

Board Office Use: Legislative File Info.	
File ID Number	15-0285
Introduction Date	2/25/2015
Enactment Number	15-0262
Enactment Date	2/25/15 O.A.



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education

From Jennifer LeBarre  
Jacqueline P. Minor

Board Meeting Date February 25, 2015

Subject **AGREEMENT WITH FINKBEINER AND ASSOCIATES**

**Action Requested** Approval of Professional Services Agreement between Oakland Unified School District and FINKBEINER AND ASSOCIATES, a human resources strategic consulting firm, of Oakland, CA for the period February 1, 2015 through December 30, 2015, in an amount not to exceed \$30,000

**Background** Finkbeiner and Associates is an Oakland based strategic consulting firm that has worked with a number of district departments to improve overall functioning and to align processes and practices with the strategic plan.

**Discussion** Approval by the Board of Education of the Agreement between the District and FINKBEINER AND ASSOCIATES for the term from February 1, 2015 to December 30, 2015 to assist the Nutrition Services Department in meeting its strategic objectives and establishing processes and procedures to support the vision of Nutrition Services and the changing service and food delivery model.

**Recommendation** Approval of Professional Services Agreement between Oakland Unified School District and FINKBEINER AND ASSOCIATES, a human resources strategic consulting firm, of Oakland, CA for the period February 1, 2015 through December 30, 2015, in an amount not to exceed \$30,000

**Fiscal Impact** Funding resource name: General Purpose

**Attachments**

- Agreement

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**AGREEMENT  
Between  
OAKLAND UNIFIED SCHOOL DISTRICT and  
FINKBEINER AND ASSOCIATES**

**1. INTENT**

The Oakland Unified School District (hereinafter "the District" or "OUSD") hereby enters into a professional services agreement with FINKBEINER AND ASSOCIATES of Oakland, California (hereinafter "CONSULTANT" or "CONTRACTOR") for the latter to assist the Nutrition Services Department in meeting its strategic objectives and establishing processes and procedures to support the vision of Nutrition Services and the changing service and food delivery model.

**2. TERMS AND CONDITIONS**

- 2.1 Term of Agreement.** The term of this agreement shall be February 1, 2015 to December 30, 2015 and may be extended by written agreement of both parties.
- 2.2 Fees.** CONSULTANT'S fees for its services shall not exceed Thirty Thousand dollars (\$30,000.00). Subject to Section 5 below, Consultant shall be reimbursed separately for travel; telephone toll charges; express mail, messenger or delivery service for the term of this Agreement, provided that these cumulative out-of-pocket costs do not exceed Five Hundred Dollars (\$500.00).
- 2.3 Simultaneous Services by Consultant to Other Clients.** The District acknowledges its understanding that Consultant is 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 sixty (60) 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 **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).
- 2.9 **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. **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 emailed to:

[Jacqueline.minor@ousd.k12.ca.us](mailto:Jacqueline.minor@ousd.k12.ca.us)

and

[Cindee.lajoure@ousd.k12.ca.us](mailto:Cindee.lajoure@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.

## **6. 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.

## **7. 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.

## **8. COMPLIANCE WITH LAWS**

CONSULTANT shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, including but not limited to any and all restrictions and requirements of the Lobbying Disclosure Act, and shall at all times comply with such laws as they may be amended from time to time.

## **9. 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.

## **10. ENTIRE AGREEMENT**

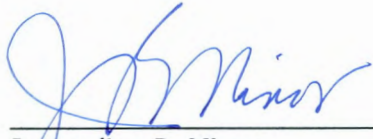
This Agreement contains the entire agreement between the parties and supersedes all other oral or written provisions.

