

Board Office Use: Legislative File Info.	
File ID Number	19-1106
Introduction Date	June 12, 2019
Enactment Number	19-0926
Enactment Date	6/12/19 lf



**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Rebecca Littlejohn, Risk Management Officer *RL*  
Michael L. Smith, Interim General Counsel

**Board Meeting Date** June 12, 2019

**Subject** Contract – Cannon Cochran Management Services, Inc. – Property and Liability Claims Administration

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**Action** Authorize a Contract with Cannon Cochran Management Services, Inc. ("CCMSI"), a Third Party Administrator ("TPA"), for the period July 1, 2019 to June 30, 2020, with the option to renew for two additional one-year periods, in an annual not to exceed amount of \$250,000, for the provision of liability and property claims adjusting services to the District.

**Background** The District's current contract with CCMSI, twice amended, (Enactment Nos. 15-0260, 15-0466, and 17-0694) for CCMSI to provide the District liability and property claims management services expires June 30, 2019. That contract for specialized services was awarded following an RFP process.

In September 2018, the Risk Management Department issued a Request for Proposals for such specialized services. However, in November 2018, the District withdrew that RFP due to an anticipated significant reduction in the District's self-insurance level, which altered the material terms of the RFP. Further, at that point only one vendor had responded to the RFP: CCMSI. Later, following an internal District change in April 2019, it was determined that actually the District's self-insurance level is not likely to be altered as drastically as initially thought.

Based on the foregoing, the District must maintain its business relationship with CCMSI in order to secure the existing specialized claims adjusting services.

**Discussion** Although CCMSI's final year of adjusting services under the expiring contract were provided at an annual not to exceed amount of

\$135,000, because the volume of claims reported to and adjusted by CCMSI is significantly greater than was set forth in the District's original 2015 RFP, CCMSI has offered to continue said services at an annual not to exceed amount of \$250,000. CCMSI provides two claims adjusters to the District under the existing arrangement, as well as oversight of those adjusters.

The District is not currently resourced to internally address its liability and property claims adjusting needs.

**Recommendation**

Authorize a contract with CCMSI, a TPA, for the period July 1, 2019 to June 30, 2020, with the option to renew for two additional one-year periods, in an annual not to exceed amount of \$250,000, for the provision of liability and property claims adjusting services to the District.

**Fiscal Impact**

Fund 67 (Resource Code 0000), not to exceed \$250,000 per contract year.

**Attachment**

District-CCMSI 2019 Contract



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**AGREEMENT BETWEEN  
OAKLAND UNIFIED SCHOOL DISTRICT AND  
CANNON COCHRAN MANAGEMENT SERVICES, INC.  
FOR PROPERTY AND LIABILITY THIRD PARTY ADMINISTRATOR  
SPECIALIZED SERVICES**

**1. INTENT**

The Oakland Unified School District (the "OUSD" or "District") is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal and administrative matters with persons specially trained, experienced, and competent to perform such services. Cannon Cochran Management Services, Inc. ("CCMSI" or "Contractor"), a Delaware corporation, warrants it is a Third Party Administrator ("TPA") specially trained, experienced, and competent to provide such liability (including property) claims adjusting services. The Superintendent, General Counsel and Risk Manager have determined that CCMSI is the most qualified and, subject to the terms and conditions provided herein, enters into this Agreement (at times referred to as "Contract") with CCMSI to provide TPA services assigned to it.

**2. TERMS AND CONDITIONS**

**2.1 Term of Agreement.** The term of this Agreement shall be July 1, 2019 to June 30, 2020, and may be extended by written agreement of both parties for two (2) additional years beyond that period. An annual or yearly period contemplated under this Agreement shall be considered as being between July 1 of a particular year to June 30 of the year immediately following said year.

**2.2 Termination.** Either OUSD or CCMSI may terminate this agreement upon 120 days written notice to the other. If OUSD terminates this Agreement, OUSD shall compensate CCMSI for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CCMSI fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another vendor. If that cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CCMSI shall pay the additional cost. OUSD's right to terminate this Agreement is not its exclusive remedy but is in addition to all other remedies available to OUSD by law, in equity, or under the provisions of this Agreement. Upon any termination of this Agreement, CCMSI shall immediately provide OUSD with complete and accurate copies or originals – where appropriate – of all documents in its possession belonging to OUSD. CCMSI and OUSD further agree to do all other things reasonably necessary to cause an orderly transition of services.

