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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Maria Santos, Deputy Superintendent *M. Santos*

Board Meeting Date April 25, 2012

Subject **MEMORANDUM OF UNDERSTANDING WITH KAREN MATES**

Action Requested Approval of Agreement between the Oakland Unified School District and Karen Mates, a consultant, for the term April 1, 2012 through June 30, 2012, for an amount not to exceed \$50,000 during the term.

Background
A one paragraph explanation of why the consultant's services are needed.

Karen Mates, a consultant, is being retained to conduct a preliminary assessment of the District's Programs for Exceptional Children ("PEC"), including interviews of designated staff, reviewing IEP files and policies and procedures and compliance.

Discussion
One paragraph summary of the scope of work.

Approval by the Board of Education of the Agreement between the District and Karen Mates to conduct a preliminary assessment of the District's PEC, including interviews of designated staff, reviewing IEP files and policies and procedures and compliance for the contract term from April 1, 2012 through June 30, 2012 for an amount not to exceed \$50,000 per fiscal year.

Recommendation

Approval by the Board of Education of the Agreement between the District and Karen Mates for the contract term from April 1, 2012 through June 30, 2012 for an amount not to exceed \$50,000 per fiscal year.

Fiscal Impact

Funding resource name: General Purpose not to exceed \$50,000 per fiscal year.

Attachments

- Agreement

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
OAKLAND UNIFIED SCHOOL District and
KAREN MATES**

1. INTENT

Intent of this Memorandum of Understanding. The District is entering into this Memorandum of Understanding with Karen Mates, ("CONSULTANT"), and the Oakland Unified School District (the "District") to conduct a preliminary assessment of the District's Programs for Exceptional Children ("PEC"), including interviews of designated staff, reviewing IEP files and policies and procedures and compliance. The cost of this Agreement shall not exceed \$50,000 during the term, at an hourly billing are not to exceed \$125.00 per hour. This MOU is effective immediately and shall govern the retention of CONSULTANT on or after April 1, 2012.

2. TERMS AND CONDITIONS

2.1 Term of Agreement. The term of this MOU shall be April 1, 2012 through June 30, 2012; the MOU may be extended by written agreement of both parties.

2.2 Notice of Termination. The District may at any time terminate this Agreement upon not less thirty (30) days written notice to CONSULTANT. The District shall compensate CONSULTANT for services satisfactorily provided through the date of termination. In addition, the District may terminate this agreement for cause should CONSULTANT fail to perform any part of this Agreement. The District's right to terminate this Agreement is not its exclusive remedy but is in addition to all other remedies available to the District by law, in equity, or under the provisions of this Agreement. Upon any termination of this Agreement, CONSULTANT shall immediately provide the District with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to the District. CONSULTANT further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of the District.

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

2.4 Conflict of Interest. CONSULTANT shall not hire any officer or employee of the District to perform any service by this Agreement. CONSULTANT affirms to the best of his/her/its 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 the District's attention in writing. CONSULTANT has undertaken a conflicts check within its firm and certifies that it has no conflict of interest with respect to its assistance to the District or has obtained a written conflicts waiver from the General CONSULTANT.

2.5 Drug-Free / Smoke Free Policy. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on the District property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.

2.6 Anti-Discrimination. Consistent with the policy of the District in connection with all work performed under this MOU, 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 the District policy. In addition, CONSULTANT agrees to require like compliance by all its subcontractor(s).

2.7 Limitation of the District Liability. Other than as provided in this Agreement, the District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

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 the District, and are not entitled to benefits of any kind or nature normally provided or entitled to employees of the District, 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, the District 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 District, with all intellectual property rights therein vested in the District at the time of creation. The District 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 District. CONSULTANT may retain a copy of all materials produced under this Agreement for its use in its general business activities.

3.4 Copyright/Trademark/Patent/Ownership. CONSULTANT understands and agrees that all matters produced under this Agreement shall become the property of the District and cannot be used without the District's express written permission. The District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of the District.

3.5 Confidentiality. The CONSULTANT shall maintain the confidentiality of all information and documents received. CONSULTANT understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

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.

In addition to CONSULTANT's obligation to indemnify the District, CONSULTANT specifically acknowledges and agrees that CONSULTANT has an immediate and independent obligation to defend the District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to CONSULTANT by the District and continues at all times thereafter.

5. Important Billing and Payment Notes

- a. Bills for CONSULTANT fees and expenses must be submitted monthly unless otherwise agreed. Invoices should be addressed to:

Maria Santos, Deputy Superintendent
Oakland Unified School District
1025 Second Avenue, 3rd Floor
Oakland, CA 94606
or emailed to
maria.santos.dept.su@ousd.k12.ca.us

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

Maria Santos

Maria Santos
Deputy Superintendent

[Signature]

Karen Mates
KMates@comcast.net

Gay Linder 6/28/12

President, Board of Education
Oakland Unified School District

[Signature] 6/28/12

Secretary, Board of Education
Oakland Unified School District

Approved As To Form:

Jacqueline P. Minor

Jacqueline P. Minor
General Counsel