

Board Office Use: Legislative File Info.	
File ID Number	19-0382
Introduction Date	4-10-2019
Enactment Number	19-0542
Enactment Date	4-10-19 If



OAKLAND UNIFIED  
SCHOOL DISTRICT

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent and Secretary, Board of Education  
 Timothy White, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** April 10, 2019

**Subject** Independent Consultant Agreement Greater than \$92,600 - MK Think -  
 Facilities Planning & Management Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement Greater than \$92,600 between the District and MK Think, San Francisco, CA, for the latter to provide strategic support for the Facilities Division and the Research Assessment & Data Department; MKThink will develop a (FMP) Facilities Master Plan integrating and building on the work developed in the 2012 Facilities Master Plan, the 2014 Asset Management Plan, and the 2017 Blueprint. MKThink will provide Assessment of data to support the Citywide Plan, Deliver a new FMP, and provide Strategies and assistance to optimize property and facility utilization, Total Fee services includes coverage until August 2019 as follows: Asset Management Strategy Goal and Objectives, Potential Property Appraisals; Assessment and Options; Database Assessment - updates, Quantitative and Systematic relationship map assessment, Surplus property assessment, Development Revenue Modeling, Cost/Benefit Analysis; Implementation Strategy; Strategic Framework Presentation, Implementation Framework; Facilities Master Plan, in conjunction with the Facilities Planning and Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set fourth, commencing April 11, 2019 and concluding no later than December 15, 2019, in an amount not to exceed \$299,680.00.

**Discussion** Vender to assist the District in developing and discovery and asset Management Strategy Master Plan

**LBP** (Local Business Participation Percentage) 00.00%

**Recommendation** Approval by the Board of Education of an Independent Consultant Agreement Greater than \$92,600 between the District and MK Think, San Francisco, CA, for the latter to provide strategic support for the Facilities Division and the Research Assessment & Data Department; MKThink will develop a (FMP) Facilities Master Plan integrating and building on the work developed in the 2012 Facilities Master Plan, the 2014 Asset Management Plan, and the 2017 Blueprint. MKThink will provide Assessment of data to support the Citywide Plan, Deliver a new FMP, and provide Strategies and assistance to optimize

property and facility utilization, Total Fee services includes coverage until August 2019 as follows: Asset Management Strategy Goal and Objectives, Potential Property Appraisals; Assessment and Options; Database Assessment - updates, Quantitative and Systematic relationship map assessment, Surplus property assessment, Development Revenue Modeling, Cost/Benefit Analysis; Implementation Strategy; Strategic Framework Presentation, Implementation Framework; Facilities Master Plan, in conjunction with the Facilities Planning and Management Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing April 11, 2019 and concluding no later than December 15, 2019, in an amount not to exceed \$299,680.00.

**Fiscal Impact**

Fund 21, Measure B

**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.** 19-0440

**Department:** Facilities Planning and Management

**Vendor Name:** M K Think

**Project Name:** Facilities Planning and Management      **Project No.:** 00918

**Contract Term:** Intended Start: 4/11/2019      Intended End: 12/15/2019

**Annual (if annual contract) or Total (if multi-year agreement) Cost:** \$299,680.00

**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 was selected through RFP Process

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

Assemble and empower Facilities Master Plan Steering Committee; Develop Facilities Mast Plan guiding principles and boundaries; data gap assessment; identify issues with existing facilities data; develop plan of action for prioritizing data collection and validation to achieve goals and requirements of Facilities Master Plan given schedule constraints

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

If No, please answer the following:

1) How did you determine the price is competitive?

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 \$90,200 (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 AGREEMENT FOR PROFESSIONAL SERVICES**  
**Greater than \$92,600**

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **21st day of February 2019**, by and between the **Oakland Unified School District** ("District") and **MKThink** ("Consultant"), (together, "Parties").

**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"):

Scope of work to provide strategic support for the Facilities Division and the Research Assessment & Data Department; MKThink will develop a (FMP) Facilities Master Plan integrating and building on the work developed in the 2012 Facilities Master Plan, the 2014 Asset Management Plan, and the 2017 Blueprint. MKThink will provide Assessment of data to support the Citywide Plan, Deliver a new FMP, and provide Strategies and assistance to optimize property and facility utilization, Total Fee services includes coverage until December 2019 as follows: Asset Management Strategy Goal and Objectives, Potential Property Appraisals; Assessment and Options; Database Assessment - updates, Quantitative and Systematic relationship map assessment, Surplus property assessment, Development Revenue Modeling, Cost/Benefit Analysis; Implementation Strategy; Strategic Framework Presentation, Implementation Framework; Facilities Master Plan.

