

Board Office Use: Legislative File Info.	
File ID Number	14-1576
Introduction Date	8/13/14
Enactment Number	14-1460
Enactment Date	8-13-14



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Jacqueline Minor, General Counsel
Board Meeting Date August 13, 2014
Subject Agreement with Moira De Nike

Action Requested Ratification by the Board of Education of the Agreement with Moira De Nike to serve as Project Manager to support the District's response to the US Department of Education information and data request associated with the Voluntary Resolution – Agreement to Resolve approved by the Board of Education on September 27, 2012 as Board of Resolution 1213-0020 and VRP compliance.

Background Moira De Nike is being retained to serve as Project Manager to support the District's response VRP compliance.

Discussion Ms. De Nike will facilitate meetings, prepare compliance reports, coordinate reports to the Board and provide overall project management for the term July 15, 2014 to June 30, 2015. Work will be conducted at a rate of \$125 per hour, not to exceed \$60,000.

Recommendation Ratification by the Board of Education of the Agreement with Moira De Nike to serve as Project Manager to support the District's compliance with the Voluntary Resolution – Agreement to Resolve approved by the Board of Education on September 27, 2012 as Board of Resolution 1213-0020, at a rate of \$125 per hour, not to exceed \$60,000 for the term July 15, 2014 to June 30, 2015.

Fiscal Impact General Purpose not to exceed \$60,000

Attachments

- Agreement

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**AGREEMENT
Between
OAKLAND UNIFIED SCHOOL DISTRICT and
MOIRA DE NIKE**

1. INTENT

The Oakland Unified School District (hereinafter "the District" or "OUSD") hereby enters into a professional services agreement with **MOIRA DE NIKE** (hereinafter "CONSULTANT" or "CONTRACTOR") for the latter to serve as project manager to support the District's response to the US Department of Education information and data request associated with the Voluntary Resolution -- Agreement to Resolve approved by the Board of Education on September 27, 2012 (as Board Resolution 1213-0020).

2. TERMS AND CONDITIONS

2.1 Term of Agreement. The term of this agreement shall be July 15, 2014 to June 30, 2015 and may be extended by written agreement of both

2.2 Scope of Services:

1. Facilitation of VRP Lead Meetings: Throughout the course of the consulting engagement, the Consultant will attend and facilitate monthly 2 hour meetings that include all of the VRP Leads, to organize ongoing work, plan cross work-stream activities (e.g. professional development), and generate and follow-up on action items. The Consultant will prepare agendas and conduct follow-up to help ensure that the meetings are focused on action items and that they continually move the project toward its objectives.

2. Quarterly Meetings with Each VRP Lead: The Consultant will hold quarterly meetings with VRP Leads to collect information on project progress and outcomes-to-date, and to problem-solve work flow impediments. These meetings may involve members of BRP Lead teams (Barb McClung - PBIS/RJ; Theresa Clincy - Discipline Policies, New Discipline Guide, Universal referral form; Jean Wing - data/evaluation; Susan Beltz - IT; Raquel Jimenez - Student and Family Engagement; Chris Chatmon - AAMA/Manhood Development Program).

3. Report Writing: The Consultant will work with VRP Leads to gather all pertinent and required documentation to write the annual September 30 report and subsequent "mid-year" report based on OCR feedback to annual report, likely due December or January. The consultant will draft the reports and work with OUSD Associate Superintendent Curtiss Sarikey (or his designee) to revise as needed.

4. **Board Presentations and Executive Summary:** The Consultant will work with VRP Leads to create brief PPT and written reports to the Oakland Schools Board of Education in fall and in spring, to demonstrate progress toward VRP goals.

5. **Ongoing Project Management:** The Consultant will provide ongoing project management to help maintain work flow according to timelines and deliverables, including regular communication with all parties as necessary. The Consultant will prepare additional documents that help detail progress against project deliverables on an ongoing basis, including but not limited to school-level implementation tables, theory of change or logic model diagrams, and internal progress checklists.

6. **Planning:** The Consultant will support the development of a three year plan, backward mapped annually with clear goals, activities and outcomes, as well as analysis of funding needed to accomplish goals.

2.3 **Fees.** CONSULTANT'S, hourly billing rate is \$125 per hour, not to exceed fees \$60,000 for the services under this Agreement. Subject to Section 5 below, Consultant shall be reimbursed separately for travel; telephone toll charges; express mail, messenger or delivery service for the term of this Agreement, provided that these cumulative out-of-pocket costs do not exceed Five Hundred Dollars (\$500.00).

2.4 **Simultaneous Services by Consultant to Other Clients.** The District acknowledges its understanding that Consultant is actively involved in furnishing services to other clients. Consultant shall not be limited in any way in performing services for other clients that do not prevent it from discharging its obligations under this Agreement.

2.5 **Due Diligence and Lack of Warranty.** CONSULTANT shall exercise due diligence and its best efforts in performing the services required by this Agreement. Consultant makes no warranty, express or implied, as to the results of the services provided.

2.6 **Notice of Termination.** OUSD may at any time terminate this Agreement upon not less thirty (30) days written notice to CONSULTANT. OUSD shall compensate CONSULTANT for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this agreement for cause should CONSULTANT fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. 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. CONSULTANT further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.

2.7 **Choice of Laws.** This Agreement is governed by the laws of the State of California.

2.8 **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.

2.9 **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. In addition, CONSULTANT agrees to require like compliance by all of its subcontractor(s).

2.10 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 or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. CONSULTANT understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are 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 with respect to CONSULTANT's employees. 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. Any acknowledgment of CONSULTANT's role in the production of the final report will be limited to, "gathering and organizing documents, information, and materials in response to the US Department of Education information and data request," or otherwise agreed to by CONSULTANT. 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 Ownership of Work Product; Compliance with FERPA. 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; provided however, OUSD agreed and authorizes CONSULTANT to characterize the services provided under this

6. WAIVER

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

7. MODIFICATION OF AGREEMENT

The parties may amend this Agreement in writing by mutual consent. Changes, including any increase or decrease in the amount of the CONSULTANT's compensation, shall only be effective upon proper Board approval and execution of a duly authorized written amendment to this Agreement.

8. COMPLIANCE WITH LAWS

CONSULTANT shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, including but not limited to any and all restrictions and requirements of the Lobbying Disclosure Act, and shall at all times comply with such laws as they may be amended from time to time.

9. SECTION HEADINGS

The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

10. ENTIRE AGREEMENT

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

11. 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.

12. 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>

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



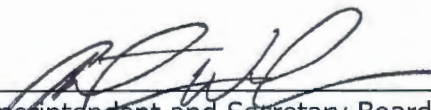
7/5/2014

MOIRA DE NIKE



8-14-14

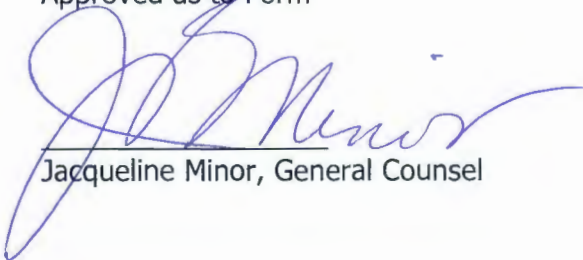
President, Board of Education
Oakland Unified School District



8-14-14

Superintendent and Secretary Board of Education
Oakland Unified School District

Approved as to Form



Jacqueline Minor, General Counsel

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By: