

Board Office Use: Legislative File Info.	
File ID Number	16-0299
Introduction Date	02/24/2016
Enactment Number	16-0330
Enactment Date	2/24/16 OA



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date February 10, 2016

Subject **AGREEMENT WITH GENE BREGMAN & ASSOCIATES**

Action Requested Ratification of Agreement 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 potential Measures for the November 2016 ballot and to conduct a parent survey. The Agreement is for the period of 01/18/2016 – 12/31/2016.

Background
A one paragraph explanation of why the consultant's services are needed. This is an Agreement for Gene Bregman & Associates to provide public opinion research and feasibility assessment related to Measures for the November 2016 ballot and to conduct a parent survey.

Discussion
One paragraph summary of the scope of work. Ratification of Agreement 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 Measures for the November 2016 ballot and to conduct a parent survey. The Agreement is for the period of 01/18/2016 – 12/31/2016, in amounts not to exceed \$35,000 for the voter survey and \$25,000 for the parent survey.

Recommendation Ratification by the Board of Education of the Agreement between Oakland Unified School District and Gene Bregman & Associates for the period of 01/18/2016 – 12/31/2016, in amounts not to exceed \$35,000 for the voter survey and \$25,000 for the parent survey.

Fiscal Impact Funding resource name: General Purpose \$60,000

Attachments

- Agreement

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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 Aptos, California, a public opinion and market research firm, to provide public opinion research, assessment and feasibility assessment related to potential Measures for the November 2016 ballot and to conduct a parent survey. The scope of work is further delineated in Attachment A.

2. TERMS AND CONDITIONS

2.1 Term of Agreement. The term of this agreement shall be January 18, 2016 to December 31, 2016 and may be extended by written agreement of both parties.

2.2 Fees. Consultant's fee for its services shall not exceed \$35,000 for the voter survey and \$25,000 for the parent survey.

The Fees shall be paid as follows: subject to invoicing by Consultant, \$25,000 within 45 days of execution of the Agreement and the balance within 30 days of receipt of the final invoice from the Consultant.

Subject to Section 6 below, Consultant shall be reimbursed separately for parking; 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).

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:

Workers' Compensation, in statutory amounts, with Employer's Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

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:

Jacqueline Minor, General Counsel
Oakland Unified School District
1000 Broadway, Room 398
Oakland, CA

Invoices may be emailed to:

Jacqueline.minor@ousd.k12.ca.us
and
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:

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.

13. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary**


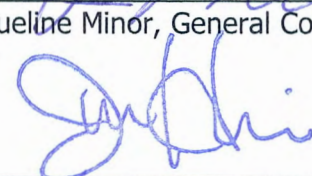
Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition 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.

Gene Bregman & Associates

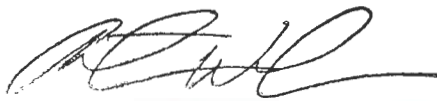


Oakland Unified School District


Jacqueline Minor, General Counsel


President, Board of Education

2/25/16



Secretary, Board of Education
Oakland Unified School District

2/25/16



GENE BREGMAN & ASSOCIATES
Public Opinion & Marketing Research

MEMORANDUM

To: Isaac Kos-Read, Chief
Communications & Public Affairs
Oakland Unified School District

From: Gene Bregman
Gene Bregman & Associates

Date: December 9, 2015

Re: Public Opinion Research Proposal

This memo summarizes the scope of services to be provided by Gene Bregman & Associates (GBA) for two surveys of differing populations in the Oakland Unified School District. First, is a general population survey of likely voters in the November, 2016 election. Second is a survey of parents of current OUSD students.

I. Voter/General Population Survey

Working with you and designated staff and officials, we will develop a questionnaire that tracks some of the data from our previous research for the Oakland Unified School District and explores new areas to be determined in our discussions. As you know, GBA has conducted ten surveys over the previous 21 years for the District. All OUSD successful bond and parcel tax elections over that period were preceded by our polls.

For the election-related segment of this poll, our research, as always, is geared to helping our clients determine the best measure to place before the voters, the measure which meets the community's needs, and the one that has the greatest chance for success on Election Day. We will also help you determine the optimum tax rates, and the best election to ask for voter support. The research also will determine how attitudes and opinions differ among the various demographic groups that comprise the voting population.



P.O. Box 2799, Aptos, CA 95001
831.685.2700

www.GeneBregmanAndAssociates.com



However, there are two new components to the upcoming survey that are not usually present. First, will be to help determine how the general population gets its information about OUSD issues and events. In November, 2003, we asked one question on this issue, the results of which were as follows:

Question: In general, where would you say you get most of your information about Oakland schools? (Multiple answers were allowed):

Newspapers	57%
From friends and neighbors	35%
Television	25%
Radio	15%
Because you have children in school	15%
Somewhere else	5%

The second component may be to go beyond our usual questions asking for general opinions about the job being done by the Oakland Unified School District and delve into evaluations of specific aspects of the job being done by the District.

