

Board Office Use: Legislative File Info.	
File ID Number	13-2370
Committee	Facilities
Introduction Date	10-23-2013
Enactment Number	13-2239
Enactment Date	10-23-13 <i>lf</i>



Memo

To Board of Education

From Dr. Gary Yee, Acting Superintendent and Secretary, Board of Education
 By: Vernon Hal, Deputy Superintendent, Business Operations
 Timothy White, Associate Superintendent, Facilities Planning and Management *AW*

Board Meeting Date October 23, 2013

Subject Independent Consultant Agreement for Professional Services - Simpson Gumpertz & Heger - Highland New Classroom Building Project

Action Requested Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Simpson Gumpertz & Heger for Structural Review Services on behalf of the District at the Highland New Classroom Building Project, in an amount not-to exceed \$4,000.00 The term of this Agreement shall commence on October 23, 2013 and shall conclude no later than October 9, 2014.

Background This contract is necessary in order to finish the work started by the previous design team.

Local Business Participation Percentage 0.00% (Sole Source)

Strategic Alignment Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources,

number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of an Independent Consultant Agreement for Professional Services with Simpson Gumpertz & Heger for Structural Review Services on behalf of the District at the Highland New Classroom Building Project, in an amount not-to exceed \$4,000.00 The term of this Agreement shall commence on October 23, 2013 and shall conclude no later than October 9, 2014

Fiscal Impact

General Obligation Bond - Measure B

Attachments

- Independent Consultant Agreement including scope of work

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

Highland New Classroom Building Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **6th day of September, 2013** by and between the Oakland Unified School District, Oakland, California ("District") and **Simpson Gumpertz & Heger** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

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

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

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

The scope of the project is to review RFI's and determine that their contents are consistent with the intent of the approved construction documents. Finish process to receive Division of State Architect (DSA) approval for the suspended ceiling at the Multi-Purpose Room.

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

The contract will commence on October 23, 2013 and conclude no later than October 23, 2014.

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Contract until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

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

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Four thousand dollars and no cents (\$4,000.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except as follows: Not applicable.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: Not applicable.
8. **Performance of Services.**
 - 8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
 - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
 - 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
 - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.
10. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

12. **Termination.**

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

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

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

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

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

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or

death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement, including without limitation the payment of all consequential damages.

14. Insurance.

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

14.1.1. **Commercial General Liability and Automobile Liability Insurance.**

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

14.1.2. **Workers' Compensation and Employers' Liability Insurance.**

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

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

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

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

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the

District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

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

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

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

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

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

16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

17. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.

18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's

performing of any portion of the Services.

21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a twenty percent (20%) minimum participation requirement for all District contracts. Consultant shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local and/or small local resident business participation. The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: www.ousd.k12.ca.us
23. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
26. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
27. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

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

Consultant:

Ronald O. Hamburger
Simpson Gumpertz & Heger
100 Pine Street, Suite 1600
San Francisco, CA 94111

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

28. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

29. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

30. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

31. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

32. Authority to Bind Parties. Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

33. Attorney Fees/Costs. Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

34. Captions and Interpretations. Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

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

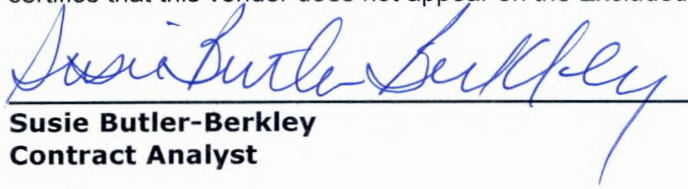
36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37. Counterparts. This Agreement and all amendments and supplements to it may be executed

in counterparts, and all counterparts together shall be construed as one document.

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

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



Susie Butler-Berkley
Contract Analyst

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

OAKLAND UNIFIED SCHOOL DISTRICT

David Kakashiba, President, Board of Education

Date: 10/24/13

Dr. Gary Yee, Acting Superintendent and
Secretary, Board of Education

Date: 10/24/13

Timothy White, Associate Superintendent Facilities
Planning and Management

Date: 10/24/13

Simpson Gumpertz & Heger

Kurt Gumpertz

10/4/13

APPROVED AS TO FORM:

Catherine Boskoff, Facilities Counsel

Date: 10.7.13

File ID Number: 13-2370
Introduction Date: 10-23-13
Enactment Number: 13-2239
Enactment Date: 10-23-13
By: 8

Information regarding Consultant:

Consultant: SIMPSON GUMPERTZ + HEGER INC. 04-2256923 :
License No.: N/A Employer Identification and/or Social
Address: 100 PINEST, SUITE 1600 Security Number
SF, CA 94111
Telephone: 415 495 3700
Facsimile: 415 495 3550
E-Mail: ROHARTBURGER@SGH.COM
Type of Business Entity:
☐ Individual
☐ Sole Proprietorship
☐ Partnership
☐ Limited Partnership
☒ Corporation, State: MA
☐ Limited Liability Company
☐ Other: _____

NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

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

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

Date:

4 OCTOBER 2013

Proper Name of Consultant:

SIMPSON GUMPERTZ + HEGER, INC.