**2.3 Licenses and Permits.** CCMSI warrants it is specially trained, experienced, competent and fully licensed to provide the services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply. CCMSI further warrants that CCMSI has the qualifications and ability to perform the services in a professional manner, without the advice, control, or supervision of OUSD. CCMSI 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.

**2.5 Conflict of Interest.** CCMSI shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CCMSI shall not hire any officer or employee of OUSD to perform any



service by this Agreement without the prior approval of OUSD's Human Resources Director. CCMSI affirms to the best of its knowledge, there exists no actual or potential conflict of interest between CCMSI's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention immediately in writing. Through its execution of this Agreement, CCMSI acknowledges that it is familiar with the provisions of Section 1090, *et seq.* and Section 87100, *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CCMSI receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CCMSI agrees it shall notify OUSD in writing.

**2.6 Conduct of CCMSI:** By signing this Agreement, CCMSI certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, immediately upon request, which include:

- a. **Tuberculosis Screening:** CCMSI is required to screen employees who will be working at OUSD sites for more than six hours. CCMSI affirms that each employee has current proof of negative TB testing on file and TB screening will be continuously completed consistent with all applicable legal requirements throughout the term of this Agreement.
- b. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 apply to CCMSI's services under this Agreement and CCMSI certifies its compliance with these provisions as follows: "CCMSI certifies that CCMSI has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CCMSI's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CCMSI, who may have contact with District pupils in the course of providing services pursuant to the Agreement, 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. CCMSI further certifies that it has received and reviewed fingerprint results for each of its Employees and CCMSI has requested and reviews subsequent arrest records for all Employees who may come into contact with District pupils in providing services to OUSD under this Agreement."

In the event that OUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CCMSI-related person, employee, representative or agent from an OUSD school site and/or property and/or administration of claim, CCMSI shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

**2.7 Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, contractors, or sub-contractors are to use controlled substances, alcohol or tobacco on such property.

**2.8 Nondiscrimination.** It is the policy of OUSD that in connection with all work performed under contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age. Therefore, CCMSI agrees to comply with all 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, CCMSI agrees to require like compliance by all its subcontractor(s). CCMSI shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation or other protected class.



**2.9 Limitation of District Liability.** Other than as provided in this Agreement, OUSD'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 OUSD 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.

**2.10 Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.

**2.11 Evaluation of CCMSI.** OUSD may evaluate CCMSI's work in any way that OUSD is entitled to do so pursuant to applicable law. OUSD's evaluation may include, without limitation: (a) Requesting that OUSD employee(s) evaluate CCMSI and CCMSI's employees and subcontractors and each of their performance and/or (b) announced and unannounced observance of CCMSI, CCMSI's employee(s), and/or subcontractor(s).

### **3. AREAS OF AUTHORITY**

**3.1 Status of CCMSI.** This is not an employment contract. CCMSI, in the performance of this Agreement, shall be and act as an independent contractor. CCMSI understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partners, or joint ventures of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CCMSI 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 CCMSI's employees. In the performance of the work herein contemplated, CCMSI is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

**3.2 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.

**3.3 Ownership of Documents.** All documents created, received, or obtained by CCMSI pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by CCMSI, are and shall be at the time of creation and thereafter the property of OUSD, with all intellectual property rights therein vested in OUSD at the time of creation. OUSD shall be entitled access to and copies of these materials during the progress of the work. Any such materials in the hands of CCMSI or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to OUSD. CCMSI may retain a copy of all materials produced under this Agreement for its use in its general business activities, subject to the confidentiality limitations set forth in this Agreement.

**3.4 Records.** (a) CCMSI shall maintain all claim information relating specifically to OUSD which is necessary to the performance of CCMSI's obligations under this Agreement (the "Records"). The Records shall remain at all times the sole property of OUSD. (b) However, the Records shall not include any manuals, forms, files and reports, documents, customer lists, rights to solicit renewals, computer records and tapes, financial and strategic data, or information which documents CCMSI's processes, procedures and methods, or which CCMSI employs to administer programs other than OUSD's. The items specified in this Section 3.4, subsection (b) shall at all times be and remain the sole and exclusive property of CCMSI, and OUSD shall not have any ownership, interest, right to duplicate or right to utilize these items except for the documentation or information that relates solely to OUSD's Program.

