

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of October 14, 2008

ITEM # 33

ITEM TITLE:

Consider Approval to Accept Proposal from SimplexGrinnell for Fire Alarm System Wiring and Repairs, Building E (Beginner's Inn Culinary Kitchen Project) and Art Building, Laney College

SPECIFIC BOARD ACTION REQUESTED:

Approval is requested to accept a proposal from SimplexGrinnell for Fire Alarm System wiring and repairs at Laney College, in the amount of \$33,485.

ITEM SUMMARY:

The scope includes:

- Building E: Installation of new conduit, as required, and new wiring within Building E (where the Beginner's Inn Culinary Kitchen is being constructed) to repair fire alarm circuits at the Boiler/Mechanical Room and to meet code requirements. The work is required as a result of the change out of the boiler, which was included in the Beginner's Inn Culinary Kitchen project.
- Art Building: SimplexGrinnell will perform required repairs on the beam smoke detector at the Laney Art Building and provide testing. This is necessary to meet DSA requirements for final close out on the Laney Art Building project.

BACKGROUND/ANALYSIS:

Due to the proprietary nature of the fire system, only SimplexGrinnell is authorized to perform maintenance and repair functions on the fire alarm systems. Board approval is required because the cumulative total of purchase orders issued to SimplexGrinnell exceeds the bid threshold amount.

ALTERNATIVES/OPTIONS:

Not applicable.

EVALUATION AND RECOMMENDED ACTION:

Approval is recommended to accept a proposal from SimplexGrinnell for Fire Alarm System wiring and repairs at Laney College, in the amount of \$33,485.

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

Measure A, as approved by the voters in Peralta's constituency and authorized under Resolution 05/06-45, Exhibit A-1, Laney College "Equipment, technology upgrades, and facility and classroom improvements for the college's following programs: Biology, Business, Chemistry, CIS, Culinary Arts, Dance, Environmental Control Technology, Foreign Languages, Geography, Math, Theater Arts, and Welding."

OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):

Yes _____ No X

COMMENTS:

No additional comments.

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

Vice Chancellor Ikharo

DID A BOARD STANDING COMMITTEE RECOMMEND THE ITEM? Yes _____ No X

IF "YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.

PLEASE ACQUIRE SIGNATURES IN THIS ORDER:

DOCUMENT PREPARED BY:

Prepared by: Sadiq B. Ikharo Date: October 14, 2008
Dr. Sadiq B. Ikharo
Vice Chancellor of General Services

DOCUMENT PRESENTED BY:

Sadiq B. Ikharo Date: October 14, 2008
Dr. Sadiq B. Ikharo
Vice Chancellor of General Services

FINANCE DEPARTMENT REVIEW

Finance review required Finance review *not* required

If Finance review is required, determination is: Approved Not Approved

If not approved, please give reason: _____

Signature: Thomas Smith Date: 10.7.08
Thomas Smith
Vice Chancellor for Finance and Administration

GENERAL COUNSEL (Legality and Format/adherence to Education Codes):

Legal review required Legal review *not* required

If Legal review is required, determination is: Approved Not Approved

Signature: Thuy T. Nguyen Date: 10/7/08
Thuy T. Nguyen, General Counsel

CHANCELLOR'S OFFICE APPROVAL

Approved, and Place on Agenda Not Approved, but Place on Agenda

Signature: Elihu Harris Date: 10/6/08
Elihu Harris, Chancellor

tyco / Fire & Security / **SimplexGrinnell**

Tuesday, September 30, 2008

Peralta Community College District
333 East Eighth Street
Oakland, CA 94606

Attention: Mark Sennette

Reference: Laney College – Building E Wiring (Mechanical/Boiler Room) and Arts Building
(Beam Smoke Detector) (Change Order #01 – SG Job #936278201)

Subject: **Letter of Commitment**

Dear Mr. Sennette:

We are pleased Peralta Community College District has chosen SimplexGrinnell for the above referenced project. We are looking forward to working with you and delivering our products and services in a professional and timely manner.