Overall, the questions will achieve the following objectives:

1. Explore the current image of the Oakland Unified School District, residents' attitudes towards the District, and their assessments of its strengths and weaknesses;
2. Determine how voters get their information about the Oakland Unified School District;
3. Determine voter perceptions of the needs of OUSD and the priorities that voters set for those needs;
4. Determine voter attitudes towards the previous tax-related measures, including awareness of and assessments of their effectiveness;
5. Evaluate voters' top priorities for money raised in order to develop the measure that best addresses the desires of the community;
6. Determine the most effective and important reasons for your voters to support a new measure for the District, as well as the main reasons for people to oppose it;



7. Determine the optimum amount of a tax to place before the voters that would have a good chance for approval;
8. Determine the best election date to place a measure on the ballot, whether it is the June, 2016 or November, 2016 election;
9. Develop a demographic profile of Oakland Unified School District voters and how the various demographic groups differ in their attitudes and opinions.

As in most of our previous research, we recommend completing 600 interviews with likely voters. A survey of this size has a margin of error ranging from +/- 2.4% to +/- 4.0%, depending on response levels to a particular question.

One important change that has taken place in the last few years is the frequent existence of voters who only have cell phones. In our most recent survey for the OUSD, 53% of the likely voters were interviewed on their cell phones. Of course, for this survey we will interview people on their cell phones, as well as those using landlines.

Summary of Services: General Likely Voter Survey

To summarize, we will provide to the Oakland Unified School District:

- Random survey of 600 likely voters;
- Consultation solely with principal of Gene Bregman & Associates;
- Assistance in developing topic areas to be investigated;
- Development of survey questionnaire (in consultation with appropriate staff);
- Scientific sample selection to assure our reaching an accurate representation of the voting population, including cell-only voters;
- Pre-testing of questionnaire;
- Conduct of field work from our central phone bank;
- Editing, coding, and electronic data processing;
- A full computer printout of all cross-tabulated data;
- Analysis of survey results, including appropriate graphical presentation;
- In-person presentation(s) of results;
- On-going strategy and consultation.



Cost

In 2014, we completed 550 interviews for a survey that averaged 21 minutes per completed interview. We believe that this year's poll will need to be nearly as long, perhaps 20 minutes per completed interview. With a recommended 600 completed interviews, a survey with these parameters would cost \$35,000.

However, I know that you have been looking at a shorter survey, one that will average no more than 15 minutes pre completed interview. While we do not think this is realistic for obtaining the information you require, this cost would be \$30,000 (600 completed interviews @ 15 minutes per completed interview).

To summarize:

15 minutes - 600 interviews	\$30,000.
20 minutes - 600 interviews	\$35,000.

These costs include all services provided by Gene Bregman and Associates as outlined in this proposal. Travel expenses will be billed at cost, but only in the unlikely event that an overnight stay is required.

II. Parent Survey

In 2006, we conducted a survey of parents of current students in the Palo Alto Unified School District. For that survey, parents could either fill out the questionnaire on-line or pick up hard copies at their children's schools and return them either to the school or the District office. They had a three-week window in which to complete the survey. We believe this methodology, if feasible in the OUSD, would maximize the number of responses. It will also be the least expensive way to conduct the survey. If not, then a strictly on-line methodology will be employed.

This survey would ask for feedback on:

1. How parents view the education their children are receiving, in general;
2. Evaluations of specific aspects of their children's education;
3. How parents have gone about choosing their children's schools;



4. Satisfaction with the school choice process and, possibly, suggestions for improvement;
5. How well-informed do parents feel about their children's education;
6. Where parents get their information about OUSD schools;
7. Other issues to be determined by our discussions with you and appropriate staff as we develop the questionnaire.

In conjunction with OUSD resources, we will have available Spanish and Chinese language translations for parents who need them.

While it is impossible to know the exact number of interviews that will be completed, the cost for 750 interviews will be \$15,000.

Alternate Option for Parent Survey

An alternate option for conducting the parent survey would be to conduct a telephone survey based on lists of parents with phone numbers as provided by the OUSD. This would have the same parameters as the on-line survey, but conducted by telephone among 400 OUSD parents. Assuming a 15 minute survey, the cost for this would be \$25,000.

Thank you for giving Gene Bregman & Associates the opportunity to offer this proposal to once again assist the Oakland Unified School District in this most important effort. If you have any questions, or would like to further discuss your polling needs, please do not hesitate to call Gene Bregman at (831)685-2700.



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

Legislative File ID No. 16-0299

Department: Legal

Vendor Name: Gene Bregman

Contract Term: Start Date: 01/18/2016 End Date: 12/31/2016

Annual Cost: \$ 60000

Approved by: General Counsel

Is Vendor a local Oakland business? Yes ☐ No ☒

Why was this Vendor selected?

Expertise in public opinion surveys and voter polling.

Summarize the services this Vendor will be providing.

Feasibility of OUSD placing potential measures on November 2016 ballot.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

Price is the same paid by the District since 2012 voter survey. Compared price with EMC Research (market and opinion research firm).

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 \$87,800 (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 [requires Board resolution declaring an emergency]
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 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**