**3.5 Confidentiality of Records.** CCMSI and its agents, personnel, employees, and/or subcontractors shall maintain the confidentiality of all information received in the course of performing the services pursuant to this Agreement. CCMSI and its agents, personnel, employees, and/or subcontractors shall maintain records



in accordance with all applicable federal and state laws and regulations and agree that records relating to individual pupils provided by OUSD are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. CCMSI and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

#### **4. INDEMNIFICATION**

CCMSI agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CCMSI also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, CCMSI, or subcontractor furnishing work, services, or materials to CCMSI in connection with the performance of this Agreement. This provision survives termination of this Agreement.

#### **5. INSURANCE**

Without in any way limiting CCMSI's liability pursuant to the "Indemnification" section of this Agreement, throughout the term of the Agreement CCMSI shall pay for and maintain in full force and effect with an insurance company/ies admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:

CCMSI shall maintain Commercial General Liability insurance, including automobile coverage (including hired and non-owned automobile liability), with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CCMSI. The policy shall protect CCMSI and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

CCMSI shall maintain at all times during the performance of work under this Agreement Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws, when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. CCMSI certifies that it is 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 will comply with such provisions before commencing the performance of the Work of this Contract.

CCMSI shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of OUSD and endorsed to name the Oakland Unified School District, its officers, employees, volunteers and agents as additional insured, and shall not be cancelable or reduced without thirty (30) days prior written notice to OUSD. Said Additional Insured endorsement shall be provided to OUSD prior to this Agreement becoming valid and at any time, upon demand by OUSD. If at any time said policies of insurance lapse or become canceled, this Agreement shall become voidable at OUSD's sole discretion. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or CCMSI to OUSD.

## 6. SCOPE OF WORK

CCMSI shall comply with each and every term, condition, duty and provision of the "Scope of Work" that is attached to this Agreement as **Exhibit A**, and incorporated as if fully set forth herein.

## 7. COMPENSATION, INVOICES, AND NOTICES

**7.1 Compensation:** CCMSI will be paid as follows for the performance of its services under this Agreement:

### **RISK MANAGEMENT INFORMATION SYSTEM FEES**

**No charge up to 8 users – additional users \$250.00 per user, annual charge.**

Risk Management Information System ("RMIS," also known as "iCE") cost includes: 8 (eight) User ID's; internet access to claim files; the ability to email OUSD's adjuster and Account Manager; access to CCMSI's library of template risk management reports together with initial training and ongoing support; monthly loss runs and loss fund activities reports. The RMIS Fee will be charged on an annual contract year basis.

### **SERVICES FEES**

<b><i>Services:</i></b>	
<b>Claims Management – Time &amp; Expense Rates</b>	
\$90.00 (Ninety Dollars ) per hour	
\$100.00 (One Hundred per hour – field work	
<b><i>Claims Management Fees include:</i></b>	
<ul style="list-style-type: none"> <li>• All claims management functions</li> <li>• State filings and reporting</li> <li>• Claims investigation</li> <li>• Litigation Management</li> <li>• Identifying potential sources for and providing analysis and likelihood of subrogation recovery-</li> <li>• SIU handling (inside)</li> </ul>	
<b>Administration Fees - \$7,500.00 annual fee</b>	
<b><i>Administration Fee includes:</i></b>	
<ul style="list-style-type: none"> <li>• Maintenance of Quality Service Plan (client service instructions)</li> <li>• Designated Account Manager</li> <li>• Oversight, preparation and participation in quarterly claims reviews</li> <li>• Oversight , preparation and delivery of any special reports requested.</li> <li>• Quarterly Client Scorecard evaluations</li> <li>• Maintenance of the loss fund account and all bank charges</li> <li>• Filing of all required state forms.</li> <li>• Reporting to excess or fronting carrier, Joint Powers Authority</li> <li>• Annual adjuster training and certification.</li> <li>• File storage</li> </ul>	
The Administration Fee will be charged on an annual contract year basis.	
<b>Other Services</b>	
<b><i>Service</i></b>	<b><i>Fee</i></b>