**Term.** Consultant shall commence providing Services under this Agreement on **April 11, 2019**, and will diligently perform as required and complete performance by **December 15, 2019**, unless this Agreement is terminated and/or otherwise cancelled prior to that time. This Agreement may be extended upon mutual approval of both parties in writing on an annual basis to the extent permissible under applicable law.

- 2. **Submittal of Documents.** The Consultant shall not commence the Services under this Contract 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:

<input checked="" type="checkbox"/> Signed Agreement	<input checked="" type="checkbox"/> W-9 Form
<input checked="" type="checkbox"/> Insurance Certificates & Endorsements	<input checked="" type="checkbox"/> Workers' Compensation Certificate
<input checked="" type="checkbox"/> Debarment Certification	Other: _____
<input checked="" type="checkbox"/> Fingerprinting/Criminal Background Investigation Certification	

- 3. **Compensation.** District agrees to pay Consultant for Services satisfactorily rendered pursuant to this Agreement, a fixed fee of **TWO HUNDRED NINETY-NINE THOUSAND , SIX HUNDRED EIGHTY NO/100 Dollars (\$299,680.00)**, paid monthly in proportion to Services performed.

3.1. District shall pay Consultant for all undisputed amounts in installment payments within thirty (30) days after the Consultant submits an invoice to the District for Services actually

completed and after the District's written approval of the Services, or the portion of the Services for which payment is to be made (such approval not to be unreasonably withheld or delayed).

3.2. Any disputed invoiced amount which cannot be resolved in good faith between the Parties within fifteen (15) business days shall be resolved in accordance with Section 25 below.

4. **Expenses.** Expenses will not be charged for Consultant's performance of these Services.

5. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

6. **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.

7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. 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 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. In the performance of the Services herein contemplated, Consultant shall have the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

#### 8. **Performance of Services / Standard of Care.**

8.1. **Standard of Care.** 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.

8.1.1. 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.

8.1.2. 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.

8.1.3. 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.

- 8.1.4. Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall use professional efforts in identifying any errors, inconsistencies, or omissions.
- 8.1.5. Any representations, recommendations, opinions or conclusions relating to the Services provided by Consultant must be made in writing by duly authorized representatives of Consultant.
- 8.2. **Meetings.** Consultant and District agree to participate in regular meetings to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video 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.
10. **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 (specifically excluding any underlying pre-existing intellectual property). District may, with Consultant's prior written consent, use Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
11. **Termination.**
- 11.1. **For Convenience 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 (3) calendar days after the day of mailing, whichever is sooner.
- 11.2. **For Convenience 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.
- 11.3. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 11.3.1. material violation of this Agreement by the Consultant; or
- 11.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or

11.3.3. 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.

11.4. 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.

12. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify, and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified Parties") from any and all claims, arising out of, pertaining to or relating to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant. Consultant shall, to the fullest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The District shall have the right to accept or reject any legal representation that Consultant proposes to defend the indemnified parties.

13. **Insurance.**

13.1. 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.

13.1.1. **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)

13.1.2. **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.

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

Type of Coverage	Minimum Requirement
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<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

13.2. **Proof of Carriage of Insurance.** 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:

- 13.2.1. 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."
- 13.2.2. 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.
- 13.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, 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. An endorsement shall also state that there shall be a waiver of any subrogation.
- 13.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance shall be written on an occurrence form.

13.3. **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.

14. **Assignment.** The obligations of the Consultant pursuant to this Agreement shall not be assigned by the Consultant.

15. **Compliance with Laws.** Consultant shall observe and comply with all applicable rules and regulations of the governing board of the District and all applicable 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 Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are 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 Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant knowingly 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.

16. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this agreement.

17. **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.
18. **Employment with Public Agency.** Consultant, if an employee of another public agency, 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.
19. **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 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
20. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:
  - 20.1. All site visits shall be arranged through the District;
  - 20.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
  - 20.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
  - 20.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
  - 20.5. Consultant and Consultant's employees shall not use student restroom facilities; and
  - 20.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
21. **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.
22. **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.

**23. 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:

23.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.

23.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).

**24. 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.

**25. Disputes:** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

**26. 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.

**27. 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

MKThink  
1500 Sansome Street Roundhouse One  
San Francisco, CA 94111  
Tel: 415-402-0888  
ATTN: Marijke Smit

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.