Signature:

Ronald Hamburger

Print Name:

RONALD HAMBURGER

Title:

SENIOR PRINCIPAL

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

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

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

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

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

_____ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of Consultant's employees and of all of its sub-consultants' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

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

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

Name: RONALD HAMBURGER

Title: SENIOR PRINCIPAL

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

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

Date: 4 OCTOBER 2013

Proper Name of Consultant: SIMPSON CONSULTING + HEBER INC

Signature: Ronald Hamburger

Print Name: RONALD HAMBURGER

Title: SENIOR PRINCIPAL

DRUG/SMOKE-FREE WORKPLACE CERTIFICATION

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

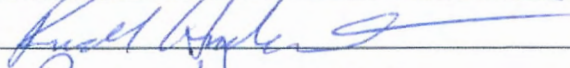
Date:

4 OCTOBER 2013

Proper Name of Consultant:

SIMPSON GUMPERTZ + HEGER

Signature:



Print Name:

RONALD HAMBURGER

Title:

SENIOR PRINCIPAL

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

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

(PLEASE SEE THE ATTACHED PROPOSAL FROM _____)

30 April 2013
23 August 2013 Revised

Mr. Eric Sih
Oakland Unified School District
955 High Street
Oakland, CA 94601

Project 097151 – Revised Proposal to Perform Clouse-Out Work for DSA, Highland Elementary School; Oakland, CA

Dear Eric:

Simpson Gumpertz & Heger Inc. will be pleased to provide structural engineering consultation services for Highland Elementary School as it pertains to DSA close-out of the project.

Basis of Proposal:

- DSA approved Construction Documents prepared by our office for RISE – New Classroom Building; Highland New Classroom Building.
- Construction Administration services provided by our office through RFI # 00312 with SGH response dated 15 August 2012.
- Phone calls between yourself and Karen Vogt-Wilcox.
- Email from you, dated 28 March 2013, requesting our assistance in closing out this project.
- List of RFI's for our review from your email dated 23 April 2013.

Scope of Work:

- Review RFI's from your 23 April 2013 email and determine if any of these RFI's were of both a structural nature and were not answered by our office.
- If any RFI's are found to meet the above criteria, SGH to review the contents of the RFI to determine if the response is consistent with the intent of the approved construction documents.
- Finish the process to receive DSA approval for the suspended ceiling at the multi-purpose room. This will include the following:

1. Site Visit and examine visible structural elements

2. Develop punch list items where deficiencies are found
3. Provide sketches to remediate any discrepancy notice
4. Final verification form and DSA close-out procedure

Fees

Our fees are computed on an hourly basis as shown on the attached schedule. We will not exceed 20 hours of time on this phase of work. We recommend you establish a budget of \$4,000 for this effort.

Direct expenses are billed at actual cost plus 10%. Direct expenses are out-of-pocket expenses and include, but are not limited to, sub-consultants, travel, outside services, copying, and charges for the use of SGH field and laboratory equipment. You have the right to terminate our services at any time, subject only to previous commitments we have made to others on your behalf. We reserve the right to suspend work if payments are in arrears.

This Proposal is valid for 30 days from the date of this letter. Our proposed Agreement consists of this Proposal, the enclosed Fee Schedule, and Contract Provisions. If this Agreement is acceptable, please sign and return one original of this Proposal. We will be happy to negotiate a different Form of Agreement if you so desire.

In accordance with California law, we cannot begin work on this project until we have a signed agreement.

Sincerely yours,

Accepted:

SIMPSON GUMPERTZ & HEGER INC.

OAKLAND UNIFIED SCHOOL DISTRICT



Ronald O. Hamburger, S.E.

Senior Principal

CA License S2951 (Structural)

I:\SF\Admin\Proposals\2013\SF13-0000439-ROH_Highland
Elementary.docx

By _____

Title _____

Date _____

Encls.

SIMPSON GUMPERTZ & HEGER INC.
FEE SCHEDULE

<u>Personnel Category</u>	<u>Hourly Billing Rate</u> <u>(\$ per hour)</u>
Senior Principal	\$240
Principal.....	\$225
Associate Principal	\$215
Staff Consultant D	\$215
Staff Consultant C	\$210
Staff Consultant B	\$205
Staff Consultant A	\$200
Senior Project Manager B	\$195
Senior Project Manager A	\$180
Senior Project Supervisor B	\$205
Senior Project Supervisor A	\$155
Senior Staff II – C	\$190
Senior Staff II – B	\$165
Senior Staff II – A	\$150
Senior Staff I – B	\$142
Senior Staff I – A	\$132
Staff IV – B	\$185
Staff IV – A	\$165
Staff III	\$146
Staff II – B	\$128
Staff II – A	\$118
Staff I – A	\$109
Technical Aide	\$70
Senior Laboratory Technician B	\$125
Senior Laboratory Technician A	\$95
Laboratory Technician	\$83
Senior Graphics Specialist	\$180
Graphics Specialist	\$90
Senior Project Drafter	\$122
Senior Drafter	\$113
Drafter	\$98
Non-Technical C	\$88
Non-Technical B	\$82
Non-Technical A	\$70

Individuals performing services are billed at the applicable rate(s) stated above. An annual rate adjustment, based upon salary increases, will apply on 1 January each year.