In order for us to proceed with the (design/submittal) approval phase of this project and in the absence of an executed subcontract agreement, please indicate that your company's commitment in awarding SimplexGrinnell a (subcontract/contract/purchase) in the amount of Thirty-three thousand, four-hundred and eighty-five dollars (\$33,485.00), in accordance with our **(BID PROPOSAL/PRICE QUOTATION; #937436702, Base #936278201)** dated (September 30, 2008), by signing this letter of commitment below. Subcontract to be sent to us within 30 days of today's date. Please return to my attention at your earliest convenience.

Please do not hesitate to call should you have any questions or require further information. Thank you in advance for your understanding and cooperation in this matter.

Sincerely,

SIMPLEXGRINNELL

Theodore N. Pappas

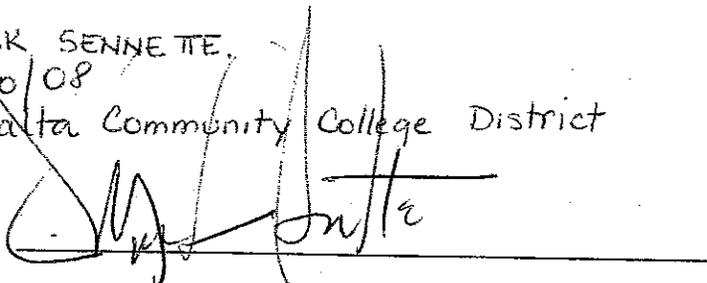
Alarm & Detection Consultant

Contact: MARK SENNETTE

Date: 09/30/08

Company: Peralta Community College District

Phone:

Accepted by: 

SimplexGrinnell

BE SAFE.

6952 Preston Ave
Suite A
Livermore, CA 94550
(925) 273-0100
FAX: (925) 273-0099
www.simplexgrinnell.com

SimplexGrinnell Quotation

TO:
Peralta Comm College District
333 E 8th St
District Office
Oakland, CA 94606-2844

Project: Laney College-CO#1-BldEWrg-Art
Customer Reference:
SimplexGrinnell Reference: 937436702
Date: 09/30/2008
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SimplexGrinnell is pleased to offer for your consideration this quotation for the above project.

QUANTITY	MODEL NUMBER	DESCRIPTION
	CO#1-Laney Coll-BldE 1stFlrWrg New Material List	
	TECH LAB OP LAB	TECHNICAL LABOR SUBCONTRACTING LABOR

Total net selling price, FOB shipping point, \$33,485.00

Comments

Scope of Work (Change Order #01 - Fire Alarm):
SimplexGrinnell shall furnish materials (conduit, j-boxes and wiring associated with mapnet, strobe and horn circuits), installation labor, and testing labor for Laney College - Building E. The scope of work includes installing partially new conduit (as required) and new wiring within Building E Mechanical /Boiler Room to repair fire alarm circuits. SimplexGrinnell to run all brand new circuitry within this area, inclusive of circuits for the initiating (mapnet/24vdc) devices, and separate horn and strobe circuits. At the completion of installing the new conduits and wiring, SimplexGrinnell will test the circuitry to verify operation of the initiating devices, horns and strobes. In order to keep the integrity of the system, SimplexGrinnell will need to run temporary wiring during the repair process. These wires will be removed at the completion of the installation of the new circuits (initiating (mapnet), horns, and strobes).

This would also include the necessary repairs to the Beam Smoke Detector at the Arts Building located in the main corridor, in addition to the testing with the IOR.

Any work/materials other than that which has been outlined above will be considered outside the scope of work and will be addressed with a change order.

SimplexGrinnell qualifies the following:

1. All work shall take place during SimplexGrinnell's normal working hours, 7:00 am to 3:30 pm.
2. SimplexGrinnell's proposal is based upon site survey and scope of work as defined by Mr. Price Eres, Bovis Lend Lease. The new mechanical/boiler room scope was reviewed with Mr. Pedro

SimplexGrinnell Quotation

Comments (continued)

Ortiz, Mr. Price Eres, and Ms. Jacqueline on Monday, August 18, 2008.