28. **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.
29. **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 county in which the District's administration offices are located.
30. **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.
31. **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.
32. **Incorporation of Recitals and Exhibit.** The Recitals and exhibit attached hereto are hereby incorporated herein by reference.
33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
34. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
35. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
36. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
37. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
38. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
39. **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.

**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>



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**Tadashi Nakadegawa**  
**Director of Facilities Planning & Management**

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

Aimee Eng 4-10-19  
 Aimee Eng, President, Board of Education Date

[Signature] 4-10-19  
 Kyla Johnson-Trammell, Superintendent & Secretary, Board of Education Date

[Signature] 2/25/19  
 Timothy White, Deputy Chief, Facilities Planning and Management Date

**APPROVED AS TO FORM:**

[Signature] 2/23/19  
 OUSD Facilities Legal Counsel Date

**CONSULTANT**

[Signature] 2-22-2019  
 Date

**Information regarding Consultant:**

Consultant: MKThink

License No.: C-28435

Address: 1500 Sansome St.  
San Francisco, CA 94111

Telephone: 415-402-0888

Facsimile: \_\_\_\_\_

E-Mail: office@mkthink.com

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

94-3358324  
 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.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

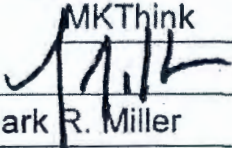
Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- 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: February 21, 2019

Proper Name of Consultant: MKThink

Signature: 

Print Name: Mark R. Miller

Title: CEO

(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**

The undersigned is aware of and hereby certify that neither **MKThink** ("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. Further, the undersigned agrees to 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 21 day of February 21 2019 for the purposes of submission of this Agreement.

By:

  
\_\_\_\_\_

Signature

Mark R. Miller

\_\_\_\_\_  
Typed or Printed Name

CEO

\_\_\_\_\_  
Title





# OAKLAND UNIFIED SCHOOL DISTRICT

*Community Schools, Thriving Students*

## Facilities Master Planning Services

Including Strategic Facilities Optimization

Submitted by  
MKThink  
San Francisco, CA  
FEBRUARY 19, 2019

**THINK**

## 10. FEE PROPOSAL & RATE SCHEDULE

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### DISCOVERY AND ASSET MANAGEMENT STRATEGY

- Assemble and empower Facilities Master Plan Steering Committee
- Develop Facilities Master Plan guiding principles and boundaries
- Data gap assessment -- Identify issues with existing facilities data
- Develop plan of action for prioritizing data collection and validation to achieve goals and requirements of Facilities Master Plan given schedule constraints
- Perform foresight analysis to anticipate future conditions
- Develop in-person and online public engagement strategy in partnership with OUSD engagement specialists
- Work with the District's preferred real estate advisor to provide appraisals of any additional properties that will serve as a basis for understanding the transactional value of the properties

### ASSESSMENT AND OPTIONS

- Assemble OUSD's facilities/student/community data into unified database tool to serve as the analytic foundation for the Facilities Master Plan
- Coordinate with relevant OUSD units (e.g. RAD) to ensure effective data sharing
- Assess OUSD's quantitative and systematic relationships with community assets and resources
- Evaluate surplus property in light of guiding principles and OUSD criteria for highest and best use of district owned property
- Model revenue generation for potential public/private development, asset sale, long term lease, and alternative property disposition
- Assess potential methods of housing OUSD administrative personnel
- Cost/benefit analysis of alternative approaches to housing district administration
- Coordinate with the 7-11 Committee, Blueprint for Quality Schools Advisory Group, and team working on Citywide Plan

### IMPLEMENTATION STRATEGY

- Develop planning scenarios to help determine potential future capacity of the District, potential locations for schools, and strategies for housing program partners and other providers
- Define range of possible uses for all OUSD owned-facilities including surplus properties

- Analyze overall cost/benefit of scenarios considering potential uses of OUSD properties
- Refine scenarios into Asset Management Strategy through work with Steering Committee and engagement with relevant committees and groups
- Develop communications program for Facilities Master Plan public outreach and publication
- Engage key stakeholders to review planning scenarios and align with other OUSD initiatives
- Develop Implementation Plan by refining OUSD scenarios into a strategic framework to serve as the basis for a facilities master plan