Invoices will be submitted showing labor (hours worked) by labor category and total expenses.

SIMPSON GUMPERTZ & HEGER INC. (SGH)
CONTRACT PROVISIONS

CLIENT/PROJECT: OAKLAND UNIFIED SCHOOL DISTRICT

1. **CONTRACT** – These Contract Provisions and the accompanying Proposal and Fee Schedule constitute the entire Agreement of the parties, and supersede all prior negotiations, agreements, and understandings with respect to the subject matter of this Agreement. These Contract Provisions shall take precedence over any inconsistency or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document. The parties may only amend this Agreement by a written document duly executed by both parties.

2. **RIGHT OF ENTRY** – When entry to property is required by the work, the Client agrees to obtain legal right-of-entry on the property.

3. **DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents prepared by SGH are instruments of SGH's service that shall remain SGH's property. The Client agrees not to use SGH-generated documents for marketing purposes or for projects other than the project for which the documents were prepared by SGH without SGH's prior written permission.

Any reuse or disbursement to third parties without such express written permission or project-specific adaptation by SGH will be at the Client's sole risk and without liability to SGH or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, the Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless SGH from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or disbursement. Any release or project-specific adaptation by SGH will entitle SGH to further compensation at rates to be agreed upon by the Client and SGH.

4. **DISPOSAL OF SAMPLES** – SGH will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.

5. **HAZARDOUS MATERIALS** – The scope of SGH's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.

6. **CONSTRUCTION SERVICES** – When construction-phase services are included in the Agreement, SGH will provide personnel to evaluate whether construction is in general accordance with the construction contract, but not to perform detailed observations or inspections of the work.

SGH is not a guarantor or insurer of the contractor's work; the contractor is solely responsible for the accuracy and adequacy of construction and for all other activities performed by the contractor, including the means and methods of construction; supervision of personnel and construction; control of machinery; false work, scaffolding, and other temporary construction aids; safety in, on, and about the job site; and compliance with OSHA and all other applicable regulations. SGH's evaluation of the contractor's performance will not include review or observation of the adequacy of the contractor's safety measures or of safety conditions on the project site nor of Contractor's means or methods of construction.

7. **STANDARD OF CARE** – SGH and its subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by engineers and architects providing similar services. The Client agrees that services provided by SGH will be rendered without any warranty, express or implied.

SGH shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

The Client agrees that SGH has been engaged to provide technical professional services only, and that SGH does not owe a fiduciary responsibility to the Client.

8. **OPINION OF PROBABLE COSTS** – When required as part of our work, SGH will furnish opinions of probable cost but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by SGH hereunder will be made on the basis of SGH's experience and qualifications and will represent SGH's judgment as an experienced and qualified design professional. SGH does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.

9. **SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by SGH. The Client shall remain liable for, and shall promptly pay SGH for all services rendered to the date of suspension of services plus suspension charges. Suspension charges shall include the cost of assembling documents, personnel and equipment rescheduling or reassignment, and commitments made to others on the Client's behalf. If after ninety (90) days the Client resumes SGH's work on the Project, SGH and the Client shall renegotiate SGH's fee.

If payment of invoices by the Client is not maintained current, SGH may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold SGH harmless from any claim or liability resulting from such suspension.

10. **TERMINATION** – The Client or SGH may terminate this Agreement for cause, except only the Client may terminate for convenience. The party initiating termination shall so notify the other party. The Client shall compensate SGH for services performed prior to termination and for prior authorized commitments made by SGH on the Client's behalf.

11. **CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute SGH's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made. In addition, costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information.

12. **FORCE MAJEURE** – SGH will not be liable to the Client for delays in performing its Services or for direct or indirect costs resulting from such delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

13. **LIABILITY** – SGH will furnish appropriate insurance certificates for general and professional liability upon request. The Client agrees that SGH's total liability to the Client and the total liability to the Client of SGH's principals, officers, agents, and employees, for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Project or this Contract from any cause or causes, including, but not limited to, SGH's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed SGH's total fee under this Agreement or \$50,000, whichever is greater. In no event shall SGH be liable to Client for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under the Agreement.

