

Board Office Use: Legislative File Info.	
File ID Number	15-2310
Introduction Date	12/02/15
Enactment Number	
Enactment Date	



OAKLAND UNIFIED  
SCHOOL DISTRICT

*Community Schools, Thriving Students*

# Memo

To Board of Education  
 From Jacqueline Minor, General Counsel  
 Board Meeting Date December 2, 2015  
 Subject **AGREEMENT WITH DAVID SIMPSON**

Action Requested **Ratification of Agreement with David Simpson**

Background and Discussion David Simpson is an attorney/businessman who is being retained to prepare a preliminary assessment of use of vacant District properties, with the assessment including zoning, politics, history and viability for development. The term of this agreement shall be November 15, 2015 to March 15, 2016 and may be extended by written agreement of both parties. The fees are fixed at \$10,000 per month, not to exceed \$40,000 under this Agreement.

Recommendation **Ratification of Agreement with David Simpson**

Fiscal Impact Funding resource name: General Purpose

Attachments • Agreement

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**AGREEMENT  
Between  
OAKLAND UNIFIED SCHOOL DISTRICT and  
DAVID SIMPSON**

**1. INTENT**

The Oakland Unified School District (hereinafter "the District" or "OUSD") hereby enters into a professional services agreement with DAVID SIMPSON (hereinafter "CONSULTANT" or "CONTRACTOR") for the latter to prepare a preliminary assessment of use of vacant District properties, with the assessment including zoning, politics, history and viability for development.

**2. TERMS AND CONDITIONS**

- 2.1 Term of Agreement.** The term of this agreement shall be November 15, 2015 to March 15, 2016 and may be extended by written agreement of both parties.
- 2.2 Fees.** CONSULTANT'S fees for its services shall be fixed at \$10,000 per month, not to exceed \$40,000 under this Agreement. The fee is all inclusive, including travel, telephone toll charges, express mail, messenger or delivery service for the term of this Agreement.
- 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 addressed to:

Jacqueline Minor, General Counsel  
Jacqueline.minor@ousd.org  
Oakland Unified School District  
1000 Broadway, Room 680  
Oakland, CA 94607

- 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 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:**

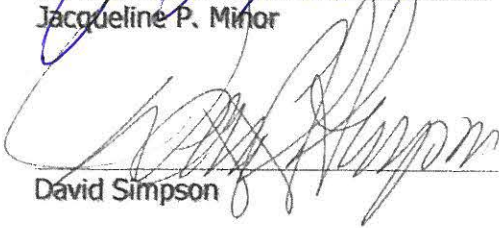
The Parties certify to the best of their knowledge and belief, that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies 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



David Simpson

\_\_\_\_\_  
President, Board of Education  
Oakland Unified School District

\_\_\_\_\_  
Superintendent and Secretary, Board of Education  
Oakland Unified School District



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

**Legislative File ID No.** 15-2310

**Department:** Legal

**Vendor Name:** David Simpson

**Contract Term:** Start Date: 11/15/15 End Date: 03/15/2016

**Annual Cost:** \$ 10,000.00 per month

**Approved by:** General Counsel

**Is Vendor a local Oakland business?** Yes ☐ No ☒

**Why was this Vendor selected?**

Vendor has knowledge about property uses, zoning, and property development

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

Vendor will provide assessment of use of vacant District properties

**Was this contract competitively bid?** Yes ☐ No ☒

\_\_\_ If No, answer the following:

1) How did you determine the price is competitive?

ompared course offerings and prices with other community colleges.

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☒ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☒ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
  - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - ☐ Western States Contracting Alliance Contracts (WSCA)
  - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**