

<b>Board Office Use: Legislative File Info.</b>	
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Enactment Number	16-1747
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OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools. Thriving Students.

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer *VEH*  
Joe Dominguez, Deputy Chief, Facilities Planning and Management *[Signature]*

**Board Meeting Date** October 26, 2016

**Subject** Independent Consultant Agreement for Professional Services - Magdave Associates, Inc. - Various Capital and Program Management Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Magdave Associates, Inc., Oakland, CA., for the latter to provide Capital and Program cost estimating services and develop Historic unit costs and costs estimating guides, in conjunction with the Various Capital and Program Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing July 1, 2016 and concluding no later than June 30, 2017, in an amount not-to exceed \$267,440.00.

**Discussion** To provide advice and solutions in estimating project costs.

**LBP** (Local Business Participation Percentage) 100.00%

**Recommendation** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Magdave Associates, Inc., Oakland, CA., for the latter to provide Capital and Program cost estimating services and develop Historic unit costs and costs estimating guides, in conjunction with the Various Capital and Program Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing July 1, 2016 and concluding no later than June 30, 2017, in an amount not-to exceed \$267,440.00.

**Fiscal Impact** Fund 21, Measure J

**Attachments**

- Independent Consultant Agreement including scope of work
- Consultant Proposal
- Certificate of Insurance



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With Every Consent Agenda Contract.**

**Legislative File ID No.** 16-2183

**Department:** Facilities Planning and Management

**Vendor Name:** Magdave Associates, Inc.

**Project Name:** Various Capital and Program Management      **Project No.:** 0

**Contract Term:** Intended Start: 7/1/2016      Intended End: 6/30/2017

**Annual (if annual contract) or Total (if multi-year agreement) Cost:** \$267,440.00

**Approved by:** Tadashi Nakadegawa

**Is Vendor a local Oakland Business or have they meet the requirements of the**

**Local Business Policy?**       Yes (No if Unchecked)

**How was this Vendor selected?**

Vendor had the best value of available options in compliance with Local Business Policy.

**Summarize the services this Vendor will be providing.**

Capital and Program Cost Estimating Services and Develop Historic Unit Costs and Cost Estimating guides

**Was this contract competitively bid?**       Yes (No if Unchecked)

If No, please answer the following:

1) How did you determine the price is competitive?

Lowest rate for the best qualified estimator.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
  - Special Services** contracts for financial, economic, accounting, legal or administrative services
  - CUPCCAA Exception** (Uniform Public Construction Cost Accounting Act)
  - Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
  - Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
  - Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternative energy supply sources)
  - Emergency** contracts
  - Technology** contracts
    - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
    - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
    - Western States Contracting Alliance Contracts (WSCA)
    - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
  - "Piggyback" Contracts** with other governmental entities
  - Perishable Food**
  - Sole Source**
  - Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
  - Other, please provide specific exception**
- 3)  **Not Applicable - no exception - Project was competitively bid**

**INDEPENDENT CONSULTANT**  
**Greater Than \$87,700**

This Independent Contractor Agreement ("Agreement" or "Contract") is made as of the **14 th day of September in the year 2016**, between the **Oakland Unified School District** ("District") and **Magdave Associates, Inc.**. The District and Consultant may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

**WHEREAS**, absent an exception or exclusion, competitive solicitation is required when contracting for Goods and Services in excess of the State bid limit,adjusted annually for inflation;

**WHEREAS**, the District is authorized to contract with and employ any persons for the furnishing of special and professional services and advice if those persons are specially trained and experienced and competent to perform the services required;

**WHEREAS**, the District is in need of such services and advice and the Consultant warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

**WHEREAS**, the Consultant agrees to perform the services described in this Agreement in accordance with the standards of its profession, to District's satisfaction, and in accordance with this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** Consultant shall furnish to the District the following services,as more fully described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"):

**Scope of work to provide Capital and Program Cost Estimating Services and Develop Historic Unit Costs and Cost Estimating guides.**

2. **Term.** Consultant shall commence providing Services under this Agreement on **July 1, 2016**, and will diligently perform as required or requested by District as applicable. The term for these Services shall expire on **June 30, 2017**. This Agreement may be extended upon mutual approval of both Parties in writing on an annual basis to the extent permissible under applicable law.
3. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u> Signed Agreement	<u>  X  </u> W-9 Form
<u>  X  </u> Insurance Certificates & Endorsements	<u>  X  </u> Workers' Compensation Certificate
<u>  N/A  </u> Bonds (as requested by District)	<u>  X  </u> Debarment Certification
<u>  X  </u> Fingerprinting/Criminal Background Investigation Certification	Other: _____

4. **Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement, at the rates indicated and as more specifically described in **Exhibit "B,"** on an hourly basis and a per-item basis, as applicable, and up to **a maximum amount not-to-exceed TWO HUNDRED SIXTY-SEVEN THOUSAND, FOUR HUNDRED FORTY DOLLARS AND NO CENTS (\$267,440.00)**. District shall pay Consultant only for all undisputed amounts in installment payments within thirty (30) days after the Consultant

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submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Work. Expenses will not be charged on this Work above the maximum not-to-exceed amount of the Contract Price. Rates for expenses are included on the Schedule of Fees and Charges attached hereto as **Exhibit "B"**.
6. **Materials.** Consultant shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
7. **Local, Small Local and Small Local Resident Business Enterprise (L/SL/SLRBE) Program:** Consultant shall comply with the requirements of District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's Local Business Participation Policy can be obtained on the District's website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under District Services, Facilities Planning & Management Department, Bids and Requests for Proposals.
8. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that he/she and all of his/her 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 employees of the District and/or to which District's employees are normally entitled, 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, including unemployment insurance, social security and income taxes with respect to Consultant's employees.
9. **Standard of Care.**
  - 9.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's 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. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
  - 9.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
  - 9.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
  - 9.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
10. **Originality of Services.** Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video

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productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. 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. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

12. **Termination.**

12.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

12.2. **Without Cause by Consultant.** Consultant may, upon sixty (60) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Consultant; or

12.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

12.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

12.4. Upon termination, Consultant shall provide the District with all documents produced maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

13. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including without limitation the payment of all consequential damages ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence,

recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or from any activity, work, or thing done, permitted, or suffered by the Consultant in conjunction with this Agreement. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

**14. Insurance.**

14.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that insure against all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from Consultant's performance of any portion of the Services. (Form CG 0001 and CA 0001)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	\$ 1,000,000
Each Occurrence	\$ 1,000,000
General Aggregate	
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

14.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."



- 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
  - 14.2.3. An endorsement stating that the District and the State and their representatives, employees, trustees, officers, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
  - 14.2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.
- 14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
15. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.
16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
17. **Labor Code Requirements.** Consultant and its subcontractors shall comply with all applicable provisions of the California Labor Code sections 1720-1861, without limitation, the payment of the general prevailing per diem wage rates for public work projects (including repairs and maintenance, where applicable) of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District/COE. In addition, the Consultant and each subcontractor shall comply with Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Consultant or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. **Registration:** As applicable, Consultant and its subcontractors shall comply with the registration and qualification requirements pursuant to sections 1725.5 and 1771.1 of the California Labor Code. **Certified Payroll Records:** Consultant and its subcontractor(s) shall keep accurate certified payroll records of employees, as applicable, and shall make them available to the District/COE immediately upon request.
18. **Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
19. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
20. **Employment with Public Agency.** Consultant, if an employee of another public agency,

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agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

21. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status and therefore the 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. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
22. **Fingerprinting of Employees.** The Consultant shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Consultant shall not permit any employee to have any contact with District pupils until such time as the Consultant has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Consultant's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.
23. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any manner which is permissible under the law. The District's evaluation may include, without limitation:
  - 24.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
  - 24.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
25. **Limitation of District Liability.** Other than as provided in this Agreement, 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 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.