14. **CONFLICTS OF INTEREST** – This assignment may presently or in the future involve parties with potentially adverse interests to those of SGH's existing or future clients ("Affected Parties" or "Affected Party"). Prior to SGH's acceptance of this assignment, SGH will make reasonable attempts to identify any Affected Parties based on information SGH has in its possession from the Client and any Affected Parties and SGH's search of its project and proposal databases. To the extent that SGH identifies a relationship with an Affected Party, SGH will inform the Client as to the identity of such parties. Client agrees to allow SGH to release to any Affected Parties the fact of SGH's engagement by the Client and any other information required to evaluate any potential conflict.

SGH's ability to inform the Client of a relationship with an Affected Party is limited by the thoroughness and accuracy of the information provided to SGH by the Client and any Affected Parties, and by SGH's limitations in reasonably and diligently discovering all relationships with Affected Parties. Regardless of SGH's relationship with an Affected Party, and provided such relationship with an Affected Party does not arise from SGH's willful disregard of a relationship with the Affected Party, SGH shall be entitled to payment for all services rendered to the date of discovery or notice, whichever occurs first, of a relationship between SGH and an Affected Party. SGH does not guarantee that a relationship between the Client and an Affected Party, which may be perceived by the Client as a conflict, will not arise during the course of an assignment or thereafter. SGH disclaims responsibility for such occurrences and to the fullest extent permitted by law, the Client agrees to waive any claim against SGH arising out of any such actual or potential conflict-related occurrences. Subsequent to the date of this Agreement, SGH will not be in a position to guaranty that it can advise the Client of any future Affected Parties or perceived or actual conflict circumstances that may arise, but will endeavor to notify Client of such situations.

15. **INDEMNIFICATION** – SGH shall, subject to the limitation of liability contained in Section 13, indemnify the Client for any loss or damage caused solely by the professional negligence of SGH in performance of the services under this Agreement.

16. MISCELLANEOUS

Governing Law: The laws of the state in which the Project is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: If any of these Contract Provisions shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the contract between them to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

SGH Reliance: Unless otherwise specifically indicated in writing, SGH shall be entitled to rely, without liability, on the accuracy and completeness of information provided by the Client, the Client's consultants and contractors, and information from public records, without the need for independent verification.

Copyright Infringement Indemnification: To the fullest extent permitted by law, the Client agrees to defend, indemnify, and hold harmless SGH from any and all claims, damages, suits, causes of action, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising out of or in any way connected with SGH's use of documents or designs prepared by the Client's consultants, that may be asserted against or incurred by SGH.

Certifications: SGH shall not be required to sign any documents, no matter by whom requested, that would result in SGH's having to certify, guaranty, or warrant the existence of conditions that SGH cannot ascertain.

Payment: Invoices will be submitted periodically, and are due and payable upon receipt. Unpaid balances shall be subject to an additional charge at the rate of 1-1/2% per month from the date of invoice if the unpaid balance is not paid within thirty (30) days. The Client shall reimburse SGH for all attorney's fees and costs related to collection of overdue payments.

Litigation: All costs and labor associated with compliance with any subpoena or other official request for documents, for testimony in a court of law (other than in connection with expert witness services), or for any other purpose relating to work performed by SGH, in connection with work performed for the Client, shall be paid by the Client as a direct expense (actual cost plus 10%).

Taxes: Client shall, in addition to the other amounts payable under this Agreement, pay, on a timely basis, all sales, use, value added or other taxes, federal, state or otherwise, however designated (hereinafter "Taxes"), which are levied or imposed by reason of the transactions contemplated by this Agreement or any of the Services, except for taxes on SGH's net income. Client shall promptly pay SGH for any Taxes actually paid by SGH on behalf of Client, or which are required to be collected or paid by SGH. SGH may bill Client separately for such Taxes.

EXHIBIT A

SIMPSON GUMPERTZ & HEGER



Engineering of Structures
and Building Enclosures

30 April 2013
(Revised 23 August 2013)

Mr. Eric Sih
Oakland Unified School District
955 High Street
Oakland, CA 94601

Project 097151 – Revised Proposal to Perform Close-Out Work for DSA,
Highland Elementary School, Oakland, CA

Dear Eric:

Simpson Gumpertz & Heger Inc. will be pleased to provide structural engineering consultation services for Highland Elementary School as it pertains to DSA close-out of the project.

BASIS OF PROPOSAL:

- DSA approved Construction Documents prepared by our office for RISE – New Classroom Building; Highland New Classroom Building.
- Construction Administration services provided by our office through RFI # 00312 with SGH response dated 15 August 2012.
- Phone calls between yourself and Karen Vogt-Wilcox.
- Email from you, dated 28 March 2013, requesting our assistance in closing out this project.
- List of RFI's for our review from your email dated 23 April 2013.

SCOPE OF WORK:

- Review RFI's from your 23 April 2013 email and determine if any of these RFI's were of both a structural nature and were not answered by our office.
- If any RFI's are found to meet the above criteria, SGH to review the contents of the RFI to determine if the response is consistent with the intent of the approved construction documents.
- Finish the process to receive DSA approval for the suspended ceiling at the multi-purpose room. This will include the following:
 - Site visit and examine visible structural elements.
 - Develop punch list items where deficiencies are found.

- Provide sketches to remediate any discrepancy notice.
- Final verification form and DSA close-out procedure.

COMPENSATION

Our fees are computed on an hourly basis as shown on the attached schedule. We will not exceed 20 hours of time on this phase of work. We recommend you establish a budget of \$4,000 for this effort.

Direct expenses are billed at actual cost plus 10%. Direct expenses are out-of-pocket expenses and include, but are not limited to, sub-consultants, travel, outside services, copying, and charges for the use of SGH field and laboratory equipment. You have the right to terminate our services at any time, subject only to previous commitments we have made to others on your behalf. We reserve the right to suspend work if payments are in arrears.

This Proposal is valid for 30 days from the date of this letter. Our proposed Agreement consists of this Proposal, the enclosed Fee Schedule, and Contract Provisions. If this Agreement is acceptable, please sign and return one original of this Proposal. We will be happy to negotiate a different Form of Agreement if you so desire.

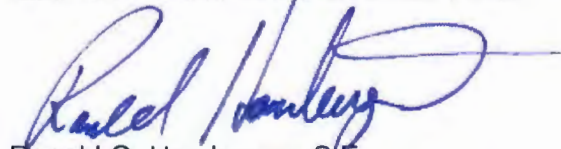
In accordance with California law, we cannot begin work on this project until we have a signed agreement.

Sincerely yours,

Accepted:

SIMPSON GUMPERTZ & HEGER INC.

OAKLAND UNIFIED SCHOOL DISTRICT



Ronald O. Hamburger, S.E.

Senior Principal

CA License S2951 (Structural)

I:\SF\Admin\Proposals\2013\SF13-0000439r-ROH_Highland
Elementary_Rev1.docx

Encls.

By _____

Title _____

Date _____

**SIMPSON GUMPERTZ & HEGER INC.
FEE SCHEDULE**

<u>Personnel Category</u>	<u>Hourly Billing Rate (\$ per hour)</u>
Senior Principal	\$240
Principal.....	\$225
Associate Principal.....	\$215
Staff Consultant D	\$215
Staff Consultant C	\$210
Staff Consultant B	\$205
Staff Consultant A	\$200
Senior Project Manager B	\$195
Senior Project Manager A	\$180
Senior Project Supervisor B	\$205
Senior Project Supervisor A	\$155
Senior Staff II – C	\$190
Senior Staff II – B	\$165
Senior Staff II – A	\$150
Senior Staff I – B	\$142
Senior Staff I – A	\$132
Staff IV – B	\$185
Staff IV – A	\$165
Staff III	\$146
Staff II – B.....	\$128
Staff II – A.....	\$118
Staff I – A.....	\$109
Technical Aide.....	\$70
Senior Laboratory Technician B.....	\$125
Senior Laboratory Technician A.....	\$95
Laboratory Technician.....	\$83
Senior Graphics Specialist	\$180
Graphics Specialist	\$90
Senior Project Drafter.....	\$122
Senior Drafter	\$113
Drafter	\$98
Non-Technical C	\$88
Non-Technical B.....	\$82
Non-Technical A.....	\$70

Individuals performing services are billed at the applicable rate(s) stated above. An annual rate adjustment, based upon salary increases, will apply on 1 January each year.

Invoices will be submitted showing labor (hours worked) by labor category and total expenses.

SIMPSON GUMPERTZ & HEGER INC. (SGH)
CONTRACT PROVISIONS

CLIENT/PROJECT: OAKLAND UNIFIED SCHOOL DISTRICT

- 1. CONTRACT** – These Contract Provisions and the accompanying Proposal and Fee Schedule constitute the entire Agreement of the parties, and supersede all prior negotiations, agreements, and understandings with respect to the subject matter of this Agreement. These Contract Provisions shall take precedence over any inconsistency or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document. The parties may only amend this Agreement by a written document duly executed by both parties.
- 2. RIGHT OF ENTRY** – When entry to property is required by the work, the Client agrees to obtain legal right-of-entry on the property.
- 3. DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents prepared by SGH are instruments of SGH's service that shall remain SGH's property. The Client agrees not to use SGH-generated documents for marketing purposes or for projects other than the project for which the documents were prepared by SGH without SGH's prior written permission.

Any reuse or disbursement to third parties without such express written permission or project-specific adaptation by SGH will be at the Client's sole risk and without liability to SGH or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, the Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless SGH from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or disbursement. Any release or project-specific adaptation by SGH will entitle SGH to further compensation at rates to be agreed upon by the Client and SGH.

