, and the amended expiration date is <b><u>March 1, 2013</u></b>.</p>
<p>3. <b>Compensation:</b>      <input type="checkbox"/> The contract price is <u>unchanged</u>.      <input checked="" type="checkbox"/> <b>The contract price has <u>changed</u>.</b></p> <p><b>If the compensation is changed:</b> The contract price is amended by</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> <b>Increase of \$200,000.00 to original contract amount</b></p> <p style="padding-left: 40px;"><input type="checkbox"/> Decrease of \$ _____ to original contract amount</p> <p>and the new contract total is <b><u>Seven hundred thousand dollars (\$700,000.00)</u></b></p>

4. **Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. **Amendment History:**

There are no previous amendments to this Agreement.       This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$

6. **Approval:** This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Board of Education, and the Superintendent as their designee.

OAKLAND UNIFIED SCHOOL DISTRICT

CONTRACTOR

David Kakishiba, President, Board of Education

Contractor Signature

Date

Date

Edgar Rakestraw, Jr., Secretary  
Board of Education

Print Name, Title

Date

**CHRIS HYNDMAN**  
**Service General Manager**  
**San Francisco 417**

Timothy White, Associate Superintendent  
Facilities, Planning and Management

Date

File ID Number: 13-0132  
Introduction Date: 1-23-13  
Enactment Number: 13-0245  
Enactment Date: 1-23-13

By: *H*

**EXHIBIT "A" Scope of Work**

**Contractor Name:**

**Billing Rate:** Two hundred thousand dollars and no cents (\$200,000.00)

**1. Description of Services to be Provided**

The existing yearly contract is presently in tack and the above stated work is continuing under that contract. However, to avoid those dollars being expended prior to the end of the years as a result stopping Simplex's continuing support of the alarm department the \$200,000.00 dollars is a backup to the present contract when and if all the dollars are expended, which we think will happen.

**2. Specific Outcomes:**

Safe school with a working fire alarm system.

**3. Alignment with District Strategic Plan:** Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

**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](http://www.epls.gov/epls/search.do).**

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

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8/3/12

John Esposito/Tammara Cappellano  
Oakland Unified School District  
Buildings & Grounds Department  
955 High Street  
Oakland, CA 94601-4404

SUBJECT: Amendment Request for Increase of \$200,000.00 Master Service Agreement for 2012

Dear John/ Tammara,

SimplexGrinnell is requesting an increase of \$200,000.00 to a new total dollar value of \$700,000.00 for the 2012 calendar year ending December 31<sup>st</sup>, 2012. In order to accurately maintain the code compliant testing for all OUSD locations during the 2012 calendar year, SimplexGrinnell is requesting this increase based upon the number of sites remaining to be tested in accordance with NPFA requirements for annual fire alarm testing and 5-year sprinkler certification at various locations. The following discounted rates for the existing District Wide Service Agreement for the calendar year 2012 shall remain in effect. Contract period shall remain valid starting January 1<sup>st</sup> through December 31<sup>st</sup> of the 2012 calendar year.

- **Material**
  - 35% Discount off list price for replacement Simplex material.
  - 35% Discount off list price for parts needed for service calls and time & material work (Simplex material only).
    - List Price documentation shall be submitted February 1<sup>st</sup> each year. The list price commitment shall be good through January 31<sup>st</sup> of the following year.
  - Bulk materials mark up: 15% over SimplexGrinnell cost.
  
- **Labor**
  - The following are the Labor Rate categories that work performed shall be billed under for the purposes of this contract which coincide with the Prevailing Wage Rate Categories designated by the County of Alameda. The rates are listed below in the Labor Rate Table.
    - A&D Technician Labor Rate – Comm System Installer Designation
      - Defined as all work on software based systems not involving installation of conduit. Includes technical work on clock/PA/phone and security systems.
    - A&D Technician Labor Rate – Inside Wireman Designation
      - Defined as all work involving installation of conduit/back-boxes.
    - Fire Sprinkler Fitter Labor Rate
      - Service and repair work involving sprinkler systems. Includes obstruction investigation portion of the 5-year certification inspection.
    - Fire Alarm/Fire Sprinkler Design Labor Rate
      - CAD and engineering labor for fire alarm or fire sprinkler systems.
    - Fire Alarm/Fire Sprinkler Inspector

8/3/12

**John Esposito/Tammara Cappellano**  
**Oakland Unified School District**

**SUBJECT: Request for Increase to Master Service Agreement for 2012**

- Used for annual inspections of fire alarm systems (*Sprinkler Fitter rate will apply for work done during the "Obstruction Investigation" portion of the 5-Year Certification inspections*).