3. CAD backgrounds will be furnished to SimplexGrinnell at no additional charge.
4. Scheduling of technicians shall be made at least five (5) business days in advance of required date.
5. Any further labor or material needed other than what was specified in the above referenced bid request will result in an additional cost.
6. This proposal does not include any additional time that might be required to make any repairs to wiring and/or devices on the second floor. If additional time is required to perform any necessary repairs, the time will be charged at an hourly rate of \$135 per man hour.
7. PCCD will allow SimplexGrinnell the use of there lift for the work associated with Building E and for the Arts Building. If a lift is not made available, an additional cost will result for the rental and lost labor time.

Exclusions:

- a) Any section contained in a specification (not provided to SimplexGrinnell)
- b) FSD monitoring
- c) FSD power or door holder power
- d) Smoke control
- e) Smoke control testing and/or air balance testing
- f) Third party smoke control report
- g) Cutting, painting and/or patching
- h) AC power
- i) Fire watch
- j) Any material and/or labor not specifically listed in this proposal
- k) Any requirements more stringent than NFPA 72, 2002.
- l) Installation of field devices
- m) Software licensing agreement
- n) X-rays and coring of floor and/or wall slab
- o) Fire alarm terminal can (recommended to assist with overcrowding of existing circuitry)
- p) Lift rental (Supplied by PCCD)

IMPORTANT NOTE:

As of Thursday, May 8, 2008, our technician, Pedro Ortiz was on site and one of the ceiling penetrations going from the first to the second floor is obstructed by newly installed sheetrock. In order for SimplexGrinnell to complete there scope of work, there is a good chance that ceiling tiles or sheetrock will need to be removed. Peralta CCD will be fully responsible for making any repairs (inclusive of all associated costs) to ceiling tiles or sheetrock that needs to be removed to allow for SimplexGrinnell to complete there scope of work.

SimplexGrinnell's "General Terms & Conditions" (attached) shall be made a part of this proposal. This proposal/quotation shall remain in effect for the next thirty (30) days after which it shall be subject to review by SimplexGrinnell. Should this meet with your acceptance, kindly sign & return this document to my attention.

SimplexGrinnell

BE SAFE.

Project: Laney College-CO#1-BldEWrg-Art
Customer Reference:
SimplexGrinnell Reference: 937436702
Date: 09/30/2008
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TERMS AND CONDITIONS

1. **Payment.** Payments shall be invoiced and due in accordance with the terms and conditions set forth above. Work performed on a time and material basis shall be at the then-prevailing Company rate for material, labor, and related items, in effect at the time supplied under this Agreement. Company shall invoice Customer for progress payments to one hundred (100%) percent based upon equipment delivered or stored, and services performed. Customers without established satisfactory credit shall make payments of cash in advance, upon delivery or as otherwise specified by Company. Where Customer establishes and maintains satisfactory credit, payments shall be due and payable thirty (30) days from date of invoice. Company reserves the right to revoke or modify Customer's credit at its sole discretion. The Customer's failure to make payment when due is a material breach of this Agreement.

If Customer fails to make any payment when due, in addition to any other rights and remedies available, Company shall have the right, at Company's sole discretion, to stop performing any Services and/or withhold further deliveries of materials, until the account is current. In the event payment is not received when due, Company may, at its discretion, assess late fees at the rate of 1.5% per month or the maximum rate allowed by law. Customer agrees to pay all costs of collection, including without limitation costs, fees, and attorneys' fees. Customer's failure to make payment when due is a material breach of this Agreement until the account is current.

2. **Pricing.** The pricing set forth in this Agreement is based on the number of devices to be installed and services to be performed as set forth in the Scope of Work ("Equipment" and "Services"). If the actual number of devices installed or services to be performed is greater than that set forth in the Scope of Work, the price will be increased accordingly. If this Agreement extends beyond one year, SimplexGrinnell may increase prices upon notice to the Customer. Customer agrees to pay all taxes, permits, and other charges, including but not limited to state and local sales and excise taxes, however designated, levied or based on the service charges pursuant to this Agreement.

3. **Alarm Monitoring Services.** Any reference to alarm monitoring services in this Agreement is included for pricing purposes only. Alarm monitoring services are performed pursuant to the terms and conditions of Company's standard alarm monitoring services agreement.

