

**Santa Monica-Malibu Unified School District  
Board of Education Meeting  
ADDENDUM TO THE AGENDA**

**October 15, 2015**

**TABLE OF CONTENTS**

**CONSENT ITEMS**

- A.14a Contract with Steve Massetti Consulting, LLC  
**ADD:** New item on the agenda *(page 2 of this addendum)*

**DISCUSSION ITEMS**

**MAJOR ITEMS**

**INFORMATION ITEMS**

SW

TO: BOARD OF EDUCATION

ACTION/CONSENT

FROM: SANDRA LYON / JANECE L. MAEZ

10/15/15

**ADDENDUM**

RE: CONTRACT WITH STEVE MASSETTI CONSULTING, LLC

RECOMMENDATION NO. A.

It is recommended that the Board of Education approve the contract with Steve Massetti Consulting LLC effective September 1, 2015, as per the attached agreement.

COMMENT: On July 15, 2015, the Board of Education gave staff direction to enter into contract negotiations for the consulting position of Bond Program Manager. Attached is the agreement effective September 1, 2015, with Steve Massetti Consulting LLC.

MOTION MADE BY:

SECONDED BY:

STUDENT ADVISORY VOTE:

AYES:

NOES:

ABSENT:

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT  
PROFESSIONAL SERVICES AGREEMENT

This AGREEMENT, by and between Massetti Consulting, LLC, hereinafter "Consultant," and Santa Monica Malibu Unified School District, hereinafter "District," is made effective on September 1, 2015 for a term of three (3) years, ending August 31, 2018.

District is engaging Consultant to provide full time professional and specialized services and advice regarding program management services, as provided in this Agreement and any attachments. Consultant will deliver the services of Steven Massetti to provide the subject services.

Consultant is experienced, qualified, and competent to provide the services and advice desired by District.

AGREEMENT

1. Consultant shall provide the professional services described herein (the "Services") consistent with generally acceptable industry standards. The Services are described in further detail in the attached Statement of Work, Attachment A, hereby incorporated into this agreement by reference. In the event of a conflict between this agreement and any attachment, the language of this agreement will supersede the conflicting language in the attachment.
2. Consultant, along with any of its employees, is an independent contractor and will perform the Services as an independent contractor and not an employee of the District. Nothing in this Agreement shall be construed as establishing an employer/employee relationship between District and Consultant or any of Consultant's agents or employees. Consultant is responsible for its own acts or the acts of any of its agents or employees as they relate to the Services provided. Consultant and its agents and employees shall not be entitled to any of the rights and privileges of the District's employees, including permanent status, health insurance benefits, sick leave, paid vacation, retirement contributions, or any other employee benefits. The Consultant will comply with all City, County, State and Federal business requirements and payroll taxes. District and Consultant agree that Consultant is not an employee for state or federal tax purposes and that District will not withhold state or federal income tax deductions from payments made to Consultant under this Agreement. Consultant shall provide to District its Taxpayer ID number.
3. District will prepare and furnish to Consultant such information as is necessary to perform the Services. Consultant shall provide its own equipment, vehicles, tools, and computer equipment that will be necessary for the proper performance of the Services. District will provide office space for Consultant as

well as access to standard office supplies and equipment, with the exception of computers and related electronic equipment. Consultant shall provide its own computers and electronic equipment, which will not be reimbursable and are considered part of the annual rate. District will provide internet connectivity and access to all necessary District programs. District IT staff will assist Consultant with systems access and set up as well as network maintenance and issue resolution.

4. The initial contract term shall be for a period of three (3) years with two additional optional one (1) year terms, unless terminated earlier by either party as provided in this Agreement. Any annual extension at the end of the three year initial term will be at the option of the District based upon Consultant's performance, program status, funding and other factors, if determined to be in the best interest of the District and mutually agreed upon by Consultant. District will extend the Agreement in a written amendment to this Agreement executed by District and Consultant.
5. Consultant shall furnish to the District the Services in accordance with the annual rate indicated below. Payments will be processed monthly. Consultant shall invoice monthly for 1/12 of the annual rate in a form acceptable to District. Upon receipt of an invoice from Consultant, District shall approve or disapprove an invoice within five (5) business days. If such invoice is not approved or disapproved within this time, it shall be deemed approved. An approved invoice shall be paid to Consultant within thirty (30) calendar days of receipt. If an invoice is disapproved or disputed, in whole or in part, District shall notify Consultant immediately upon disapproval and advise Consultant as to the specific reason or reasons for disapproval. In the event of a disputed or disapproved invoice, District will not withhold entire payment, but will issue payment in the amount of the total invoice less any questioned or disputed amount. District will process payment for questioned or disputed amounts upon receipt of any requested documentation verifying the claimed amount and District's determination that the amount is due under the terms of this agreement. District shall advise Consultant of approval or disapproval in writing within five (5) days of receipt of requested documentation. Upon submittal of documentation or submittal of a revised invoice, the same time parameters in this paragraph shall apply as if a new invoice had been submitted.