#### **FACILITIES MASTER PLAN**

- Describe guiding principles, asset inventory, projected needs, and proposed projects into draft Facilities Master Plan that will serve as the foundation for a 2020 General Obligation Bond
- Collaborate with internal OUSD partners and sub-consultants with specific topic area knowledge (e.g. engineering, seismic safety, etc...) as needed to resolve any remaining data gaps
- Engage key participants of Blueprint for Quality Schools Advisory Group, Citywide Plan, and other key stakeholder groups
- Engage public in partnership with OUSD engagement specialists to distribute and publicize plan objectives
- Present Facilities Master Plan to Board of Education
- Coordinate with OUSD's preferred bond consultant(s) and prepare materials for Bond Issue

## Total Fee Proposal

### Services

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<b>Discovery and Asset Management</b>	<b>\$72,480</b>
<b>Strategy</b>	
Goal and Objectives	\$33,155
Potential Property Appraisals	\$39,325
<b>Assessment and Options</b>	<b>\$77,280</b>
Database Assessment - updates	\$25,160
Quantitative and systematic relationship assessment	\$12,420
Surplus property Assessment	\$19,110
Development Revenue Modeling	\$11,800
Cost/Benefit Analysis	\$8,790
<b>Implementation Strategy</b>	<b>\$82,080</b>
Strategic Framework Presentation	\$45,970
Implementation Framework	\$36,110
<b>Facilities Master Plan</b>	<b>\$67,840</b>
<b>Total</b>	<b>\$299,680</b>

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# Rate Schedule

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## Hourly Rate Schedule

*Valid through March 31, 2019*

*Not for Profit Rates Apply*

Classification	Commercial	501(c)(3)
<b>Leadership and Management</b>		
Executive Principal	\$410	\$328
Principal   Director	\$370	\$300
Associate Director	\$288	\$244
Senior Project Manager	\$236	\$198
Project Manager	\$185	\$157
<b>Consulting Professional (Analysts, Designers, Planners, Engineers, Architects):</b>		
Senior Professional	\$236	\$198
Professional	\$185	\$157
Associate Professional	\$165	\$140
Associate	\$148	\$120
<b>Production and Support</b>		
Associate	\$165	\$140
Technician	\$148	\$120
Administrator	\$125	\$110

# OUSD FACILITIES MASTER PLAN PROJECT SCHEDULE





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SCHEDULED ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**NAME OF PERSONS OR ORGANIZATIONS:**  
OAKLAND UNIFIED SCHOOL DISTRICT AND  
ITS DIRECTORS, OFFICERS, EMPLOYEES,  
AGENTS AND REPRESENTATIVES  
OAKLAND CA 94601

**PROJECT/LOCATION OF COVERED OPERATIONS:**

### PROVISIONS

**1. The following is added to SECTION II – WHO IS AN INSURED:**

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

The person or organization does not qualify as an additional insured:

- c. With respect to the independent acts or omissions of such person or organization; or
- d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III – Limits Of Insurance.
- g. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to that additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.



COMMERCIAL GENERAL LIABILITY

2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance provided to the additional insured shown in the Schedule above is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

3. The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

We waive any right of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the DEFINITIONS Section:

"Written contract requiring insurance" means that part of any written contract with the person or organizations shown in the Schedule above, under which you are required to include that person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After you have signed that written contract;
- b. While that part of the written contract is in effect; and
- c. Before the end of the policy period.



Department of Facilities Planning and Management

ROUTING FORM

Project Information

Project Name Facilities Planning and Management

Site 210

Basic Directions

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

- Attachment Checklist: Proof of general liability insurance, Workers compensation insurance certification

Contractor Information

Contractor Name M K Think, Agency's Contact Marijke Smit, OUSD Vendor ID # 002887, Address 1500 Sansome Street, Telephone 6462097937, Contractor History Previously been an OUSD contractor?

Term

Date Work Will Begin 3/14/2019, Date Work Will End By 8/30/2019 (not more than 5 years from start date)

Compensation

Total Contract Amount, Total Contract Not To Exceed \$299,680.00, Pay Rate Per Hour (if Hourly), Other Expenses, Requisition Number

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Table with 5 columns: Resource #, Funding Source, Org Key, Object, Amount. Row 1: 9350/9000, Fund 21, Measure J, 210-9350-0-9000-8500-6289-9180-9905-9999-99999, 6289, \$299,680.00

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.

- 1. Division Head: Director, Department of Facilities Planning and Management. Signature, Date Approved 2/22/19.
2. General Counsel, Department of Facilities Planning and Management. Signature, Date Approved 2/23/19.
3. Deputy Chief, Department of Facilities Planning and Management. Signature, Date Approved 2/23/19.
4. Senior Business Officer, Board of Education. Signature, Date Approved.
5. President, Board of Education. Signature, Date Approved.