**Labor Rate per Man Hour Table – (Rates by Year)**

Labor Category	Year 2009	Year 2010	Year 2011	Year 2012
Comm Sys Installer	\$115.00	\$115.00	\$120.00	\$120.00
Inside Wireman	\$135.00	\$135.00	\$140.00	\$140.00
Sprinkler Technician	\$135.00	\$135.00	\$140.00	\$140.00
Designer	\$95.00	\$95.00	\$95.00	\$95.00
Inspections	\$95.00	\$95.00	\$95.00	\$95.00

- Equipment Rental
    - Reduction in rate from cost + 25% (overhead & profit) to cost + 20%.
  - Minimum Service Call Charge
    - The minimum service charge on any call shall be a 2 hour minimum (reduced from 3.5 hour minimum). This includes weekend and overtime periods.
  - Normal Working Hours
    - Under the provisions of this new contract, the normal working hours for SimplexGrinnell shall be Monday-Friday 7:00 am to 3:30pm. Overtime, double time and Holiday pay shall be billed per the requirements of Alameda prevailing wage. Overtime work shall be billed at 1.5 times the base rate listed above.
    - When work is to be completed on consecutive days after hours (minimum 5 days), work will be performed on a shift differential. The differential will increase the pay rate, and subsequent bill rate by 15% for each labor category.
  - All work shall be completed and billed under a time and material basis. After site survey by the SimplexGrinnell Sales Rep, quotations shall be submitted in a Not-to-Exceed format.
  - Written dailies shall be used for back-up and billing. The SimplexGrinnell technicians shall be required to sign-in and date their time on the sign-in sheets at each school and sign out at the end of the day. The dailies should never be signed by a site administrator. All signatures for approval/review of time will come from B&G representatives. All dailies will require the SimplexGrinnell technician's signature(s) as well.
  - All software changes shall be provided to OUSD via email, for the work performed under this contract immediately upon completion of each project, in addition to an updated program disk being left in the panel on-site.
  - As part of this agreement, the SimplexGrinnell lead technician for the district wide service work shall receive a grand-master set of keys for the district.
- **Design**
    - Support architectural firms/electrical engineers/fire protection consultants in design before DSA submittal.

8/3/12

**John Esposito/Tammara Cappellano**  
**Oakland Unified School District**

**SUBJECT: Request for Increase to Master Service Agreement for 2012**

- SimplexGrinnell shall not charge the district for this assistance in pre-design. SimplexGrinnell will help with suggestions for device placement, voltage drop calculations, device interactivity, DSA code compliance, etc.
- Support District's peer review process.
  - SimplexGrinnell will review drawings that are in the pre-DSA submittal design phase while Aon Engineering completes their review. SimplexGrinnell shall submit these comments and drawing mark-ups to Aon Engineering for incorporation into their final comment letter which is then sent to the designer of record.
- **Training**
  - Provide optional off-site programming/service training for 4100ES equipment for district fire alarm technicians, should the District so choose.
    - The last training for (2) OUSD technicians took place in 2006. OUSD was responsible for travel and lodging expenses for said training. This service shall be made available again in calendar 2012 for (1) OUSD technician should the district so choose.
    - OUSD shall be notified of additional training opportunities for district employees throughout the span of the contract. OUSD shall have the opportunity to receive additional training for any and all product line(s) that are still supported at SimplexGrinnell's cost for said services (minus travel/lodging as noted above).
- **Technician Team**
  - OUSD will be provided with a dedicated team of 2 technicians to increase productivity, consistency, and reliability. A lead technician will be assigned to the account. This lead will have (2) back-ups and be able to bring other members of the team if needed.
- **Cellular Phones:**
  - To increase productivity, SimplexGrinnell shall provide (1) cellular phones to their lead technician Geoff Gommerman. This phone will allow the SimplexGrinnell technician team to keep in immediate contact at all times and not lose time waiting for a response. The mobile plan is set up as follows:
    - \$60 per month base usage fee.
    - 500 minutes cellular.
    - 1,000 minutes mobile to mobile (which includes any Verizon wireless user and all SimplexGrinnell employees based in San Francisco).
    - Text messaging is an extra.
    - SimplexGrinnell will get a statement for each user. If the OUSD employees exceed their call plan, the difference will be billed to OUSD B&G. The base call plan shall be paid for by SimplexGrinnell.