4. **Code Compliance.** Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in the Scope of Work. Customer acknowledges that the Authority Having Jurisdiction (e.g. Fire Marshal) may establish additional requirements for compliance with local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

5. **Limitation of Liability; Limitations of Remedy.** It is understood and agreed by the Customer that Company is not an insurer and that insurance coverage, if any, shall be obtained by the Customer and that amounts payable to company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of the Customer's property and the property of others located on the premises. Customer agrees to look exclusively to the Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or Warranty, including any implied warranty of merchantability or fitness for a particular purpose, that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert.

It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that, Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability shall be limited to an amount equal to the Agreement price (as increased by the price for any additional work) or where the time and material payment term is selected, Customer's time and material payments to Company. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Such sum shall be complete and exclusive. If Customer desires Company to assume greater liability, the parties shall amend this Agreement by attaching a rider setting forth the amount of additional liability and the additional amount payable by the Customer for the assumption by Company of such greater liability, provided however that such rider shall in no way be interpreted to hold Company as an insurer. **IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S) OR ANY OF ITS COMPONENT PARTS BY THE CUSTOMER OR ANY THIRD PARTY. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE USE, LOSS OF THE USE, PERFORMANCE, OR FAILURE OF THE COVERED SYSTEM(S) TO PERFORM.** The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of company, whether direct or indirect, company's employees, agents, officers and directors.

6. **General Provisions.** Customer has selected the service level desired after considering and balancing various levels of protection afforded, and their related costs. Customer acknowledges and agrees that by this Agreement, Company, unless specifically stated, does not undertake any obligation to maintain or render Customer's system or equipment as Year 2000 compliant, which shall mean, capable of correctly handling the processing of calendar dates before or after

December 31, 1999. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement.

Company will perform the services described in the Scope of Work section ("Services") for one or more system(s) or equipment as described in the Scope of Work section or the listed attachments ("Covered System(s)").

The Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes the Covered System(s) are in operational and maintainable condition as of the Agreement date. If, upon initial inspection, Company determines that repairs are recommended, repair charges will be submitted for approval prior to any work. Should such repair work be declined Company shall be relieved from any and all liability arising therefrom. **UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS THAT ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING.**

7. **Customer Responsibilities.** Customer shall furnish all necessary facilities for performance of its work by Company, adequate space for storage and handling of materials, light, water, heat, heat tracing, electrical service, local telephone, watchman, and crane and elevator service and necessary permits. Where wet pipe system is installed, Customer shall supply and maintain sufficient heat to prevent freezing of the system. Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes any existing system(s) are in operational and maintainable condition as of the Agreement date. If, upon initial inspection, Company determines that repairs are recommended, repair charges will be submitted for approval prior to any work. Should such repair work be declined Company shall be relieved from any and all liability arising therefrom.

Customer shall further:

- supply required schematics and drawings unless they are to be supplied by Company in accordance with this Agreement;
- Provide a safe work environment, in the event of an emergency or Covered System(s) failure, take reasonable safety precautions to protect against personal injury, death, and property damage, continue such measures until the Covered System(s) are operational, and notify Company as soon as possible under the circumstances.
- Provide Company access to any system(s) to be serviced.
- Comply with all laws, codes, and regulations pertaining to the equipment and/or services provided under this agreement.

8. **Excavation.** In the event the Work includes excavation, Customer shall pay, as an extra to the contract price, the cost of any additional work performed by Company due to water, quicksand, rock or other unforeseen condition or obstruction encountered or shoring required.

9. **Structure and Site Conditions.** While employees of Company will exercise reasonable care in this respect, Company shall be under no responsibility for loss or damage due to the character, condition or use of foundations, walls, or other structures not erected by it or resulting from the excavation in proximity thereto, or for damage resulting from concealed piping, wiring, fixtures, or other equipment or condition of water pressure. All shoring or protection of foundation, walls or other structures subject to being disturbed by any excavation required hereunder shall be the responsibility of Customer. Customer shall have all things in readiness for installation including, without limitation, structure to support the sprinkler system and related equipment (including tanks), other materials, floor or suitable working base, connections and facilities for erection at the time the materials are delivered. In the event Customer fails to have all things in readiness at the time scheduled for receipt of materials, Customer shall reimburse Company for all expenses caused by such failure. Failure to make areas available to Company during performance in accordance with schedules that are the basis for Company's proposal shall be considered a failure to have things in readiness in accordance with the terms of this Agreement.

