

Board Office Use: Legislative File Info.	
File ID Number	15-0654
Introduction Date	4/15/2015
Enactment Number	15-0465
Enactment Date	4-15-15



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Jacqueline Minor, General Counsel
 Board Meeting Date April 15, 2015
 Subject **Agreement with Heather Imboden, dba Niam Group**

Action Requested **Ratification by the Board of Education of the Agreement with Heather Imboden, dba Niam Group.**

Background Board Policy 7155, Community Engagement for Facility Projects, requires community engagement, planning and collaboration for District capital projects. Heather Imboden, dba Niam Group, is being retained to develop and support the successful implementation of the community engagement plan for the Glenview Construction Project – Phase 2.

Discussion The term of this agreement is March 1, 2015 to September 30, 2016 and may be extended for an additional year by written agreement of both parties, the cost is not to exceed \$55,200, and the community engagement activities necessary for final agency and regulatory approval of the construction plans and transition planning for the school community for the move to Santa Fe [Glenview at Santa Fe] for the 2016-17 school year.

Recommendation Ratification by the Board of Education of the Agreement with Heather Imboden dba Niam Group

Fiscal Impact Measure J, not to exceed \$55,200

Attachments

- Agreement

AGREEMENT

Between

Oakland Unified School District

And

The NIAM Group, LLC, for Professional Services

This Agreement, effective as of **March 1, 2015**, is by and between the Oakland Unified School District ("OUSD" or the "District"), and **The NIAM Group**, ("**Consultant**").

1. SCOPE OF SERVICES

Consultant is being retained to continue to develop and support the successful implementation of the community engagement plan for the Glenview Elementary School Construction Project. The design, phasing and implementation of the engagement strategy is attached hereto and incorporated herein as **Exhibit A** and is called "A Proposal for Community Based Engagement and Communications for Glenview Elementary Construction Project – Phase 2." The scope of services is consistent with Board Policy 7155, Community Engagement for Facility Projects.

2. TERMS AND CONDITIONS

- 2.1 **Term of Agreement.** The term of this agreement shall be March 1, 2015 to September 30, 2016 and may be extended for an additional year by written agreement of both parties.
- 2.2 **Fees.**
The cost of the Phase 2 of the Community Engagement is approximately \$55,200 as outlined in Exhibit A. The District has allocated \$55,200 for community engagement for the Glenview Project – Phase 2.
- 2.3 **Notice of Termination.** OUSD may at any time terminate this Agreement upon not less sixty (60) days written notice to CONSULTANT. OUSD shall compensate CONSULTANT for services satisfactorily provided through the date of termination. Upon any termination of this Agreement, CONSULTANT shall immediately provide OUSD with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to OUSD.
- 2.4 **Choice of Laws.** This Agreement is governed by the laws of the State of California.
- 2.5 **Conflict of Interest.** CONSULTANT affirms to the best of her knowledge, there exists no actual or potential conflict of interest between CONSULTANT'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 in writing.

- 2.6 **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 subcontractors are to use drugs on these sites.
- 2.7 **Non-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, CONSULTANT 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 or sexual orientation. CONSULTANT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy.
- 2.8 **Limitation of OUSD 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.

3. AREAS OF AUTHORITY

- 3.1 **Independent Contractor.** This is not an employment contract. CONSULTANT is an independent contractor. CONSULTANT understands and agrees that she is not an officer, employee, agent, partner, or joint venture of OUSD, and is not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes. In the performance of the work herein contemplated, CONSULTANT is an independent contractor, 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 by CONSULTANT 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 CONSULTANT, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation. The OUSD shall be entitled to access to and copies of these materials during the progress of the work. Any such materials in the hands of CONSULTANT or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. CONSULTANT may retain a copy of all materials produced under this Agreement for its use in its business activities.

- 3.4 **Copyright/Trademark/Patent/Ownership.** CONSULTANT understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD.
- 3.5 **Confidentiality.** The CONSULTANT shall maintain the confidentiality of all information and documents received that are labeled as confidential. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
4. **INDEMNIFICATION** CONSULTANT shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of CONSULTANT or loss of or damage to property, arising directly or indirectly from CONSULTANT's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on CONSULTANT, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

5. BILLING

- a. Bills for CONSULTANT fees and expenses should be submitted and monthly to unless otherwise agreed. Bills or invoices mailed or hand delivered to:

Michael Ezeh
Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94601

And a copy emailed to

Jacqueline.minor@ousd.k12.ca.us

- b. The District will not pay for amounts not reflected on bills or invoices.

6. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and supersedes all other oral or written provisions.

7. SEVERABILITY

If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.


8. EXCLUDED PARTIES

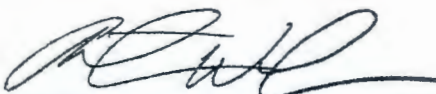
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions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

The parties hereto agreed to be bound and this Agreement is effective on the day first mentioned above.

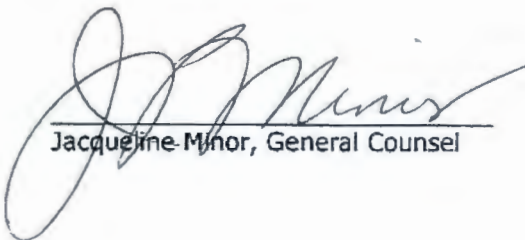

Heather Imboden, Principal, The NIAM Group, Consultant


Mia Settles-Tidwell, Chief Operations Officer


President, Board of Education
Oakland Unified School District


Superintendent and Secretary, Board of Education
Oakland Unified School District

Approved As to Form


Jacqueline Minor, General Counsel

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By: em