- 4. DISPOSAL OF SAMPLES** – SGH will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
- 5. HAZARDOUS MATERIALS** – The scope of SGH's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
- 6. CONSTRUCTION SERVICES** – When construction-phase services are included in the Agreement, SGH will provide personnel to evaluate whether construction is in general accordance with the construction contract, but not to perform detailed observations or inspections of the work.

SGH is not a guarantor or insurer of the contractor's work; the contractor is solely responsible for the accuracy and adequacy of construction and for all other activities performed by the contractor, including the means and methods of construction; supervision of personnel and construction; control of machinery; false work, scaffolding, and other temporary construction aids; safety in, on, and about the job site; and compliance with OSHA and all other applicable regulations. SGH's evaluation of the contractor's performance will not include review or observation of the adequacy of the contractor's safety measures or of safety conditions on the project site nor of Contractor's means or methods of construction.

- 7. STANDARD OF CARE** – SGH and its subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by engineers and architects providing similar services. The Client agrees that services provided by SGH will be rendered without any warranty, express or implied.

SGH shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

The Client agrees that SGH has been engaged to provide technical professional services only, and that SGH does not owe a fiduciary responsibility to the Client.

- 8. OPINION OF PROBABLE COSTS** – When required as part of our work, SGH will furnish opinions of probable cost but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by SGH hereunder will be made on the basis of SGH's experience and qualifications and will represent SGH's judgment as an experienced and qualified design professional. SGH does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
- 9. SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by SGH. The Client shall remain liable for, and shall promptly pay SGH for all services rendered to the date of suspension of services plus suspension charges. Suspension charges shall include the cost of assembling documents, personnel and equipment rescheduling or reassignment, and commitments made to others on the Client's behalf. If after ninety (90) days the Client resumes SGH's work on the Project, SGH and the Client shall renegotiate SGH's fee.
- If payment of invoices by the Client is not maintained current, SGH may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold SGH harmless from any claim or liability resulting from such suspension.
- 10. TERMINATION** – The Client or SGH may terminate this Agreement for cause, except only the Client may terminate for convenience. The party initiating termination shall so notify the other party. The Client shall compensate SGH for services performed prior to termination and for prior authorized commitments made by SGH on the Client's behalf.
- 11. CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute SGH's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made. In addition, costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information.

- 12. FORCE MAJEURE** – SGH will not be liable to the Client for delays in performing its Services or for direct or indirect costs resulting from such delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

- 13. LIABILITY** – SGH will furnish appropriate insurance certificates for general and professional liability upon request. The Client agrees that SGH's total liability to the Client and the total liability to the Client of SGH's principals, officers, agents, and employees, for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Project or this Contract from any cause or causes, including, but not limited to, SGH's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed SGH's total fee under this Agreement or \$50,000, whichever is greater. In no event shall SGH be liable to Client for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under the Agreement.

- 14. CONFLICTS OF INTEREST** – This assignment may presently or in the future involve parties with potentially adverse interests to those of SGH's existing or future clients ("Affected Parties" or "Affected Party"). Prior to SGH's acceptance of this assignment, SGH will make reasonable attempts to identify any Affected Parties based on information SGH has in its possession from the Client and any Affected Parties and SGH's search of its project and proposal databases. To the extent that SGH identifies a relationship with an Affected Party, SGH will inform the Client as to the identity of such parties. Client agrees to allow SGH to release to any Affected Parties the fact of SGH's engagement by the Client and any other information required to evaluate any potential conflict.

SGH's ability to inform the Client of a relationship with an Affected Party is limited by the thoroughness and accuracy of the information provided to SGH by the Client and any Affected Parties, and by SGH's limitations in reasonably and diligently discovering all relationships with Affected Parties. Regardless of SGH's relationship with an Affected Party, and, provided such relationship with an Affected Party does not arise from SGH's willful disregard of a relationship with the Affected Party, SGH shall be entitled to payment for all services rendered to the date of discovery or notice, whichever occurs first, of a relationship between SGH and an Affected Party. SGH does not guarantee that a relationship between the Client and an Affected Party, which may be perceived by the Client as a conflict, will not arise during the course of an assignment or thereafter. SGH disclaims responsibility for such occurrences and to the fullest extent permitted by law, the Client agrees to waive any claim against SGH arising out of any such actual or potential conflict-related occurrences. Subsequent to the date of this Agreement, SGH will not be in a position to guaranty that it can advise the Client of any future Affected Parties or perceived or actual conflict circumstances that may arise, but will endeavor to notify Client of such situations.

- 15. INDEMNIFICATION** – SGH shall, subject to the limitation of liability contained in Section 13, indemnify the Client for any loss or damage caused solely by the professional negligence of SGH in performance of the services under this Agreement.

16. MISCELLANEOUS

Governing Law: The laws of the state in which the Project is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: If any of these Contract Provisions shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the contract between them to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

SGH Reliance: Unless otherwise specifically indicated in writing, SGH shall be entitled to rely, without liability, on the accuracy and completeness of information provided by the Client, the Client's consultants and contractors, and information from public records, without the need for independent verification.

