

<b>Board Office Use: Legislative File Info.</b>	
File ID Number	15- 0861
Introduction Date	5-27-2015
Enactment Number	15-0690
Enactment Date	5/27/15 <i>ED</i>



# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education *MST*  
 By: Mia Settles-Tidwell, Chief Operations Officer  
 Lance Jackson, Interim Deputy Chief, Facilities Planning and Management

**Board Meeting Date** May 27, 2015

**Subject** Independent Contractor Agreement for Professional Services - Magdave Associates, Inc. - Division of Facilities Planning and Management Project

**Action Requested** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services with Magdave Associates, Inc. for Estimating Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$259,670.00. The term of this Agreement shall commence on July 1, 2015 and shall conclude no later than June 30, 2016.

**Background** The scope of the project is to evaluate and verify Capital and Bond Program budget costs, and payment applications related to Construction and Modernization Projects. Evaluate and Process Change Order Requests for Capital and Bond Program work categories related to Construction and Modernization.

**Discussion** Consultant will provide consistent oversight for the Capital program to increase efficiency and reduce costs. Consultant will also develop processes to manage large volumes of cost information.

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

**Recommendation** Approval by the Board of Education of an Independent Contractor Agreement for Professional Services with Magdave Associates, Inc. for Estimating Services on behalf of the District at the Division of Facilities, Planning and Management Project, in an amount not-to exceed \$259,670.00. The term of this Agreement shall commence on July 1, 2015 and shall conclude no later than June 30, 2016.

**Fiscal Impact** Measure J

**Attachments**

- Independent Contractor Agreement including scope of work
- Certificate of Insurance

## INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

### Division of Facilities Planning and Management Project

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **17<sup>th</sup> day of April, 2015** by and between the Oakland Unified School District, Oakland, California ("District") and **Magdave Associates, Inc.** ("Consultant"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

**Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

The scope of services is more specifically indicated on **Exhibit "A."**

1.1. The Services shall be performed on the following project(s) / site(s) ("Project"):

**The scope of the project is to evaluate and verify Capital and Bond Program budget costs, and payment applications related to Construction and Modernization Projects. Evaluate and Process Change Order Requests for Capital and Bond Program work categories related to Construction and Modernization.**

2. **Term.** The term of this Agreement shall be no longer than the period of construction of the Project, unless this Agreement is terminated and/or otherwise cancelled prior to that time.

**The project will commence July 1, 2015 and conclude no later than June 30, 2016**

3. **Submittal of Documents.** The Consultant shall not commence the Work 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:

Signed Agreement  
 Workers' Compensation Certification  
 Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Two hundred fifty-nine thousand, six hundred seventy dollars and no cents (\$259,670.00.00)**. District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant 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 services for District, except as follows: Not applicable.
6. **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 work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **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, except as follows: Not applicable.
8. **Performance of Services.**
  - 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.
  - 8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis 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.
  - 8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.
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. 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.

11. **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 five (5) 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.

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 thirty (30) 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 thirty (30) 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 service 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.

13. **Indemnification.** To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees



and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), , or willful misconduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

**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 shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

**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	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000
<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 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 agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured 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 except the Professional Liability Policy shall be written on an occurrence 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. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement.
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, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age 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.
21. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
22. **Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE):** There is a fifty percent (50%) minimum participation requirement for all construction related professional service contracts over the informal bidding threshold (Public Contract Code Section 20111). The requirement may be wholly satisfied by a City of Oakland certified business. Business entities must be certified by the City of Oakland in order to earn credit toward meeting the fifty percent (50%) participation requirement. Please refer to the District's S/SL/SLRBE Policy; a copy can be obtained for the OUSD website: [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us) Under the Facilities Department drop down menu, Bids and Requests for Proposals.
23. **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.
24. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable 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. **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. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

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:

**District:**

Oakland Unified School District  
955 High Street  
Oakland, CA 94601  
ATTN: **Tadashi Nakadegawa,**  
**Director of Facilities**

**Consultant:**

David Edu  
Magdave Associates, Inc.  
303 Hegenberger Road, Suite 211  
Oakland, CA 94607

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 administrative 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. **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.

33. **Attorney 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.

34. **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.

35. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days



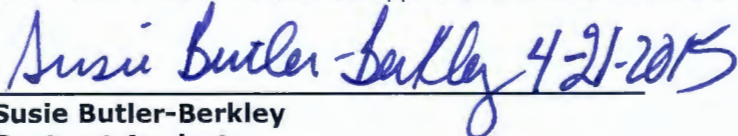
unless otherwise specified.

**36. 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.

**37. 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.

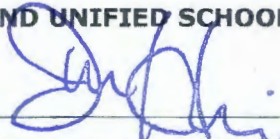
**38. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**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 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>

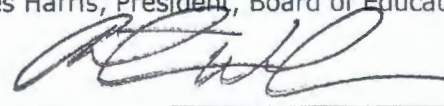
  
**Susie Butler-Berkley**  
**Contract Analyst**

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

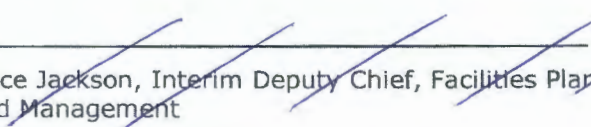
**OAKLAND UNIFIED SCHOOL DISTRICT**


  
\_\_\_\_\_  
James Harris, President, Board of Education

Date: 5/28/15

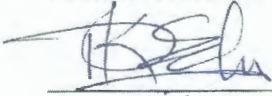
  
\_\_\_\_\_  
Antwan Wilson, Superintendent and Secretary, Board of Education

Date: 5/28/15

  
\_\_\_\_\_  
Lance Jackson, Interim Deputy Chief, Facilities Planning and Management

Date: 5/28/15 

**MAGDAVE ASSOCIATES, INC.**

  
\_\_\_\_\_  
DAVID EDUL, PRESIDENT

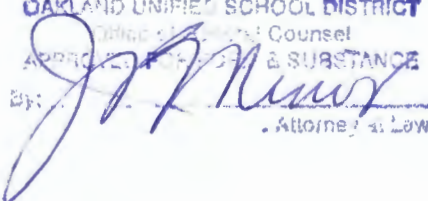
Date: APRIL 20, 2015

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Catherine Boskoff, Facilities Counsel

Date: 4.23.15

File ID Number: 15-0861  
Introduction Date: 5/27/15  
Enactment Number: 15-0690  
Enactment Date: 5/27/15  
By: o/s

**OAKLAND UNIFIED SCHOOL DISTRICT**  
Office of General Counsel  
**APPROVED FOR FORM & SUBSTANCE**  
By:   
\_\_\_\_\_  
Attorney at Law



**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

Consultant's entire Proposal is **not** made part of this Agreement.

**(PLEASE SEE THE ATTACHED PROPOSAL FROM THE CONSULTANT)**

EXHIBIT A

# PROPOSAL

*Submitted to*



**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

**Tadashi Nakadegawa, Director  
Department of Facilities Planning and Management  
Oakland Unified School District  
955 High Street, Oakland, CA 94604**

*for*

## **OAKLAND UNIFIED SCHOOL DISTRICT (OUSD)**

- **Capital and Program Estimating Services**
- **Develop Construction Unit Cost & Cost Estimating Guide**

*Submitted by*



**Magdave Associates, Inc.**  
*a Design-Build Firm*

303 Hegenberger Road, Suite 211  
Oakland, CA 94607

**July 01, 2015 – June 30, 2016**

*... where Engineering Design, Construction and the Environment are on the same Course ...*

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## Table of Contents

### APPROACH AND SCOPE OF WORK

Approach

Scope of Work

Assignment A: Services – Capital and Program Cost Estimating Services

Assignment B: Consulting – Develop Unit Cost and Cost Estimating Guide

### ASSIGNMENT MANAGEMENT AND STAFFING

Assignment Management

Staffing

### COST & FEE SUMMARY

Estimated Hours by Assignment and Tasks

## APPROACH AND SCOPE OF WORK

### 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, 2015 through June 30, 2016)*

**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 Unit Cost & Cost Estimating Guide**

### **Task B.1 – Review/Reconcile GC/Subcontractor Schedule of Bid Prices**

**Task B.1.1** – Review/Reconcile GC/Subcontractor bid items – lump sums, unit prices, and additive alternatives for bids and sub-bids for work in accordance with the Contract Documents – Plans and Specifications of 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 Systems – Hardware, Software & Peripherals**

**Task B.3.1** – Develop database structure for capturing and storing historical bid 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 and 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- As part of this task, our project manager will be managing the assignment and any specialty sub-consultant for the duration of the project. He will attend a monthly meeting for the duration of the project up to the completion of the Cost Estimating Guide Final Submittal. He will 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. He is also a licensed General Contractor in general engineering and building construction with certification 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, 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. He is a Qualified SWPPP Developer and Practitioner (QSD and QSP).