Claim Intake/Reporting	Via ICE – No charge. All others: \$35.00 (Thirty-Five Dollars) each
Subrogation	15% (Fifteen Percent) of Recovery
Field Investigation (if necessary)	Time & Expense ("T&E") at \$100.00 (One Hundred Dollars) per hour charged as Allocated Loss Adjustment Expense ("ALAE") at cost to the claim file. Any independent adjusting costs incurred shall also be billed to the claim file, at cost, as ALAE. .
Index Bureau	Billed as ALAE to claim file at cost
State Reporting EDI	Initial Reporting \$10.00 (Ten Dollars) per report; Subsequent Reports \$5.00 (Five Dollars) per report – charged ALAE to claim file
MMSEA Section 111 Reporting	\$25.00 (Twenty-Five Dollars) per eligible claimant, one-time fee, charged ALAE to claim file
Carrier Fees	If applicable, OUSD will be responsible for payment of any carrier fees associated with the transition of claim handling responsibilities to CCMSI.
<b>Allocated Loss Adjustment Expenses</b>	
<p>CCMSI will pay all Allocated Loss Adjustment Expenses ("ALAE") with OUSD funds. ALAE charges are charges for services provided in connection with specific claims by persons or firms which are eligible claim expenses under OUSD's program. Notwithstanding the foregoing, ALAE will include all expenses incurred in connection with the investigation, adjustment, settlement or defense of OUSD claims, even if such expenses are incurred by CCMSI. ALAE charges will include, but not be limited to, charges for:</p> <ul style="list-style-type: none"> <li>• Independent medical examinations</li> <li>• Fraud detection expenses, such as surveillance, which include the services provided by fire, CCMSI's proprietary Special Investigation Unit ("SIU"), and other related expenses associated with the detection, reporting and prosecution of fraudulent claims, including legal fees</li> <li>• Attorneys, experts and special process servers</li> <li>• Court costs, fees, interest and expenses</li> <li>• Depositions, court reporters and recorded statements</li> <li>• Independent adjusters and appraisers</li> <li>• Index bureau and OFAC (Office of Foreign Assets Control) charges</li> <li>• Charges associated with accident reconstruction, cause and origin investigations, etc.</li> <li>• Charges for medical records, personnel documents, and other documents necessary for adjudication of claims under OUSD's program</li> <li>• Charges associated with MMSEA Section 111 Reporting; and MSP compliance costs including lien research, Medicare Set-Aside Allocations; and Contractual Settlement Allocations</li> <li>• Other expenses normally recognized as ALAE by industry standards</li> </ul>	
<b>Custom Reporting (Optional)</b>	
<p>CCMSI will provide special reports, (reports not currently programmed or written) for a fee of \$150.00 (One Hundred Fifty dollars) per hour for system programming time. CCMSI will provide an estimate of charges before any work will be done. <u>Please note:</u> CCMSI has over 400 standard reports from which OUSD can choose, therefore it is highly unlikely it would be necessary to develop custom reports.</p>	

**7.2 Billable Time:** Unless OUSD is later billed on a flat fee basis pursuant to an amendment to this Agreement, CCMSI agrees to bill services for OUSD to the nearest 0.1 of an hour (*i.e.*, six (6) minute



intervals). As CCMSI is located outside District service boundaries, but within Contra Costa County, OUSD's main office, located at 1000 Broadway, Suite 680, Oakland, CA 94607, shall be used for calculating travel time.

**7.3 Invoicing:** Invoices furnished by CCMSI under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: CCMSI name, CCMSI address, invoice date, invoice number, purchase order number, OUSD claim number, name of school or department service was provided to, period of service, name of the person(s) performing the service(s), date(s) service was/were rendered, brief description of service(s) provided, number of hours of service, hourly rate, lump sum rate, and total payment requested.

**7.4 Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

**District Representative:**

Name: Rebecca Littlejohn

Site/Dept.: Risk Management Office

Address: 1000 Broadway, Suite 440  
Oakland, CA 94607

Phone: (510) 879-8535

Email: rebecca.littlejohn@ousd.org

**CCMSI/CCMSI:**

Name: Rodney J. Golden

Title: Chief Operating Officer

Address: 2 E. Main Street  
Danville, IL 61832

Phone: (217) 444-1127

Email: rgolden@ccmsi.com

Notice shall be effective when received if personally served or, if mailed, five calendar (5) days after mailing. Each party must give written notice of a change of representative, address, and/or other contact information.