Please feel free to contact me directly should you have any questions.

Thank you again for providing **SimplexGrinnell** the opportunity to service your fire protection needs.

Sincerely,

**Shobo Tilbury** | Alarm & Detection Sales Consultant  
SimplexGrinnell, A Tyco International Company  
Tel: +1-925-273-0100 | Fax: +1-925-273-0120 | Cell: +1-925-337-2105  
[ttilbury@simplexgrinnell.com](mailto:ttilbury@simplexgrinnell.com)





AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



**ADDITIONAL REMARKS SCHEDULE**

AGENCY Marsh USA Inc.		NAMED INSURED SimplexGrinnell LP	
POLICY NUMBER		6952 PRESTON AVENUE LIVERMORE, CA 94551 United States	
CARRIER	NAIC	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

REGARDING POLICIES OF INSURANCE:

Insurer	Policy Number(s)	Effective Date(s)	Expiration Date(s)
D	WC 043464674 (MA, ND, OH, WA, WI, WY)	9/28/2012	10/1/2013
D	WC 043464675 (CT,GA,PA,SC)	9/28/2012	10/1/2013

REGARDING NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS:

This endorsement modifies the notice of cancellation of insurance provided hereunder:

Should any of the above described policies be cancelled, other than for non-payment of premium, before the expiration date thereof, 30 days advance of cancellation will be delivered to certificate holders in accordance with the policy endorsements.

All other terms and conditions of this policy remain unchanged.

REGARDING ADDITIONAL INSURED STATUS:

In accordance with the policy provisions, Oakland Unified School District is included as an additional insured under this policy, as a result of any contract or agreement entered into by the named insured and Oakland Unified School District.

In accordance with the policy provisions, coverage afforded to an additional insured will apply as primary insurance where required by contract entered into by the named insured and the Oakland Unified School District. Any other insurance issued to such additional insured shall apply as excess and noncontributory insurance.

Other Additional Insureds: Oakland Unified School District and its directors, officers, employees, agents and representatives.

REGARDING WAIVER OF SUBROGATION:

In accordance with the policy provisions, the Waiver of Subrogation applies per contract or agreement entered into by the named insured and Oakland Unified School District.

**FOR QUESTIONS REGARDING THIS CERTIFICATE OF INSURANCE CONTACT:**

mathew rosecrans (Email: mrosecrans@simplexgrinnell.com Phone: 925-273-0100 ext.122)

THIS CERTIFICATE OF INSURANCE WAS GENERATED AND DELIVERED BY EXIGIS RiskWorks® rm.Certificates®

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**ENDORSEMENT #MAN005**

This endorsement, effective 12:01 A.M. 09/28/2012 forms a part of Policy  
No. GL 714-64-17 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC  
by NEW HAMPSHIRE INSURANCE COMPANY

**ADDITIONAL INSURED – WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

*This endorsement modifies insurance provided under the following:*

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**SECTION II – WHO IS AN INSURED**, is amended to include as an additional insured:

Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations, completed operations, or premises owned by or rented to you. However, the insurance provided will not exceed the lesser of:

- The coverage and/or limits of this policy, or
- The coverage and/or limits required by said contract or agreement.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

## ADDITIONAL INSURED – VENDORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

<b>Name Of Additional Insured Person(s) Or Organization(s) (Vendor)</b>
ALL VENDORS OF THE NAMED INSURED
<b>Your Products</b>
ALL PRODUCTS OF THE NAMED INSURED
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
  - a. "Bodily injury" or "property damage" for which the vendor 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 vendor would have in the absence of the contract or agreement;
  - b. Any express warranty unauthorized by you;
  - c. Any physical or chemical change in the product made intentionally by the vendor;
  - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (1) The exceptions contained in Sub-paragraphs **d.** or **f.**; or
  - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**ENDORSEMENT**

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No. GL 714-64-17 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC  
by NEW HAMPSHIRE INSURANCE COMPANY

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**ADDITIONAL INSURED – PRIMARY INSURANCE**

*This endorsement modifies insurance provided under the following:*

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

**Section IV, Commercial General Liability Conditions, paragraph 4., Other Insurance, subparagraph a. Primary Insurance,** is amended by the addition of the following:

However, coverage under this policy afforded to an additional insured will apply as primary insurance where required by contract, and any other insurance issued to such additional insured shall apply as excess and noncontributory insurance.