It is Consultant's responsibility to ensure that the billing for each year does not exceed the approved "Not-To-Exceed" amount authorized herein. Only the annual rate for Year 1 is established by this agreement. Prior to the completion of Year 1 and any subsequent years, District and Consultant shall negotiate any revisions to the annual rate for the following year. The annual rate for Consultant shall include any and all expenses such as administrative support staff, overhead and profit, fees, transportation, liability insurance, materials, cellular phones, computer equipment, and taxes, etc.

| Year | NTE Annual Rate |
|------|-----------------|
| 1    | \$420,000.00    |

6. Should District and Consultant determine at any time that it is necessary to add additional Consultant staff, District and Consultant will promptly execute an amendment to this agreement, which will include employee name, annual rate, scope of services, and a revised NTE fee. No additional staff will be added without consent of District. District and Consultant agree to negotiate the issue of additional staff in good faith to appropriately staff the program in order to provide the Services or any additional services necessary to execute the work.
7. If during the term of this Agreement, District and Consultant determine that it is in the best interest of the District for Consultant to procure the services of any subconsultant(s), subconsultant fees shall be billed as part of the monthly invoices with a 10% administrative mark-up. Any and all such subconsultants shall, at a minimum, be bound by the same provisions as Consultant.
8. Consultant agrees that mileage between the District office and any District location will not be reimbursable and is considered part of the hourly billing rate. Mileage for meetings and District business at locations outside the District shall be reimbursable at the then current IRS allowable mileage rate. District-related expenses (including specialized computer programs, training for project control/document control systems, licensing etc.) and travel, other than mileage as indicated above, shall be billed as part of the monthly invoices with a 5% administrative mark-up.
9. All reports, studies, information, data, forms, procedures, systems, work product, and other materials produced by Consultant under this Agreement shall be the property of District. No such materials produced under this Agreement shall be subject to copyright or patent rights by Consultant without prior consent of the District. Consultant retains the right to utilize such materials for marketing material for future pursuits with other clients, provided that no materials containing confidential information may be used by Consultant. District shall have unrestricted authority to publish, disclose, distribute, transfer and use any such materials produced by Consultant under this Agreement. Any reuse or modification of Consultant's work product without Consultant's consent shall be at District's sole risk.
10. District may suspend performance by Consultant or terminate this Agreement with seven (7) days written notice to Consultant of District's intent to suspend or terminate the Agreement for failure to satisfactorily perform. If after the expiration of seven (7) days, Consultant fails to cure the performance as set forth in the District's notice of intent to suspend or terminate, District may issue a notice of termination or suspension, and compensate Consultant for services rendered through the date of such suspension or termination.

11. District shall also have the right to terminate this Agreement in the event District is not satisfied with the working relationship with Consultant and without cause following thirty (30) days prior written notice from District to Consultant. In the event of termination for convenience, Consultant shall, in addition to compensation for services rendered through the date of termination, also be reimbursed for reasonable termination costs through the payment of 9.5% of the remaining Consultant fees. This payment is agreed to compensate Consultant for any damages resulting from early termination and is consideration for entry into this termination for convenience clause. Consultant shall have no further remedy beyond the payments listed in this paragraph in the event of termination for convenience.
12. Upon termination, whether for cause or convenience, Consultant agrees to promptly provide and deliver to District any and all work product in progress or completed to date including any reports, drafts, electronic information, etc. Unless otherwise indicated, notice will be provided to the address shown at the signature block area on the signature page of this agreement. Electronic mail notices shall be accepted.
13. Consultant agrees to and shall hold harmless and indemnify the District, its Board, officers, and employees from liability, loss, damage, or expense arising from death, bodily injury to person, injury to property, or other loss, damage, or expense sustained, arising from Consultant negligence, recklessness, or willful misconduct, except for said damages which result from the negligence, recklessness, or willful misconduct of the District, its Board, officers, employees, or agents.

Consultant, at its own expense, cost, and risk, shall defend any actions, suits, or other proceedings that may be brought or instituted against District, its Board, officers, and employees, arising solely from Consultant negligence, recklessness, or willful misconduct subject to this indemnity agreement, and shall pay or satisfy any judgment for which Consultant is found liable.

14. Throughout the term of this Agreement, Consultant shall maintain
  - a. Commercial General Liability Insurance in an amount not less than \$1,000,000;
  - b. Professional Liability Insurance in an amount not less than \$1,000,000;
  - c. Workers Compensation Insurance as required under California State Law.

Consultant shall provide certificates including applicable coverage within ten (10) days of the effective date of this Agreement naming the District as additionally insured.