10. **Confined Space.** If access to confined space by Company is required for the performance of Services, Services shall be scheduled and performed in accordance with Company's then-current hourly rate.

11. **Hazardous Materials.** Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- "permit confined space," as defined by OSHA,
- risk of infectious disease,
- need for air monitoring, respiratory protection, or other medical risk,
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions".

Company shall have the right to rely on the representations listed above. If hazardous conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control and Company shall have no obligation to further perform in the area where

the hazardous conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company.

This Agreement does not provide for the cost of capture, containment or disposal of any hazardous waste materials, or hazardous materials, encountered in any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Company shall not be responsible for the testing, removal or disposal of such hazardous materials.

12. **OSHA Compliance.** Customer shall indemnify and hold Company harmless from and against any and all claims, demands and/or damages arising in whole or in part from the enforcement of the Occupational Safety Health Act (and any amendments or changes thereto) unless said claims, demands or damages are a direct result of causes within the exclusive control of Company.

13. **Interferences.** Customer shall be responsible to coordinate the work of other trades (including but not limited to ducting, piping, and electrical) and for and additional costs incurred by Company arising out of interferences to Company's work caused by other trades.

14. **Modifications and Substitutions.** Company reserves the right to modify materials, including substituting materials of later design, providing that such modifications or substitutions will not materially affect the performance of the Covered System(s).

15. **Changes, Alterations, Additions.** Changes, alterations and additions to the Scope of Work, plans, specifications or construction schedule shall be invalid unless approved in writing by Company. Should changes be approved by Company, that increase or decrease the cost of the work to Company, the parties shall agree, in writing, to the change in price prior to performance of said work. However, if no agreement is reached prior to the time for performance of said work, and Company elects to perform said work so as to avoid delays, then Company's estimate as to the value of said work shall be deemed accepted by Customer. In addition, Customer shall pay for all extra work requested by Customer or made necessary because of incompleteness or inaccuracy of plans or other information submitted by Customer with respect to the location, type of occupancy, or other details of the work to be performed. In the event the layout of Customer's facilities has been altered, or is altered by Customer prior to the completion of the Work, Customer shall advise Company, and prices, delivery and completion dates shall be changed by Company as may be required.

16. **Commodities Availability.** Company shall not be responsible for failure to provide services, deliver products, or otherwise perform work required by this Agreement due to lack of available steel products or products made from plastics or other commodities. 1) In the event Company is unable, after reasonable commercial efforts, to acquire and provide steel products, or products made from plastics or other commodities, if required to perform work required by this Agreement, Customer hereby agrees that Company may terminate the Agreement, or the relevant portion of the Agreement, at no additional cost and without penalty. Customer agrees to pay Company in full for all work performed up to the time of any such termination. 2) If Company is able to obtain the steel products or products made from plastics or other commodities, but the price of any of the products has risen by more than 10% from the date of the bid, proposal or date Company executed this Agreement, whichever occurred first, then Company may pass through that increase through a reasonable price increase to reflect increased cost of materials.

17. **Project Claims.** Any claim of failure to perform against Company arising hereunder shall be deemed waived unless received by Company, in writing specifically setting forth the basis for such claim, within ten (10) days after such claims arises.

18. **Backcharges.** No charges shall be levied against the Seller unless seventy-two (72) hours prior written notice is given to Company to correct any alleged deficiencies which are alleged to necessitate such charges and unless such alleged deficiencies are solely and directly caused by Company.