  
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AUTHORIZED REPRESENTATIVE

**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 09/28/2012 forms a part of Policy  
No. CA 344-72-45 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC  
by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

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

**INSURANCE PRIMARY AS TO CERTAIN ADDITIONAL INSURED**

*This endorsement modifies insurance provided under the following:*

**BUSINESS AUTO COVERAGE FORM**

**Section IV - Business Auto Conditions, B. - General Conditions, 5. - Other Insurance, c.,** is amended by the addition of the following sentence:

The insurance afforded under this policy to an additional insured will apply as primary insurance for such additional insured where so required under an agreement executed prior to the date of accident. We will not ask the insurer that has issued other insurance to such additional insured to contribute to the settlement of loss arising out of such accident.

All other terms and conditions remain unchanged.



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AUTHORIZED REPRESENTATIVE

**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 09/28/2012 forms a part of Policy No. CA 344-72-45 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

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

**ADDITIONAL INSURED – WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

*This endorsement modifies insurance provided under the following:*

BUSINESS AUTO COVERAGE FORM

**SCHEDULE**

**ADDITIONAL INSURED:**

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH PERSON OR ORGANIZATION'S LIABILITY ARISING OUT OF THE USE OF A COVERED "AUTO".

**I. SECTION II – LIABILITY COVERAGE, A. Coverage, 1. – Who Is Insured**, is amended to add:

d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

- (1) The coverage and/or limits of this policy, or
- (2) The coverage and/or limits required by said contract or agreement.

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 09/28/2012 forms a part of Policy No. CA 344-72-51 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

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**ADDITIONAL INSURED – WHERE REQUIRED UNDER CONTRACT OR AGREEMENT**

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BUSINESS AUTO COVERAGE FORM

**SCHEDULE**

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(1) The coverage and/or limits of this policy, or

(2) The coverage and/or limits required by said contract or agreement.

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

*This endorsement modifies insurance provided under the following:*

**BUSINESS AUTO COVERAGE FORM**

**Section IV - Business Auto Conditions, A. - Loss Conditions, 5. - Transfer of Rights of Recovery Against Others to Us,** is amended to add:

However, we will waive any right of recovery we have against any person or organization with whom you have entered into a contract or agreement because of payments we make under this Coverage Form arising out of an "accident" or "loss" if:

- (1) The "accident" or "loss" is due to operations undertaken in accordance with the contract existing between you and such person or organization; and
- (2) The contract or agreement was entered into prior to any "accident" or "loss".

No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights or lien to be reimbursed from any recovered funds obtained by any injured employee.



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AUTHORIZED REPRESENTATIVE



**ENDORSEMENT**

This endorsement, effective 12:01 A.M. 09/28/2012 forms a part of Policy  
No. CA 344-72-54 issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC  
by NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

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No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights or lien to be reimbursed from any recovered funds obtained by any injured employee.



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AUTHORIZED REPRESENTATIVE

**ENDORSEMENT**

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- (2) The contract or agreement was entered into prior to any "accident" or "loss".

No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights or lien to be reimbursed from any recovered funds obtained by any injured employee.



\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

ANY PERSON OR ORGANIZATION TO WHOM YOU BECOME OBLIGATED TO WAIVE YOUR RIGHTS OF RECOVERY AGAINST, UNDER ANY CONTRACT OR AGREEMENT YOU ENTER INTO PRIOR TO THE OCCURRENCE OF LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

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

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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4661**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NEW HAMPSHIRE INSURANCE COMPANY**

Premium **INCLUDED**

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**


**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

**WC 00 03 13**  
**(Ed. 04/84)**

Countersigned by \_\_\_\_\_

  
**Authorized Representative**

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

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4661**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NEW HAMPSHIRE INSURANCE COMPANY**

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule  
The premium for this endorsement is shown in the Schedule.

**Schedule**

1. ( ) Specific Waiver

( X ) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: **ALL TEXAS OPERATIONS**

3. Premium:

The premium charge for this endorsement shall be **2.0** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: **INCLUDED**

**WC 42 03 04A**  
**(Ed. 01/00)**

Countersigned by \_\_\_\_\_

  
**Authorized Representative**

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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4673**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NEW HAMPSHIRE INSURANCE COMPANY**

Premium **INCLUDED**

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**


**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

**WC 00 03 13**  
**(Ed. 04/84)**

Countersigned by \_\_\_\_\_



**Authorized Representative**

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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 09/28/2012 forms a part of Policy No. WC 043-46-4672

Issued to TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC

By ILLINOIS NATIONAL INSURANCE CO.