26. **Disputes:** In the event of a dispute between the parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.
27. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
28. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**Oakland Unified School District**  
955 High Street  
Oakland, CA 94601  
Tel: 510-535-7038; Fax: 510-535-7082  
ATTN: Tadashi Nakadegawa

**Consultant**  
Magdave Associates, Inc.  
303 Hegenberger Road, Suite 211  
Oakland, CA 94612  
Tel: 510-517-6464; Fax: \_\_\_\_\_  
ATTN: David Edu

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

29. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties 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 both Parties.
30. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District's administration offices are located.
31. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

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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>



Susie Butler-Berkley  
Contract Analyst

ACCEPTED AND AGREED on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

[Signature]  
James Harris, President, Board of Education

10/27/16  
Date

[Signature]  
Antwan Wilson, Superintendent & Secretary, Board of Education

10/27/16  
Date

[Signature]  
Joe Dominguez, Deputy Chief, Facilities Planning and Management

Date

**APPROVED AS TO FORM:**

[Signature]  
OUSD Facilities Legal Counsel

9-26-16  
Date

**CONSULTANT** MAGDAVE ASSOCIATES, INC.

[Signature]  
DAVID EDU, PRESIDENT/PRINCIPAL

SEPTEMBER 14, 2016

Date

**Information regarding Consultant:**

Consultant: MAGDAVE ASSOCIATES, INC.  
License No.: C55504, 680277  
Address: 303 HEGENBERGER RD. STE. 211  
OAKLAND, CA 94621-1419  
Telephone: (510) 633-7998  
Facsimile: (510) 633-2808  
E-Mail: MAGDAVEASSOC@YAHOO.COM

Type of Business Entity:  
 Individual  
 Sole Proprietorship  
 Partnership  
 Limited Partnership  
 Corporation, State: CALIFORNIA  
 Limited Liability Company  
 Other: \_\_\_\_\_

94-3252070  
Employer Identification and/or  
Social Security Number

**NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

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**EXHIBIT "A"**  
**Scope of Services**

Consultant shall perform the following Services:

See attached scope of work.

## APPROACH AND SCOPE OF WORK

### EXHIBIT A

## Approach

Magdave Associates, Inc. (Magdave) has the technical expertise and local knowledge of the construction market conditions that influences cost estimating process. Our project team has been in the Oakland community for sixteen years and is very familiar with Bond Programs and Capital Projects for School Districts in the Bay Area.

For years, Magdave Team has provided clients with consistent and innovative advice and solutions in estimating project costs. Our design-build background stems from our strong knowledge of costs as well as implicit design knowledge of capital and modernization construction project components.

The Approach consists of a comprehensive survey of stakeholders addressing every contributing component associated with the development of a unit price for items of work in capital and modernization construction projects. Develop documented process and protocol for adjusting unit prices based on project characteristics and market conditions.

Project Tasks include: Review, Collect, Compile, Analyze, Store and Present Historical and Current Cost Data for use in preparing fiscal and project budget/cost estimate. Develop templates and software to enable the management of large volumes of project information.

## Scope of Work

### **Assignment A: Services – Capital and Program Estimating Services (For Period July 01, 2016 through June 30, 2017)**

**Task A.1** – Evaluate and Verify Capital and Bond Program budget costs, and payment applications related to Construction and Modernization projects.

**Task A.2** – Evaluate and Process Contract Change Order Requests for Capital and Bond Program work categories related to Construction and Modernization projects.

Deliverables: Submit Project Cost Review & Recommendations.  
Submit Weekly Snapshot Report on Capital and Bond Program Projects.



## **Assignment B: Consulting–Develop Historic/Current Cost Data & Cost Estimating Guide**

### **Task B.1 – Review/Compile/Analyze Historic and Current Cost Data, and Modernization Schedule of Bid Prices**

**Task B.1.1** – Review/Compile/Analyze Historic & Current Cost Data, Modernization Schedule of bid prices – lump sums, unit prices, and additive alternatives for bids and sub-bids for work in accordance with the Contract Documents – Plans, Specifications and Quantities (PS&Q) of Design-Bid and Lease-Leaseback Modernization Projects.

**Task B.1.2** – Provide Recommendations for alternative work approach supported by standard industry methodology and regulations.

**Deliverables:** Electronic submittal (PDF) of work product.

### **Task B.2 – Prepare Draft and Final Cost Estimating Guide**

**Task B.2.1** – Prepare a draft copy of the proposed Cost Estimating Guide, incorporating recommendations from survey results as provided by District.

**Task B.2.2** – Prepare final Cost Estimating Guide, incorporating comments, feedback and recommendations from the draft review process as provided by District.