**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.



## COST AND FEE SUMMARY

### Estimated Hours by Assignment and Tasks

Magdave's proposed cost and fee summary for each assignment and subsequent tasks described in this proposal is as follows:

#### **Assignment A: Services – Capital and Program Estimating Services**

- July 01, 2015 – June 30, 2016: Task 1 & Task 2
  - Total Hours – 2080 Hours Projected (52 wks @ 40hrs/wk)

#### **Total Hours Assignment A – 2080 Hours**

#### **Assignment B: Consulting – Develop Unit Cost and Cost Estimating Guide**

- Review/Reconcile Schedule of Bid Prices
  - Total Hours – 64 Hours Proposed
- Prepare Draft and Final Cost Estimating Guide
  - Total Hours – 156 Hours Proposed
- Information Technology System
  - Total Hours – 24 Hours Projected
- Assignment Management
  - Total Hours – 24 Hours Projected

#### **Total Hours Assignment B – 268 Hours**

- Other Reimbursable Expense – Reproduction Costs @ 5%:

***{See next page for COST AND FEE SUMMARY – Hours by assignment and tasks}***



## COST AND FEE SUMMARY ESTIMATED HOURS BY ASSIGNMENT AND TASK

TASK	DESCRIPTION	Total Cost	Total Hours	Project Manager	Lead/Project Estimator	Technical Writer	Admin Assistant
		Hourly Rates		\$130	\$110	\$110	\$90
<b><u>ASSIGNMENT A: SERVICES - PROGRAM ESTIMATING SERVICES(July 2015 -June 2016)</u></b>							
A.1	Evaluate & verify budget costs & process payment application for C&M projects	\$ 114,400	1040		1040		
A.2	Evaluate & process CCO requests for C&M projects	\$ 114,400	1040		1040		
<b>Subtotal Assignment A Services Hours</b>			<b>2080</b>	<b>0</b>	<b>2080</b>	<b>0</b>	<b>0</b>
<b>Subtotal Assignment A Services Fees</b>		<b>\$ 228,800</b>		<b>\$ -</b>	<b>\$ 228,800</b>	<b>\$ -</b>	<b>\$ -</b>
<b><u>ASSIGNMENT B: CONSULTING - DEVELOP COST ESTIMATING GUIDE</u></b>							
B.1	Review/Reconcile Schedule of Bid Prices: Tasks 1 & 2	\$ 6,960	64	12	36		16
B.2	Prepare Draft & Final Cost Estimating Guide: Tasks 1 & 2	\$ 17,160	156	24	36	72	24
B.3	IT System - Dev database structure & select hardware/peripherals: Tasks 1 & 2	\$ 2,640	24	8	8		8
B.4	Assignment Management - Assignment B	\$ 2,640	24	12			12
<b>Subtotal Assignment B Services Hours</b>			<b>268</b>	<b>56</b>	<b>80</b>	<b>72</b>	<b>60</b>
<b>Subtotal Assignment B Services Fees</b>		<b>\$ 29,400</b>		<b>\$ 7,280</b>	<b>\$ 8,800</b>	<b>\$ 7,920</b>	<b>\$ 5,400</b>
Other Reimbursable Expense - Reproduction Costs @ - 5%		\$ 1,470					
Total Fee - Assignment A & B		\$ 259,670					
<b>Magdave Total Fee</b>		<b>\$ 259,670</b>					

**Note:**

\* July 01, 2015 through June 30, 2016 (52 wks @ 40hrs/wk) - 2080 Projected Hours

**Information regarding Consultant:**

Consultant: MAGDAVE ASSOCIATES \_\_\_\_\_ :  
License No.: C55504, 680277 Employer Identification and/or Social Security Number  
Address: 303 HEGENBERGER RD, STE 211  
OAKLAND, CA 94621 **NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**  
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: \_\_\_\_\_



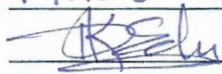
**WORKERS' COMPENSATION CERTIFICATION**

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: APRIL 20, 2015  
Proper Name of Consultant: MAGDAVE ASSOCIATES, INC.  
Signature:   
Print Name: DAVID EDU  
Title: PRESIDENT / 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.)