19. **System Equipment.** The purchase of equipment or peripheral devices (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

20. **Reports.** Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current Report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The Report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

21. **Limited Warranty.** Subject to the limitations below, Company warrants any equipment (as distinguished from the Software) installed pursuant to this Agreement to be free from defects in material and workmanship under normal use for a period of one (1) year from the date of first beneficial use or all or any part of the Covered System(s) or 18 months after Equipment shipments, whichever is earlier, provided however, that Company's sole liability, and Customer's sole remedy, under this limited warranty shall be limited to the repair or replacement of the Equipment or any

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Project: Laney College-CO#1-BldEWrg-ART
 Customer Reference:
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part thereof, which Company determines is defective, at Company's sole option and subject to the availability of service personnel and parts, as determined by Company. Company warrants expendable items, including, but not limited to, video and print heads, television camera tubes, video monitor displays tubes, batteries and certain other products in accordance with the applicable manufacturers warranty. Company does not warrant devices designed to fail in protecting the System, such as, but not limited to, fuses and circuit breakers. Company warrants that any Company software described in this Agreement, as well as software contained in or sold as part of any Equipment described in this Agreement, will reasonably conform to its published specifications in effect at the time of delivery and for ninety (90) days after delivery. However, Customer agrees and acknowledges that the software may have inherent defects because of its complexity. Company's sole obligation with respect to software, and Customer's sole remedy, shall be to make available published modifications, designed to correct inherent defects, which become available during the warranty period. If Repair Services are included in this Agreement, Company warrants that its workmanship and material for repairs made pursuant to this Agreement will be free from defects for a period of ninety (90) days from the date of furnishing. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER. COMPANY MAKES NO WARRANTY OR REPRESENTATION, AND UNDERTAKES NO OBLIGATION TO ENSURE BY THE SERVICES PERFORMED UNDER THIS AGREEMENT, THAT COMPANY'S PRODUCTS OR THE SYSTEMS OR EQUIPMENT OF THE CUSTOMER WILL CORRECTLY HANDLE THE PROCESSING OF CALENDAR DATES BEFORE OR AFTER DECEMBER 31, 1999.** Warranty service will be performed during Company's normal working hours. If Customer requests warranty service at other than normal working hours, service will be performed at Company's then current rates for after hours services. All repairs or adjustments that are or may become necessary shall be performed by and authorized representative of Company. Any repairs, adjustments or interconnections performed by Customer or any third party shall void all warranties. **22. Indemnity.** Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, including specifically any damages resulting from the exposure of workers to Hazardous Conditions whether or not Customer pre-notifies Company of the existence of said hazardous conditions, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. **23. Insurance.** Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies. **24. Termination.** Any termination under the terms of this Agreement shall be made in writing. In the event Customer terminates this Agreement prior to completion for

any reason not arising solely from Company's performance or failure to perform, Customer understands and agrees that Company will incur costs of administration and preparation that are difficult to estimate or determine. Accordingly, should Customer terminate this Agreement as described above, Customer agrees to pay all charges incurred for products and equipment installed and services performed, and in addition pay an amount equal to twenty (20%) percent of the price of products and equipment not yet delivered and Services not yet performed, return all products and equipment delivered and pay a restocking fee of twenty (20%) percent the price of products or equipment returned. Company may terminate this Agreement immediately at its sole discretion upon the occurrence of any Event of Default as hereinafter defined. Company may also terminate this Agreement at its sole discretion upon notice to Customer if Company's performance of its obligations under this Agreement becomes impracticable due to obsolescence of equipment at Customer's premises or unavailability of parts. **25. Default.** An Event of Default shall be 1) failure of the Customer to pay any amount within ten (10) days after the amount is due and payable, 2) abuse of the System or the Equipment, 3) dissolution, termination, discontinuance, insolvency or business failure of Customer. Upon the occurrence of an Event of Default, Company may pursue one or more of the following remedies, 1) discontinue furnishing Services, 2) by written notice to Customer declare the balance of unpaid amounts due and to become due under the this Agreement to be immediately due and payable, provided that all past due amounts shall bear interest at the rate of 1 1/2% per month (18% per year) or the highest amount permitted by law, 3) receive immediate possession of any equipment for which Customer has not paid, 4) proceed at law or equity to enforce performance by Customer or recover damages for breach of this Agreement, and 5) recover all costs and expenses, including without limitation reasonable attorneys' fees, in connection with enforcing or attempting to enforce this Agreement. **26. Exclusions.** Unless expressly included in the Scope of Work, this Agreement expressly excludes, without limitation, testing inspection and repair of duct detectors, beam detectors, and UV/IR equipment; provision of fire watches; clearing of ice blockage; draining of improperly pitched piping; replacement of batteries; recharging of chemical suppression systems; reloading of, upgrading, and maintaining computer software; system upgrades and the replacement of obsolete systems, equipment, components or parts, making repairs or replacements necessitated by reason of negligence or misuse of components or equipment or changes to Customer's premises, vandalism, corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")), power failure, current fluctuation, failure due to non-Company installation, lightning, electrical storm, or other severe weather, water, accident, fire, acts of God or any other cause external to the Covered System(s). Repair Services provided pursuant to this Agreement do not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. All such services may be provided by Company at Company's sole discretion at an additional charge. If Emergency Services are expressly included in the scope of work section, the Agreement price does not include travel expenses. **27. Force Majeure; Delays.** Company shall not be liable for any damage or penalty for delays or failure to perform work due to acts of God, acts or omissions of Customer, acts of civil or military authorities, Government regulations or priorities, fires, epidemics, quarantine, restrictions, war, riots, civil disobedience or unrest, strikes, delays in transportation, vehicle shortages, differences with workmen,