**Task B.2.3** – Circulate final Cost Estimating Guide to key District and Program staff for final review and comments. Finalize Cost Estimating Guide for publication.

**Deliverables:** Electronic submittal (PDF) of review recommendations, Draft and Final Cost Estimating Guide with outline of specifications and templates with specifications for capturing, adjusting and updating the database. Reproducible set of the Guide, photo ready and electronic (Word Format) specification for the press will be provided.

### **Task B.3 – Information Technology System – Hardware, Software & Peripherals**

**Task B.3.1** – Develop database structure for capturing and storing historical cost data, unit prices and cost estimates at specific stages in Capital and Bond Program work categories related to Construction and Modernization projects. Provide recommendations for computer hardware, software and peripherals as needed to support cost estimating system.

**Task B.3.2** – Develop processes to manage large volumes of cost data, outline steps and algorithm involved in preparing cost estimates in each project development phase, including templates, figures and spreadsheets.

**Deliverables:** Management and Maintenance of Information Technology System support protocol plan. An electronic version (PDF) of the plan will be provided.

### **Task B.4 – Assignment Management**

**Task B.4.1** – Assignment Management- Project Manager will manage the assignments and provide consistent oversight for the Capital Program, any specialty sub-consultant for the duration of the assignments. He will attend scheduled monthly meetings and also prepare monthly invoices and progress reports with budget and schedule tracking.

**Deliverables:** Management and meeting memoranda, monthly invoices with progress report with budget and schedule tracking.



## ASSIGNMENT MANAGEMENT AND STAFFING

### Assignment Management

David Edu is proposed as the assignment manager. He will attend key meetings, maintaining communications with the client, directing staff on assignment efforts and handling scheduling, quality assurance and assuring timely submittal of deliverables and overall assignment management. Mr. Edu will review the scope of work and respective assignment tasks with the District, Program Manager and stakeholders. He will present assignment schedule, and contact list.

During the course of the assignments he will monitor and update as needed the assignment schedules for the successful completion of the tasks associated with the assignments. Any changes to key staff, i.e. assignment manager will only be made after the client has been notified. As part of the management plan, the assignment manager will provide direction to the assignment team regarding staff resources and in-house reviews of assignment documents prior to submittal to the client. He will provide monthly invoices for the assignment activities performed during the prior month. The invoice will include a brief summary of progress status, deliverables and activities that have occurred during the previous month.

The assignment manager will attend progress meetings. He will be responsible for coordination of the team. In the event that conflicting comments are received from the stakeholders, it will be the responsibility of the District to resolve conflicts and state in writing a preference to the assignment team.

### Staffing

**David K. Edu, P.E., G.C.**, Mr. Edu has over 35 years experience as a principal civil engineer with broad experience that spans the educational, public works and transportation engineering industry. A skilled principal and manager in planning, design, construction management, construction, and implementation of district/public works facilities. He is a Registered Professional Engineer in the states of California and Oregon, and the Commonwealth of Pennsylvania, and a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer and Practitioner (QSD&P), and a Pavement Management System Expert. He is also a licensed General Contractor in general engineering and building construction with certifications in Asbestos and Hazardous material removal, abatement and remediation. He



has developed, designed, supervised and coordinated construction and modernization projects for School Districts in Northern California, public works and municipal projects for the Department of Transportation in California (Caltrans), Bay Area Rapid Transit (BART), Alameda County and San Mateo County Transportation Authorities, and The Port of Oakland. Mr. Edu has specialized training and extensive experience in developing and implementing Cost Estimating and Control Programs, Pavement Management Programs for Educational Facilities with safe school routes for Public Works Agencies in the Bay Area. He also has research and construction management experiences in providing forensic engineering and expert witness services that include CCO analysis, postmortem examination, testing and analyses to determine cause, prevention and remediation of structural, geotechnical, construction, building, materials and criteria issues.

**Emiliano E. Vinuya, P.E.**, is the current on-site Capital and Program District Lead Estimator for the Magdave Team. Mr. Emiliano Vinuya is a Registered Civil Engineer with over thirty-three years experience in cost estimating, cost control, scheduling and other project control methods. As on-site Program Lead Estimator, his duties include all tasks associated with Assignment A: Capital and Bond Program Estimating Services – Evaluate and process project budgets, payment applications, costs and change order requests for construction and modernization projects.