**7.4 Payment:** Payment for CCMSI's services/work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after CCMSI submits an invoice to OUSD for services/work actually completed and after OUSD's written approval of the services/work, or the portion of the services/work for which payment is to be made. The granting of any payment by OUSD, or the receipt thereof by CCMSI, shall in no way lessen the liability of CCMSI to correct unsatisfactory services/work, although the unsatisfactory character of that services/work may not have been apparent or detected at the time a payment was made. Services/work which does not conform to the requirements of this Agreement may be rejected by OUSD and in that case must be corrected or replaced by CCMSI without delay and at no charge to OUSD.

**8. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

CCMSI certifies to the best of his/her/its knowledge and belief, that it and its principals 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 Agreement certifies that CCMSI does not appear on the Excluded Parties List (<https://www.sam.gov/>).

**9. PERFORMANCE OF CCMSI**

**9.1 Key Personnel:** CCMSI shall assign personnel with the skills and experience necessary to achieve OUSD's objectives and CCMSI represents that it has identified in its bid submitted in response to OUSD's RFP those specific personnel it intends to assign to the Project. CCMSI understands that OUSD is relying upon CCMSI's representation in that regard. CCMSI is not permitted to reassign any of the key personnel (*i.e.*, the



specific Sr. Claim Specialist, Claim Supervisor, and Regional Liability Claims Manager identified in CCMSI's November 2014 Proposal in response to OUSD's RFP) unless OUSD approves in writing the proposed reassignment and the proposed replacement.

**9.2 Assignment:** The obligations of CCMSI under this Agreement shall not be assigned by CCMSI without the express prior written consent of OUSD.

## **10. OTHER LEGAL TERMS OF AGREEMENT**

**10.1 Choice of Law/Venue:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, without resort to conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

**10.2 Incorporation of Recitals and Exhibits:** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. CCMSI agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Contract, the terms and provisions of this Contract shall govern.

**10.3 Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between OUSD and CCMSI 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 all parties to the Agreement.

**10.4 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.

**10.5 Section Headings:** All section headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**10.6 Severability:** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if the invalid or unenforceable provision had been revised to the minimum extent necessary to make it valid and fully enforceable under applicable law.

**10.7. Provisions Required By Law Deemed Inserted:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

**10.8 Captions and Interpretations:** Section and 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.

**10.9 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 given the proper authority and empowered to enter into this Agreement.

**10.10 Agreement Contingent on OUSD Governing Board/Superintendent Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CCMSI absent such formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education and/or the Superintendent, as its designee.

**10.11 W-9 Form:** If CCMSI is doing business with OUSD for the first time, complete and return with the signed Agreement the W-9 form.

**10.12 Not To Exceed Amount:** The total annual amount that OUSD will pay for CCMSI's services under this Agreement for each yearly period (*i.e.*, July 1 – June 30 of each contract year) shall not exceed \$250,000, not including ALAE costs and expenses that are incurred and paid by CCMSI on OUSD's behalf and passed directly through to OUSD for reimbursement to CCMSI pursuant to Section 7.1. Should incurred charges in the yearly



period at issue exceed the yearly not to exceed amount, those charges will be submitted to OUSD and will be jointly reviewed by OUSD and CCMSI in order to (1) reach an agreement as to the amount owed by OUSD in excess of the annual not to exceed amount and (2) to consider an adjustment upwards of the not to exceed amount for the pending or next yearly period.

**10.13 Contract Publicly Posted:** This Contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.

**OAKLAND UNIFIED SCHOOL DISTRICT**

*Aimee Eng*

Aimee Eng (President, Board of Education)

Date: 6/13/19

*Kyla Johnson-Trammell*

Kyla Johnson-Trammell (Superintendent and Secretary to the Board of Education)

Date: 6/13/19

*Approved as to form by OUSD General Counsel:*

*Michael L. Smith*

Michael L. Smith *Andrea Epps, Staff Attorney*

Date: \_\_\_\_\_

**CCMSI (CCMSI)**

*Rodney J. Golden*

CCMSI Signature (for CCMSI)

*Rodney J. Golden*

Rodney J. Golden, Chief Operating Officer

Date: 5/9/19

**EXHIBIT A**  
**TO THE AGREEMENT BETWEEN OAKLAND UNIFIED SCHOOL DISTRICT AND**  
**CANNON COCHRAN MANAGEMENT SERVICES, INC.**  
**FOR PROPERTY AND LIABILITY THIRD PARTY ADMINISTRATOR –**  
**SCOPE OF DUTIES**