inability to obtain necessary labor, material or manufacturing facilities, defaults of Company's subcontractors, failure or delay in furnishing complete information by Customer with respect to location or other details of work to be performed, impossibility or impracticability of performance or any other cause or causes beyond Company's control, whether or not similar to the foregoing. In the event of any delay caused as aforesaid, completion shall be extended for a period equal to any such delay, and this contract shall not be void or voidable as a result of the delay. In the event work is temporarily discontinued by any of the foregoing, all unpaid installments of the contract price, less an amount equal to the value of material and labor not furnished, shall be due and payable upon receipt of invoice by Customer. **28. One-Year Limitation On Actions; Choice Of Law.** It is agreed that no suit, or cause of action or other proceeding shall be brought against either party more than one (1) year after the accrual of the cause of action or one (1) year after the claim arises, whichever is shorter, whether known or unknown when the claim arises or whether based on tort, contract, or any other legal theory. The laws of Massachusetts shall govern the validity, enforceability, and interpretation of this Agreement. **29. Assignment.** Customer may not assign this Agreement without Company's prior written consent. Company may assign this Agreement to an affiliate without obtaining Customer's consent. **30. Entire Agreement.** The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement") to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions of sale for all equipment and services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company. **31. Severability.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision. **32. Legal Fees.** Company shall be entitled to recover from the customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement. **33. License Information (Security System Customers):** AL Alabama Electronic Security Board of Licensure 7956 Vaughn Road, PMB 392, Montgomery, Alabama 36116 (334) 264-9388. AR Regulated by: Arkansas Board of Private Investigators and Private Security Agencies, #1 State Police Plaza Drive, Little Rock 72209 (501)818-8600. CA Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814. Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act. NY Licensed by the N.Y.S. Department of the State: TX Texas Commission on Private Security, 5805 N. Lamar Blvd., Austin, TX 78752-4422, 512-424-7710.

IMPORTANT NOTICE TO CUSTOMER

In accepting this Proposal, Customer agrees to the terms and conditions contained herein including those on the following pages of this Agreement and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that the Customer may issue. Any changes in the system requested by the Customer after the execution of this Agreement shall be paid for by the Customer and such changes shall be authorized in writing. **ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS ON THE FOLLOWING PAGES.** This Proposal shall be void if not accepted in writing within thirty (30) days from the date of the Proposal.

Offered By: SimplexGrinnell LP License#: 802591 6952 Preston Ave Suite A Livermore, CA 94550 Telephone: (925) 273-0100 Fax: 925-273-0120 Representative: <u>Theodore N, Pappas Jr</u> Email: <u>tpappas@tycointl.com</u>	Accepted By: (Customer) Company: _____ Address: _____ Signature: _____ Title: _____ P.O.#: _____ Date: _____
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