**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 certifies that it 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):

\_\_\_\_\_ The Consultant has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Consultant's employees and all of its sub-consultants' 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 sub-consultants' 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 sub-consultants' employees is

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

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

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

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

Date:

APRIL 20, 2015

Proper Name of Consultant:

MAGDAVE ASSOCIATES, INC.

Signature:

[Handwritten Signature]

Print Name:

DAVID EDU

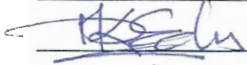
Title:

PRESIDENT/CEO



**DRUG/SMOKE-FREE WORKPLACE CERTIFICATION**

The District and all District projects are "drug-free" and "smoke-free" workplaces and, as such, require that the Project Manager be subject to the requirements mandated by California Government Code Section 8340, et seq., when on the Project site. The Drug-Free Workplace Act of 1990 requires that every person or entity awarded a contract or grant for the procurement of any property or service from a State agency certify that it will provide a drug-free workplace and, in that respect, comply with certain obligations set forth in that Act. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by the State agency may be subject to suspension of payments or termination for failure to comply with such Act. It is the sole responsibility of the Project Manager to police and oversee its personnel on the Project. If the Project Manager fails to comply with the Drug-Free Workplace Act or the smoke-free workplace policy of the District, the District may enforce its lawful rights to suspend pending or subsequent payments and to terminate this Agreement and may pursue all other rights and remedies it may have against the Project Manager at law and/or in equity.

Date: APRIL 20, 2015  
Proper Name of Consultant: MAGDAVE ASSOCIATES, INC  
Signature:   
Print Name: DAVID EDU  
Title: PRESIDENT/CEO



# CERTIFICATE OF LIABILITY INSURANCE

MAGDA-1

OP ID: SL

DATE (MM/DD/YYYY)

10/10/2014

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).

PRODUCER <b>ACEC/MARSH</b> 701 Market St., Ste. 1100 St. Louis, MO 63101 Jeff B. Connelly	CONTACT NAME: <b>Jeff B. Connelly</b>
	PHONE (A/C, No, Ext): <b>800-338-1391</b>
	FAX (A/C, No): <b>888-621-3173</b>
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE
	INSURER A : <b>Hartford Insurance Company</b>
	NAIC # <b>22357</b>
INSURED <b>Magdave Associates, Inc.</b> <b>303 Hegenberger Rd, Ste 211</b> <b>Oakland, CA 94621</b>	INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <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 OTHER:			84SBWRS4286  PROFESSIONAL LIAB. EXCL.	11/30/2014	11/30/2015	EACH OCCURRENCE \$ <b>2,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>2,000,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>2,000,000</b> GENERAL AGGREGATE \$ <b>4,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>4,000,000</b>
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			84UEGIU8886	11/30/2014	11/30/2015	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
A	<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	Y/N	N/A	84WEGTA8026	11/30/2014	11/30/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Division of Facilities, Planning & Management Capital Program and Historical Cost Data Estimating and Base Development

**CERTIFICATE HOLDER****CANCELLATION**

<b>OAKLAND</b>  <b>Oakland Unified School Dist.</b> <b>Div. of Facilities, Planning &amp; Mgmt - Susie Butler-Berkley</b> <b>955 High Street</b> <b>Oakland, CA 94601</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 CONTRACTOR AGREEMENT FOR SPECIALTY SERVICES ROUTING FORM

Project Information			
Project Name	Division of Facilities Planning and Management	Site	918
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
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	94607
Telephone	510-517-6464	Policy Expires	11-30-2015				
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	NA						

Term			
Date Work Will Begin	7-1-2015	Date Work Will End By <small>(not more than 5 years from start date)</small>	6-30-2016

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$259,670.00
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
9350	Measure J	9189905802	5825	\$259,670.00

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	Phone	510-535-7038	Fax	510-535-7082
	Director, Facilities Planning and Management				
	Signature			Date Approved	4/24/15
2.	General Counsel, Department of Facilities Planning and Management				
	Signature			Date Approved	4/25/15
3.	Interim Deputy Chief, Facilities Planning and Management				
	Signature			Date Approved	
4.	Chief Operations Officer, Board of Education				
	Signature			Date Approved	5/7/15
5.	President, Board of Education				
	Signature			Date Approved	