- A. CCMSI agrees to investigate, evaluate, process, manage and resolve bodily injury, personal injury and property damage claims and potential claims for money damages or losses, including property, against OUSD, its officers, agents, or employees for which OUSD, its officers, departments, or any of its employees are alleged to be legally responsible.
- B. Government Tort Claims Management
1. CCMSI agrees to provide comprehensive claims management and administration, including existing open claims. This will include investigation, case management, written responses, defense management and settlement/negotiations. CCMSI agrees to manage all claims to their final conclusion. CCMSI agrees that OUSD's Deputy General Counsel (or, where applicable, General Counsel) has exclusive decision-making authority regarding the selection of all counsel/attorneys who may be retained to assist or work with CCMSI on an OUSD claim or matter.
  2. General Timeline for Claims Handling
    - a. CCMSI shall within two (2) business days of receipt of a new claim, enter the claim information into its claims management information system, "iCE."
    - b. CCMSI agrees to also begin the file review and initial investigation within four (4) business days of receipt of the claim.
    - c. CCMSI agrees to provide within five (5) business days of notice of potential claim or claim filing a written report to OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) on all serious or catastrophic occurrences that have a potential litigated value of over fifty thousand dollars (\$50,000) (including damages, costs and attorney's fees). CCMSI agrees to notify the excess carrier or its administrator on behalf of OUSD in accordance with the specific requirements of the excess carrier and its administrator.
    - d. CCMSI agrees to provide within twenty (20) business days of claim filing a written claim analysis report including, but not limited to, 1) fact analysis, 2) liability assessment, 3) possible defenses, 4) damage assessment, and 5) recommendations for action (including settlement, rejection or defense).
    - e. CCMSI agrees to send OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) copies of all notices regarding claims which are untimely or insufficient, and all actions taken on claims, within two (2) business days of such notices being issued to the claimant.
  3. Settlement of Claims
    - a. CCMSI agrees to contact OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) and Risk Management Officer, respectively, with its settlement recommendation and obtain from OUSD approval to negotiate and resolve any claim.
    - b. CCMSI agrees to settle bodily injury and property damage aspects of a claim as one "global" settlement, unless authorized differently by OUSD's Deputy General Counsel (or designee in the Office of the General Counsel).



- c. CCMSI agrees that settlements of more than fifty thousand dollars (\$50,000) must be approved by OUSD's Board of Education. CCMSI agrees to prepare all settlement agreements and to draft all Board memoranda for OUSD Board approval on all claims CCMSI is handling.
  - d. CCMSI agrees to coordinate Medicare and Medicaid set aside agreements in compliance with all applicable laws and reporting requirements, including Section 111 of the Medicare, Medicaid, and SCHIP Extension Act ("MMSEA").
4. CCMSI agrees to keep OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) and Risk Management Officer, respectively, fully informed of all significant developments in assigned matters.
  5. CCMSI agrees to establish and maintain liability and expense reserves on each claim which fairly and adequately reflect OUSD's exposure according to standard industry practices.
  6. CCMSI agrees to report to OUSD any assigned claims determined to present a potential conflict of interest. CCMSI agrees to not represent OUSD where a conflict may exist, without an express written and executed waiver from OUSD.
  7. CCMSI agrees to acknowledge existing claimants identified by OUSD Deputy General Counsel (or designee in the Office of the General Counsel) by letter and notify them of the newly assigned adjuster and the newly assigned adjuster's contact information within thirty (30) days of the start of this Agreement.
  8. CCMSI agrees to manage and administer liability claims on open existing claims or as may be assigned by OUSD during the term of this Agreement.
  9. CCMSI agrees to obtain the claims files from OUSD and that at the end of the Agreement term or when the Agreement is terminated, CCMSI will immediately transfer all files in electronic format, as requested, to any new TPA or OUSD, as directed.
  10. CCMSI agrees to coordinate, consult, and fully cooperate with District personnel in the administration of all claims assigned to CCMSI. CCMSI shall cooperate with OUSD in-house and outside attorneys to resolve claims and subsequent litigation.
  11. CCMSI agrees to, upon appropriate approval by OUSD, initiate settlement payments through a District-owned checking account established specifically for that purpose. A monthly reconciliation statement and check register for all payments made from the account must be provided by CCMSI to OUSD's Risk Management Officer. CCMSI agrees to demonstrate appropriate controls are in place to monitor all financial transactions and protect the integrity of the account.