## **11. 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.

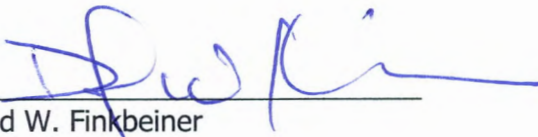
- 12. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered 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>

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



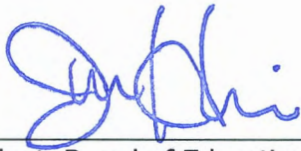
Jacqueline P. Minor  
General Counsel  
Oakland Unified School District

Date: 2/4/15



David W. Finkbeiner  
Managing Partner  
Finkbeiner and Associates

Date: 2/4/15



President, Board of Education  
Oakland Unified School District

Date: 2/26/15



Secretary, Board of Education  
Oakland Unified School District

Date: 2/25/15

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Enactment Date: 2/25/15  
By: 02



## Finkbeiner and Associates

311 Oak St. PH 4  
Oakland, CA 94607  
510 350 7156 (Voice Mail)  
925.872.6334 (Cell)  
[www.dfinkbeinerassociates.com](http://www.dfinkbeinerassociates.com)

provides the subject matter expertise.

The governance framework for the engagement will include a Steering Committee (consisting of Jennifer and Robert) and supported by a consultant, and our SME teams that will provide content expertise and leadership for changes that result from our work.

The attached spreadsheet elaborates the work steps for each phase of the work.

### Description of Project Deliverables

- 1/ Planning document to guide the work
- 2/ Review of relevant documents
- 3/ Interview questionnaires covering policies and procedures, process improvement, organizational communication, training and development, career opportunities, current and new roles, and improved alignment and understanding with partner organizations
- 4/ Approximately fifteen interviews
- 5/ Presentation of findings and a set of recommendations
- 6/ Revised process documents for food storage and preparation
- 7/ Facilitation of Steering Committee Meetings
- 8/ Business case covering centralization of food purchasing and process automation
- 9/ Assistance with planning and implementation of changes, including communications and change management

### Budget and Timing

Below is an estimate of the time needed for each phase, the approximate number of project hours, and the cost for each phase.

Project Phases	Lapsed Time	Approximate Hours	Cost Range
Project planning	2 week	3-5 hours	\$600-\$1,000
Document review and research	1-2 weeks	5-7 hours	\$1,000-\$1,400
Development of interview questions and identification/scheduling with subject matter experts	2-3 weeks	12-16 hours	\$2,400-\$3,200
Conduct interviews	3-6 weeks	28-32 hours	\$5,600-\$6,400
Analyze findings and develop a set of recommendations (Includes 2-3 revised processes)	2-3 weeks	32-36 hours	\$6,400-\$7,200
Complete ROI analysis and develop business case for centralization of some services and automation of	2-3 weeks	14-18 hours	\$2,800-\$3,600

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<b>processes. Present findings and recommendations</b>			
<b>Engage Building and Grounds to clarify their role and cost sharing in the repair and replacement of kitchen equipment. Draft MOU covering all aspects of the working relationship and facilitate agreement</b>	<b>3-4 weeks</b>	<b>12-16 hours</b>	<b>\$2,400-\$3,200</b>
<b>Develop implementation, communication and change management plan for approved recommendations and support implementation with district stakeholders</b>	<b>4-8 weeks</b>	<b>18-20 hours</b>	<b>\$3,600-\$4,000</b>
<b>TOTAL</b>	<b>19-35 weeks</b>	<b>124-150 hours</b>	<b>\$24,800-\$30,000</b>

### **Billing and Logistics:**

Our billing cycle is monthly and is based on consulting hours worked for the period. You will be billed only for the hours worked for the cycle, with the billing maximum not to exceed the budgeted amount above, unless otherwise approved by you. Payment is due 30 days from the billing date. The client will not be billed for travel time or other expenses related to travel, provided that commuting is within a reasonable distance (20 miles) of my office.

### **Conclusion:**

I would like to thank you for the opportunity to propose on this project. I will follow up with you to discuss the revised proposal.

Best regards,

*David*

David Finkbeiner  
Managing Principal  
Finkbeiner and Associates

**NOTICE:** This communication may contain confidential, proprietary or legally privileged information. It is intended only for the person(s) to whom it is addressed.