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:


Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more Insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am 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 I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: SEPTEMBER 14, 2016

Proper Name of Consultant: MAGDAVE ASSOCIATES, INC.

Signature: 

Print Name: DAVID EDU

Title: PRESIDENT


(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

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

I am aware of and hereby certify that neither MAGDAYE ASSOCIATES [Type name of Consultant] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 14 TH day of SEPTEMBER 2016 for the purposes of submission of this Agreement.

By:   
Signature

DAVID EDU  
Typed or Printed Name

PRESIDENT/PRINCIPAL  
Title

**CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Consultant currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant. Consultant has taken at least one of the following actions with respect to the construction Project that is the subject of the Contract (check all that apply):

\_\_\_\_\_ Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, 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. A complete and accurate list of Consultant's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Consultant has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Consultant's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Consultant certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Consultant who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Consultant's employees and its subcontractors' employees is

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Consultant that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Consultant's responsibility for background clearance extends to all of its employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Consultant.

Date: SEPTEMBER 14, 2016

Proper Name of Consultant: MAGDAVE ASSOCIATES, INC.

Signature: 

Print Name: DAVID EDU

**Contract #2: Independent Consultant Greater Than \$87,700 – OUSD & Magdave Associates, Inc. – Various Capital and Program Management Project**

Title:

PRESIDENT/PRINCIPAL



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/30/2015

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

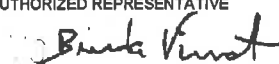
<b>PRODUCER</b> Marsh Sponsored Programs a division of Marsh USA Inc. 701 Market Street, Ste. 1100 St. Louis MO 63101	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 800-338-1391      FAX (A/C, No): 888-621-3173 E-MAIL ADDRESS: acecclientrequest@marsh.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Magdave Associates, Inc.  303 Hegenberger Rd, Ste 211 Oakland, CA 94621	<b>INSURER A:</b> Sentinel Insurance Company Ltd <b>NAIC #</b> 11000	
	<b>INSURER B:</b> Hartford Underwriters Insurance Co      30104	
	<b>INSURER C:</b> Hartford Accident and Indemnity Co      22357	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
<b>INSURER F:</b>		

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			84SBWRS4286 Prof. Liab. Excl.	11/30/2015	11/30/2016	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$2,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
								\$
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			84UEGIU8886	11/30/2015	11/30/2016	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			84WEGTA8026	11/30/2015	11/30/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Re: Division of Facilities, Planning & Management Capital Program and Historical Cost Data Estimating and Base Development

<b>CERTIFICATE HOLDER</b>  Oakland Unified School Dist. Div. of Facilities, Planning & Mgmt - Susie Butler-Berkley 955 High Street Oakland, CA 94601	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## INDEPENDENT CONSULTANT AGREEMENT ROUTING FORM

Project Information			
<b>Project Name</b>	Division of Facilities Planning and Management	<b>Site</b>	918
Basic Directions			
<b>Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.</b>			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Magdave Associates, Inc.	Agency's Contact	David Edu				
OUSD Vendor ID #	I005734	Title	Project Manager				
Street Address	303 Hegenberger Road, Suite 21	City	Oakland	State	CA	Zip	94612
Telephone	510-517-6464	Policy Expires	11-30-2016				
Contractor History	Previously been an OUSD contractor? x Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes x No				
OUSD Project #	NA						

Term			
Date Work Will Begin	7-1-2016	Date Work Will End By (not more than 5 years from start date)	6-30-2017

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$267,440.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9450	Fund 21, Measure J	9189905806	5825	\$267,440.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
	<b>Division Head</b>	Phone	510-535-7038	Fax
1.	<b>Director, Facilities Planning and Management</b>			
	Signature	Date Approved	7/19/16	
2.	<b>General Counsel, Department of Facilities Planning and Management</b>			
	Signature	Date Approved	9.26.16	
3.	<b>Deputy Chief, Facilities Planning and Management</b>			
	Signature	Date Approved		
4.	<b>Chief Operations Officer, Board of Education</b>			
	Signature	Date Approved		
5.	<b>President, Board of Education</b>			
	Signature	Date Approved		