#### C. First-Party Property Losses

1. CCMSI agrees to provide comprehensive claims management and administration of OUSD's first-party property losses within the applicable SIR/MRL, to include investigation and valuation of such losses for purposes of establishing appropriate internal reimbursement amounts between OUSD's self-insurance fund and the individual departments sustaining such loss.
2. CCMSI agrees to manage these purely internal property claims to their final conclusion, including potential subrogation recoveries from responsible third parties.

#### D. Employee Reimbursement Program

1. As OUSD has established a limited program of non-tort reimbursement for certain, qualifying losses of property belonging to District employees, CCMSI agrees to provide comprehensive claims management and administration of employee property reimbursement claims, including investigation and valuation of such losses.

#### E. Subrogation

1. CCMSI agrees to identify potential sources of subrogation recovery in all of the claims it handles for OUSD.
2. CCMSI agrees to provide OUSD with an analysis and recommendation regarding the amount and likelihood of recovery in every potential subrogation it identifies.

#### F. Data Management

1. CCMSI agrees to enter into and maintain all open claims and new claims data in an OUSD-approved electronic claims management information system, which is currently CCMSI's "iCE" system.
2. In collaboration with OUSD, CCMSI agrees to create and maintain a "site" and "department" coding system which will allow for analysis of loss data in relation to those elements.
3. CCMSI agrees to create and maintain a review system to ensure accurate data will be entered into the claims management system. All claims must be reviewed on a periodic basis, as determined by OUSD. The review system must include a check on all the financial documentation entered into the claims management system to ensure the financial integrity of the system. In addition, the review system must include, but is not limited to, appropriate claims handling and reserving procedures, and timely file closures.
4. CCMSI agrees to use electronic notes in the claims management information system to record activity which shall be updated with new developments. All significant documents (*e.g.*, e-mail updates, status updates from counsel) will be scanned into the database by CCMSI.
5. CCMSI agrees to provide training, support and access to OUSD's Legal and Risk Management Department staff of the claims management information system so that they may search for claim information and data, as required. Additionally, CCMSI agrees to provide access to designated OUSD personnel to create prospective, and retrospective, "incident only" or "information only" entries in the claim information system.
6. CCMSI agrees that it is responsible for the protection of the confidentiality, availability, privacy and integrity of OUSD's information in CCMSI's custody. CCMSI has implemented an Information Security Policy that has been developed to comply with applicable federal and state laws or regulations and industry best practices. CCMSI agrees that the Information Security Policy applies to all CCMSI personnel, including temporary employees, independent contractors and vendors with access to CCMSI systems.
7. OUSD may be provided with the right to use one or more CCMSI Applications in connection with the services provided by CCMSI in this Agreement. CCMSI Applications include iCE, MyReports, Loss Control ASAP, Loss Control Resources and iCEBAR. The right to use CCMSI Applications is non-exclusive, limited to the term of this Agreement, non-transferable and is solely for the internal business use of Client.
  - a. CCMSI owns and reserves all rights, title, and interest in and to the CCMSI Applications. OUSD has no right to receive a copy of the object code or source code to the CCMSI Applications. OUSD may not attempt to:



- i. License, sell, lease or otherwise make the CCMSI Applications available to any other party. OUSD will not provide any access, passwords or other information regarding the CCMSI Applications to any third parties and/or competitors of CCMSI without the prior written consent of CCMSI;
  - ii. Use the CCMSI Applications in any way that violates any law, regulation or mandate, or the term of this Agreement;
  - iii. Take any action that jeopardizes confidential or proprietary information held by CCMSI.
- b. OUSD is responsible for any confidential or proprietary information accessed or downloaded by OUSD from the CCMSI Applications, including the implementation of appropriate information security controls surrounding such information.
  - c. Except as expressly provided in this Agreement, CCMSI Applications are provided "as-is." CCMSI disclaims all other warranties, express, implied, or statutory, including the implied warranties or merchantability, satisfactory quality, title, fitness for a particular purpose, non-infringement, compatibility, security, quiet enjoyment, or accuracy. Without limiting the foregoing, CCMSI does not warrant that access to or use of the CCMSI Applications will be uninterrupted or error-free. CCMSI will provide support for the CCMSI Applications in the two most recent versions of the Internet Explorer, Chrome, Firefox and Safari browsers.