Copyright Infringement Indemnification: To the fullest extent permitted by law, the Client agrees to defend, indemnify, and hold harmless SGH from any and all claims, damages, suits, causes of action, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising out of or in any way connected with SGH's use of documents or designs prepared by the Client's consultants, that may be asserted against or incurred by SGH.

Certifications: SGH shall not be required to sign any documents, no matter by whom requested, that would result in SGH's having to certify, guaranty, or warrant the existence of conditions that SGH cannot ascertain.

Payment: Invoices will be submitted periodically, and are due and payable upon receipt. Unpaid balances shall be subject to an additional charge at the rate of 1-1/2% per month from the date of invoice if the unpaid balance is not paid within thirty (30) days. The Client shall reimburse SGH for all attorney's fees and costs related to collection of overdue payments.

Litigation: All costs and labor associated with compliance with any subpoena or other official request for documents, for testimony in a court of law (other than in connection with expert witness services), or for any other purpose relating to work performed by SGH, in connection with work performed for the Client, shall be paid by the Client as a direct expense (actual cost plus 10%).

Taxes: Client shall, in addition to the other amounts payable under this Agreement, pay, on a timely basis, all sales, use, value added or other taxes, federal, state or otherwise, however designated (hereinafter "taxes"), which are levied or imposed by reason of the transactions contemplated by this Agreement or any of the Services, except for taxes on SGH's net income. Client shall promptly pay SGH for any Taxes actually paid by SGH on behalf of Client, or which are required to be collected or paid by SGH. SGH may bill Client separately for such Taxes.

Eduardo Rivera-Garcia

From: Ronald O. Hamburger <ROHamburger@sgh.com>
Sent: Monday, May 06, 2013 1:04 PM
To: Eric Sih; Karen Vogt-Wilcox
Cc: Jenny D. In
Subject: RE: Highland - proposal for new work

Eric
That is correct.

Ronald O. Hamburger, S.E. (CA, IL, OR, UT, WA), P.E. (LA, MN), SECB
Senior Principal

SIMPSON GUMPERTZ & HEGER

415.495.3700 main
650.678.3295 mobile
415.495.3550 fax
www.sgh.com

From: Eric Sih [mailto:esih@sgicm.com]
Sent: Monday, May 06, 2013 12:02 PM
To: Karen Vogt-Wilcox
Cc: Ronald O. Hamburger; Jenny D. In
Subject: RE: Highland - proposal for new work

Karen and Ron,

Thanks for the previous submitted proposal to OUSD for the close out of the Highland project #06009. Tadashi wants me to get a written confirmation from all engineer consultants the proposal you have submitted will cover all services require to close out the project with certification. Is this correct?

Please respond to this email and so we can get the district some kind of assurance to get this project complete. Thanks.



www.sgicm.com

Please consider the environment before printing this email

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Karen Vogt-Wilcox [<mailto:KJVogtWilcox@sgh.com>]
Sent: Tuesday, April 30, 2013 11:04 AM
To: Eric Sih
Cc: Ronald O. Hamburger; Jenny D. In
Subject: RE: Highland - proposal for new work

Eric,
Please find attached our proposal for the work that you have requested.
Thank you,
Karen

Karen J. Vogt-Wilcox, S.E. (CA)
Senior Staff II - Structures

SIMPSON GUMPERTZ & HEGER
510.457.4600 main
510.457.4461 direct
510.457.4599 fax
www.sgh.com

From: Eric Sih [<mailto:esih@sgicm.com>]
Sent: Friday, April 26, 2013 8:31 AM
To: Karen Vogt-Wilcox
Subject: Re: Highland - proposal for new work

Yes. Address to me at 955 high st, oakland ca. Oakland unified school district.



www.sgicm.com

Please consider the environment before printing this email

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Karen Vogt-Wilcox <KJVogtWilcox@sgh.com>
To: Eric Sih
Cc: Ronald O. Hamburger <ROHamburger@sgh.com>
Sent: Thu Apr 25 16:41:17 2013
Subject: RE: Highland - proposal for new work

Eric,
I am working on the proposal. I am assuming that we will be working directly for the Oakland Unified School District. Can you please confirm this and tell me who the proposal should be addressed to.

