

Board Office Use: Legislative File Info.	
File ID Number	12 - 0880
Introduction Date	April 25, 2012
Enactment Number	12-1196
Enactment Date	4-25-12 82



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date April 25, 2012

Subject AGREEMENT WITH GENE BREGMAN & ASSOCIATES

Action Requested Ratification of Agreement contract between the District and Gene Bregman & Associates, a public opinion and market research firm. The firm will provide public opinion research and feasibility assessment related to a potential General Obligation Bond Measure for the November 2012 ballot. The Agreement is for the period of 04/01/2012 – 12/31/2012.

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

This is a short term Agreement for Gene Bregman & Associates to provide public opinion research and feasibility assessment related to a potential General Obligation Bond Measure for the November 2012 ballot.

Discussion
One paragraph summary of the scope of work.

Ratification by the Board of Education of the Agreement between the District and Gene Bregman & Associates to provide public opinion research and assessment and feasibility assessment related to a potential General Obligation Bond Measure for the November 2012 ballot. The Agreement is for the period of 04/01/2012 – 12/31/2012, in an amount not to exceed \$33,000.00.

Recommendation

Ratification by the Board of Education of the Agreement between Oakland Unified School District and Gene Bregman & Associates for the period of 04/1/2012 through 12/31/2012, in an amount not to exceed \$33,000.00.

Fiscal Impact Funding resource name: General Purpose

Attachments

- Agreement

Board Office Use: Legislative File Info.	
File ID Number	12-0880
Introduction Date	4-25-12
Enactment Number	
Enactment Date	

**AGREEMENT
Between
OAKLAND UNIFIED SCHOOL DISTRICT and
GENE BREGMAN & ASSOCIATES**

1. INTENT

The Oakland Unified School District (hereinafter "the District" or "OUSD") hereby enters into a professional services agreement with GENE BREGMAN & ASSOCIATES (hereinafter "CONSULTANT" or "CONTRACTOR") of Soquel, California, a public opinion and market research firm, to provide public opinion research and assessment and feasibility assessment related to a potential General Obligation Bond Measure for the November 2012 ballot.

2. TERMS AND CONDITIONS

2.1 **Term of Agreement.** The term of this agreement shall be April 1, 2012 to December 31, 2012 and may be extended by written agreement of both parties.

2.2 **Fees.** Consultant's fee for its services shall not exceed Thirty-Three Thousand Dollars (\$33,000).

The Fees shall be paid as follows: subject to invoicing by Consultant, \$12,000 within 30 days of the Agreement and the balance within 30 days of receipt of the final invoice from the Consultant.

2.3 **Simultaneous Services by Consultant to Other Clients.** Client acknowledges its understanding that Consultant is engaged in bond/parcel tax feasibility, political, government affairs, and community relations consulting, and during the performance of this Agreement Consultant may be actively involved in furnishing services similar to those provided by this contract for other clients. Consultant shall not be limited in any way in performing services for other clients that do not prevent it from discharging its obligations under this Agreement.

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

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

- 2.6 **Choice of Laws.** This Agreement is governed by the laws of the State of California.
- 2.7 **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 2.8 **Conflict of Interest.** CONSULTANT shall not hire any officer or employee of OUSD to perform any service under this Agreement. CONSULTANT affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONSULTANT's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
- 2.9 **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.
- 2.10 **Anti-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, CONSULTANT shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. CONSULTANT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONSULTANT agrees to require like compliance by all of its subcontractor(s).
- 2.11 **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

3. AREAS OF AUTHORITY

- 3.1 **Independent Contractor.** This is not an employment contract. CONSULTANT, is an independent contractor or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. CONSULTANT understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes with respect to CONSULTANT's employees. In the performance of the work herein contemplated, CONSULTANT is an independent contractor, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
- 3.2 **No Rights in Third Parties.** This agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

- 3.3 **Ownership of Documents.** All documents created by CONSULTANT pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by CONSULTANT, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation. The OUSD shall be entitled to access to and copies of these materials during the progress of the work. Any such materials in the hands of CONSULTANT or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. CONSULTANT may retain a copy of all materials produced under this Agreement for its use in its business activities.
- 3.4 **Copyright/Trademark/Patent/Ownership.** CONSULTANT understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD 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 OUSD.
- 3.5 **Confidentiality.** The CONSULTANT and all CONSULTANT's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information and documents received that are labeled as confidential. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

4. INDEMNIFICATION

CONSULTANT shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of CONSULTANT or loss of or damage to property, arising directly or indirectly from CONSULTANT's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on CONSULTANT, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

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

5. INSURANCE

Without in any way limiting CONSULTANT's liability pursuant to the "Indemnification" section of this Agreement, throughout the term of the AGREEMENT, CONSULTANT shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:

Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

All liability policies that this Section requires CONSULTANT to maintain shall provide for the following: (i) name as additional insureds the District, the School Board, the State Trustee, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of the OUSD. Prior to final approval of this Agreement, CONSULTANT shall deliver to the District a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the District.

If at any time said policies of insurance lapse or become canceled, this agreement shall become void. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or CONSULTANT to OUSD.

6. BILLING

- a. Bills for CONSULTANT fees and expenses must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or invoices should be addressed to:

Timothy White, Deputy Superintendent of Facilities
Oakland Unified School District
900 High Street
Oakland, CA

Invoices may be emailed to:
Timothy.white@ousd.k12.ca.us

- b. The District will not pay for amounts not reflected on bills or invoices.
- c. The District will pay only the actual costs for reasonable expenses without any premiums or markups.
- d. The District shall reimburse CONSULTANT for necessary photocopying and other expenses at cost, subject to the following limitation:
 - i. Copying expense - 10¢ per page
 - ii. Facsimile expense - 50¢ per page
- e. The District retains the right to audit all bills or files that are or have been the subject matter of any billing in the past. Such an audit will require CONSULTANT to produce any and all documentation that would support the billing submitted by CONSULTANT. CONSULTANT will produce any individual who has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. CONSULTANT acknowledges that the District may utilize its own personnel, an outside auditing service, or such other company or service to perform such audits.

7. WAIVER

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

8. MODIFICATION OF AGREEMENT

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

9. COMPLIANCE WITH LAWS

CONSULTANT shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time.

10. SECTION HEADINGS

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

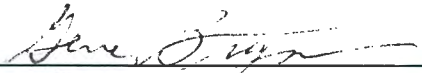
11. ENTIRE AGREEMENT


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

12. SEVERABILITY

If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

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


Gene Bregman & Associates


President, Board of Education
Oakland Unified School District


Secretary, Board of Education
Oakland Unified School District

Approved As to Form


Jacqueline Minor, General Counsel

File ID Number: 12-0880
Introduction Date: 4-25-12
Enactment Number: 12-1196
Enactment Date: 4-25-12
By: JZ