#### G. Reporting and Audits

1. CCMSI agrees that it will review on a monthly basis selected OUSD claims with OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) and Risk Management Officer, respectively, and/or other designated OUSD officials to discuss the status of ongoing claims and to make case strategy recommendations.
2. CCMSI agrees to provide the following reports on a monthly basis – (a) a detailed listing of all claims broken down by location, policy year and line of coverage; (b) a summary of all claims broken down by location, policy year and line of coverage; (c) a check register listing all checks issued during a reporting period; and (d) any reports mutually agreed between CCMSI and OUSD.
3. CCMSI agrees to provide quarterly statistical reports on claims (*i.e.*, open claims, closed claims, and financial reports) on all fees and costs paid on liability claims in a form acceptable to OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) and Risk Management Officer, respectively. Standard, custom and ad-hoc reports shall be furnished to OUSD at no additional cost. Reports identified by OUSD shall automatically be generated at the intervals and distributed to the identified parties, as specified by OUSD.
4. CCMSI agrees to comply with all reporting requirements of OUSD's excess carrier administrator. Requirements include notifying, on a timely basis, OUSD and OUSD's excess carrier administrator of any claims that may exceed OUSD's self-insured retention and/or that meet the reporting requirements of the excess insurer. CCMSI agrees that such notification shall be by email to OUSD and the insurer and a first report notice shall be submitted to the excess carrier administrator with a copy to OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) and Risk Management Officer, respectively. All subsequent CCMSI communications shall be copied to OUSD's Deputy General Counsel (or designee in the Office of the General Counsel).
5. CCMSI agrees to proactively manage OUSD's claims, identify loss trends, and suggest steps that might be taken to mitigate future claims.



6. CCMSI agrees to cooperate, assist, and meet with auditors and actuaries reviewing OUSD's and CCMSI's system and records. CCMSI will provide documents to auditors and actuaries upon request. To ensure a high quality work product, CCMSI also agrees to cooperate, assist and meet with OUSD's Deputy General Counsel (or designee in the Office of the General Counsel) on TPA audits conducted by OUSD's Office of the General Counsel, Risk Management Department or Excess Carrier administrator.
7. CCMSI agrees that OUSD will periodically audit OUSD's claims, to include but not be limited to, the settlement fund and claim file data. The audit will include, but not necessarily be limited to, CCMSI's compliance with established procedures and controls; prompt, thorough, well documented claims investigations; adjusting expertise consistent with industry standards; settlement; file documentation; and reserves management.

#### H. CCMSI's Retention of Support Services

1. OUSD's Risk Management Officer must pre-approve expenditures for support services which exceed \$500 (Five Hundred Dollars) for a specific service per claim. In selecting support services such as copy services, investigators, experts/consultants and similar providers for handling claims, CCMSI agrees to with OUSD's local business policy. Specifically, in order to provide economic opportunity for Oakland residents and businesses, and stimulate economic development in Oakland, OUSD has implemented a Local, Small Local and Small Local Resident Business Enterprise Program. This is defined in OUSD Administrative Regulation 7115, which includes all details on that program.

#### I. Closed Files

1. CCMSI agrees to maintain all closed claim files on behalf of OUSD for a period of fifteen (15) years after the month of closure, or for as long as necessary to protect the applicable statute of limitations, whichever is longer. CCMSI agrees that any closed file can be retrieved within 24 hours of CCMSI receiving a request from OUSD. CCMSI agrees that closed claims related to sexual abuse/molestation of a minor shall be maintained indefinitely by CCMSI and shall be subject to the 24 hour provision requirement set forth above.

#### J. Additional Terms

1. CCMSI agrees that it is the adjuster of record and shall track data using OUSD, as well as excess carrier/excess carrier administrator, and/or industry standard loss and payment codes. CCMSI agrees to maintain confidentiality of OUSD claims information.
2. On occasion, OUSD requires special services be provided on its premises. Should there be a need for such services, CCMSI and OUSD agree to negotiate the cost for said services. Said costs will be independent of the annual agreement fee and shall be paid as an allocated claim expense.
3. CCMSI agrees that OUSD reserves the right to discuss modifications and additions to the agreed-upon services throughout the term of this Agreement. Should additional services become desirable, OUSD and CCMSI shall negotiate the terms of such desired services, as appropriate. If CCMSI is unable to provide the desired services in a manner acceptable to OUSD, OUSD may identify an alternate service provider and obtain the services in a manner agreeable to all involved parties.