Thank you,
Karen

Karen J. Vogt-Wilcox, S.E. (CA)

Senior Staff II - Structures

SIMPSON GUMPERTZ & HEGER

| Engineering of Structures and Building Enclosures

500 12th Street, Suite 270
Oakland, CA 94607

510.457.4600 main
510.457.4461 direct
510.457.4599 fax
www.sgh.com

From: Eric Sih [esih@sgicm.com]
Sent: Tuesday, April 23, 2013 12:53 PM
To: Karen Vogt-Wilcox
Cc: Ronald O. Hamburger; Eduardo Rivera-Garcia
Subject: RE: Highland - proposal for new work

Karen and Ron,


I have read through all 321 RFI on this project. Per your request, here is a list of the RFI related to SGH for the Highland project:

11,12,19,21,24,25,25.1,27,31,32,33,53,63,71,77,78,79,83,84,85,89,90,91,93,94,99,101,107,112,114,117,119,120,121,122,124,127,128,131,132,133,149,157,148,151,164,165,169,171,173,173.1,194,196,199,200,201,203,204,205,215,218,219,223,228,235,236,242,248,251,254,258,259,261,264,265,267,290,312

Let me know if this help to narrow down your research and could submit a proposal for the close out. Thanks.



www.sgicm.com

 Please consider the environment before printing this email

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Karen Vogt-Wilcox [<mailto:KJVogtWilcox@sgh.com>]
Sent: Friday, April 12, 2013 10:00 AM
To: Eric Sih
Cc: Ronald O. Hamburger
Subject: RE: Highland - proposal for new work

Good morning Eric,

When we spoke at the beginning of this week we discussed having you, or someone at the District, do an initial sort of the files that you wanted SGH to review. This was so that we could spend our time productively working towards an approval for the multi-purpose room suspended ceiling. There is also the possibility that our review of the selected RFI's, ASI's and other files may highlight something that we were unaware of, and therefore, follow-up work may be required.

Were you able to have your conversation with the District?

Thank you,
Karen

Karen J. Vogt-Wilcox, S.E. (CA)
Senior Staff II - Structures

SIMPSON GUMPERTZ & HEGER
| Engineering of Structures and Building Enclosures

500 12th Street, Suite 270
Oakland, CA 94607

510.457.4600 main
510.457.4461 direct
510.457.4599 fax
www.sgh.com



CERTIFICATE OF LIABILITY INSURANCE

SIMP GUM-01 KPAWLOWSKI

DATE (MM/DD/YYYY)

6/27/2013

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

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

PRODUCER Ames & Gough 859 Willard Street Suite 320 Quincy, MA 02169	CONTACT NAME: PHONE (A/C, No, Ext): (617) 328-6555 FAX (A/C, No): (617) 328-6888 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Charter Oak Fire Insurance Company INSURER B: Travelers Property Casualty Company of America INSURER C: Travelers Casualty and Surety Company INSURER D: Lexington Insurance Company INSURER E: INSURER F:	NAIC # 25615 25674 19038 19437
INSURED Simpson, Gumpertz & Heger, Inc. 41 Seyon Street Bldg. #1, Suite 500 Waltham, MA 02453		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			630-3646P601	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 1,000,000
			DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000				
			MED EXP (Any one person) \$ 10,000				
			PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			810-2235X620	1/1/2013	1/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
			BODILY INJURY (Per person) \$				
			BODILY INJURY (Per accident) \$				
			PROPERTY DAMAGE (Per accident) \$				
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-5212P879	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 5,000,000
			AGGREGATE \$ 5,000,000				
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N/A			UB-3654P324	1/1/2013	1/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
			E.L. EACH ACCIDENT \$ 1,000,000				
			E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
			E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
D	Prof. Liability			023462679	7/2/2013	7/2/2014	Per Claim 12,000,000
D				023462679	7/2/2013	7/2/2014	Aggregate 12,000,000

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

For proposal Only

CERTIFICATE HOLDER**CANCELLATION**

For Proposal Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Maguerite Parrot

© 1988-2010 ACORD CORPORATION. All rights reserved.

INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information

Project Name	Highland New Classroom Building	Site	126
---------------------	---------------------------------	-------------	-----

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	Simpson Gumpertz & Heger	Agency's Contact		Ronald O. Hamburger				
OUSD Vendor ID #	New Consultant	Title		Project Manager				
Street Address	100 Pine Street, Suite 1600	City	SF	State	CA	Zip	94111	
Telephone	415-495-3700	Policy Expires		1-1-2014				
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input type="checkbox"/> No					
OUSD Project #	06009							

Term

Date Work Will Begin	10-23-2013	Date Work Will End By (not more than 5 years from start date)	10-9-2014
-----------------------------	------------	---	-----------

Compensation

Total Contract Amount	\$	Total Contract Not To Exceed	\$4,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information

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

Resource #	Funding Source	Org Key	Object Code	Amount
9699	Measure B	1269901837	6215	\$4,000.00

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.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities Planning and Management				
	Signature	Date Approved	10/7/13		
2.	General Counsel, Department of Facilities Planning and Management				
	Signature	Date Approved	10-7-13		
	Associate Superintendent, Facilities Planning and Management				
3.	Signature	Date Approved	10/7/13		
	Deputy Superintendent, Board of Education				
4.	Signature	Date Approved			
	President, Board of Education				
5.	Signature	Date Approved			