Premium INCLUDED

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**

**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

WC 00 03 13  
(Ed. 04/84)

Countersigned by \_\_\_\_\_



Authorized Representative

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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4674**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NEW HAMPSHIRE INSURANCE COMPANY**

Premium **INCLUDED**

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**

**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

**WC 00 03 13**  
**(Ed. 04/84)**

Countersigned by \_\_\_\_\_



**Authorized Representative**



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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause") need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4663**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **COMMERCE AND INDUSTRY INSURANCE COMPANY**

Premium **INCLUDED**

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**


**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

**WC 00 03 13**  
**(Ed. 04/84)**

Countersigned by \_\_\_\_\_

  
Authorized Representative

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

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4675**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NEW HAMPSHIRE INSURANCE COMPANY**

Premium **INCLUDED**

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

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

**Schedule**

**ANY PERSON OR ORGANIZATION WITH WHOM YOU HAVE ENTERED INTO A CONTRACT, A CONDITION OF WHICH REQUIRES YOU TO OBTAIN THIS WAIVER FROM US.**

**THIS ENDORSEMENT DOES NOT APPLY TO BENEFITS OR DAMAGES PAID OR CLAIMED:**

- 1. PURSUANT TO THE WORKERS' COMPENSATION OR EMPLOYERS' LIABILITY LAW OF KENTUCKY, NEW HAMPSHIRE, OR NEW JERSEY; OR,**
- 2. BECAUSE OF INJURY OCCURRING BEFORE YOU ENTERED INTO SUCH A CONTRACT.**

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Tennessee, Texas, Utah, or Washington.

**WC 00 03 13**  
**(Ed. 04/84)**

Countersigned by \_\_\_\_\_



**Authorized Representative**

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

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM **09/28/2012** forms a part of Policy No. **WC 043-46-4662**

Issued to **TYCO INTERNATIONAL MANAGEMENT COMPANY, LLC**

By **NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA**

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization with whom you have a written contract that requires you to obtain this agreement from us, as regards any work you perform for such person or organization.

The additional premium for this endorsement shall be **2.00** % of the total estimated workers compensation premium for this policy.

## AMENDMENT TO INDEPENDMENT CONSULTANT AGREEMENT FOR SERVICES ROUTING FORM

Project Information			
Project Name	District-wide Fire Alarm Maintenance	Site	District-wide
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	Simplex Grinnell	Agency's Contact	Shobo Tibury
OUSD Vendor ID #	I015439	Title	Project Manager
Street Address	6952 Preston Avenue	City	Livermore State CA Zip 94551
Telephone	925-273-1217	Policy Expires	10-1-2013
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 #	03055		

Term			
Date Work Will Begin	1-2-2012	Date Work Will End By <small>(not more than 5 years from start date)</small>	3-1-2013

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$700,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$200,000.00
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
2525	Developer Fees	91899000890	6265	\$200,000.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
1.	Division Head	Charles Love	Phone	510-535-7081 Fax 510-535-7082
	Capital Program Contract & Accounting Manager			
	Signature		Date Approved	12-4-12
2.	General Counsel, Department of Facilities Planning and Management			
	Signature		Date Approved	12.4.12
3.	Associate Superintendent, Facilities Planning and Management			
	Signature		Date Approved	
4.	President, Board of Education			
	Signature		Date Approved	

Board Office Use: Legislative File Info.	
File ID Number	11-2896
Committee	Facilities
Introduction Date	11-8-2011
Enactment Number	11-2429
Enactment Date	11-16-1182



OAKLAND UNIFIED  
SCHOOL DISTRICT

## Memo

**To** Board of Education

**From** Tony Smith, Ed.D., Superintendent  
Timothy White, Assistant Superintendent, Facilities Planning and Management

**Board Meeting Date** November 16, 2011

**Subject** Independent Contractor Agreement for Services - Simplex Grinnell - District-wide Fire Alarm

**Action Requested** Approval by the Board of Education of an Independent Contractor Agreement for Services, with Simplex Grinnell for Fire Alarm Maintenance Services on behalf of the District at the District-wide Fire Alarm Maintenance Project, in an amount not-to exceed \$500,000.00. The term of this Agreement shall commence on January 2, 2012 and shall conclude no later than December 31, 2012.

**Background** Simplex Grinnell supplements the District's fire alarm technicians in repairs and testing of fire alarm systems.

**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 Contractor Agreement for Services with Simplex Grinnell for Fire Alarm Maintenance Services on behalf of the District at the District-wide Fire Alarm Maintenance Project, in an amount not-to exceed \$500,000.00. The term of this Agreement shall commence on January 2, 2012 and shall conclude no later than December 31, 2012.

**Fiscal Impact**

The funding sources for this project Resource Codes: 9299, 9399 and 9499.

**Attachments**

- Professional Services Contract including scope of work

**Key Code:**

9189901890-5670

## INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES

This Independent Contractor Agreement for Services ("Agreement") is made as of October 11, 2011, between the Oakland Unified School District ("District") and **Simplex Grinnell** ("Consultant") (together, "Parties").

1. **Services.** The Consultant shall furnish to the District the services as described in Exhibit "A" attached hereto and incorporated herein by this reference ("Services" or "Work")— Proposal dated **September 23, 2011**.
2. **Term.** Consultant shall commence providing services under this Agreement upon execution of the Agreement by both parties, and will diligently perform such services as required. The term for services and schedule to provide services shall be in accordance with the schedule included in the Consultant's Proposal, Attachment "A;"
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;

<input checked="" type="checkbox"/>	Signed Agreement
<input type="checkbox"/>	Workers' Compensation Certificate, if necessary
<input type="checkbox"/>	Criminal Background Investigation Certification, if necessary
<input checked="" type="checkbox"/>	Insurance Certificates and Endorsements
<input checked="" type="checkbox"/>	W-9 Form

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4. **Compensation.** District compensation to the Consultant shall be as set forth in Exhibit "A" as the proposed fee for services, but in no event shall total fees, costs, and expenses exceed **\$500,000.00**, without the express approval of the Board.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, other than as proved in Attachment "A."
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. 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.
7. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this

OAKLAND UNIFIED SCHOOL DISTRICT  
PLANNING DEPARTMENT

Agreement.

8. **Standard of Care.** Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
9. **Originality of Services.** 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 three (3) 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. In the event that District terminates this Agreement pursuant to this section, District shall compensate Consultant for work completed to date as a pro-rata amount of the full fees, costs, and expenses.
  - 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 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.

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

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

## 14. Insurance.

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance:

14.1.1. **General Liability.** Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location or the general aggregate limit shall be twice the required occurrence limit.

14.1.2. **Automobile Liability Insurance.** Automobile Liability Insurance, Occurrence Form, that shall protect the Consultant the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Consultant.

14.1.3. **Workers' Compensation and Employers' Liability Insurance.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Consultant shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

14.1.4. **Other Insurance Provisions:** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

a. The District, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Consultant; instruments of Service and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

b. For any claims related to the projects, the Consultant's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

d. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of

the insurer's liability.

e. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

f. Consultant shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Work commence.

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. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
18. **Safety and Security:** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
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.
20. **Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Consultant or its employees will have contact with students during the

CIA  
10/11/11

provision of services under this Agreement. If, at a future time, Consultant will have contact with any pupils, Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

**21. District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.**

The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:

21.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.

21.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

**22. 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.

**23. 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. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**24. 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**

Timothy White  
Assistant Superintendent  
Facilities, Planning and Management  
955 High Street  
Oakland, CA 94601

**Consultant**

Shobo Tilbury  
Simplex Grinnell  
6952 Preston Avenue  
Livermore, CA 9451

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.

25. **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 Alameda County, California.
26. **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.
27. **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.
28. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

Date: OCT. 11, 2011


By:   
CHRIS HYNDMAN


Print Name: Service General Manager

Its: San Francisco 417

OAKLAND UNIFIED SCHOOL DISTRICT

By:  Date: 11/17/11  
Jody London, President, Board of Education

By:  Date: 11/17/11  
Edgar Rakestraw, Jr., Board Secretary

By:  Date: \_\_\_\_\_  
Timothy E. White, Assistant Superintendent  
Facilities Planning and Management

By:  Date: 10-18-2011  
Cate Boskoff, Facilities Legal

File ID Number: 11-2896  
Introduction Date: 11-8-11  
Enactment Number: 11-2429  
By: \_\_\_\_\_