15. This Agreement is not assignable or delegable by either party without prior written consent of the other party.
16. Consultant shall not at any time or in any manner, use for personal benefit of Consultant, or divulge or disclose any information that is proprietary to District or protected from disclosure by law. If in possession of any such information, Consultant shall protect and treat it as strictly confidential.
17. Consultant shall be permitted to conduct marketing activities in pursuit of other clients only to the extent that such activities are not in conflict with the Services provided under this agreement. Consultant shall not conduct said marketing activities while actively performing Services under this agreement or using District facilities. Consultant agrees that Steven Massetti will not perform billable services under any other agreement with a different client without consent of District.
18. It is recognized that Consultant will, from time to time, attend industry-related events, meetings, and conferences, which may occur during normal business hours or in the evening or on weekends. Examples of such events include, but are not limited to, CMAA and CASH meetings and conferences. The cost for such attendance shall be borne by Consultant. Consultant's annual memberships in industry-related organizations shall not be reimbursable.
19. Any amendment or modification of this agreement shall be effective only if it is in writing and is signed by both parties, except that the District may unilaterally amend this agreement in writing to accomplish any of the following changes: increase dollar amounts; increase the term of the agreement; effect administrative changes; and effect other changes required by law.
20. This Agreement and the enumerated attachments constitute the entire Agreement between the parties and supersede any and all prior or contemporaneous oral or written agreements.
21. This Agreement shall be governed and construed by the laws of the State of California regardless of any conflicts of laws or rules that would require the application of the laws of another jurisdiction. Venue shall be in Los Angeles County, California. To the extent that there is any inconsistency between this Agreement and applicable law, or this Agreement omits any requirement of applicable law, the language of the applicable law, in effect on the date of execution of this Agreement, shall prevail. Any provisions of this Agreement that are found to be unenforceable shall be ineffective without affecting other provisions of this Agreement.
22. Regardless of which party provided the initial draft of this Agreement, it is agreed that both parties are joint authors of the Agreement. As such, no errors or mistakes shall be construed against either party. In the event that an error or

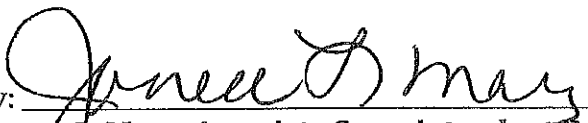
mistake is recognized, the parties agree to collectively negotiate a reasonable resolution.

23. Consultant agrees to abide by applicable District policies and to abide by the same terms and conditions of conduct as is expected of District employees in each of these policies, without the implication of employment.
24. Consultant agrees that it will not discriminate on the basis of race, color, national origin, ancestry, sex (including sexual harassment), sexual orientation, marital status, handicap, disability, medical condition, religion, or age in any of its policies, procedures, or practices in compliance with applicable laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

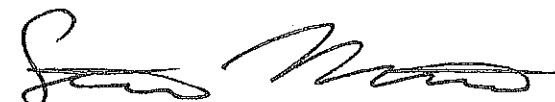
"District"

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California

By:   
Janece L. Maez, Associate Superintendent Business  
and Fiscal Services, Chief Financial Officer  
Date: 8/25/15

"Consultant"

MASSETTI CONSULTING, LLC, a California Limited Liability Company

By:   
Steven Massetti, President  
Date: 8/25/15

END OF AGREEMENT



Attachment A  
STATEMENT OF WORK

This Statement of Work is an appendix attached to, and made a part of and incorporated into by reference, the agreement dated September 1, 2015, by and between Massetti Consulting, LLC, hereinafter "Consultant," and Santa Monica Malibu Unified School District, hereinafter "District" providing for professional services, hereinafter, the "Agreement."

**BOND PROGRAM MANAGEMENT SERVICES**

District anticipates undertaking a series of construction projects within its boundaries in the cities of Santa Monica and Malibu and the county of Los Angeles, to be funded by general obligation funds and other sources. Project delivery methods may vary and may include design-bid-build, design-build, multiple-prime, lease-leaseback, or other methods as may be suitable. For purposes of this Agreement, the various projects of the Facilities Improvement Program are referred to as the Program and the individual or grouped projects that constitute the Program are referred to as the Projects or Project.

The Board of Education has determined that Measure ES funds will be allocated as follows:

- Technology Projects – Approximately \$34,431,359
  - Infrastructure, SBAC devices, 21st century classroom components, library upgrades, expanded computer labs, and staff development
- SAMOHI - \$180,000,000
  - Scope undetermined – will be based on development and implementation of master plan
- Malibu Specific Projects - \$77,000,000
  - Scope undetermined – will be based on input from committee of Malibu residents
- Unallocated - \$93,568,641
  - Measure BB shortfall, Elementary School Campuses, and Emerging Considerations

It is recognized that the Program is and will be dynamic and may change in its schedule, the scope of individual Projects, combination of individual Projects, or other changes. Modifications to the Program, unless a cardinal change to the entire concept, do not require a change in this Agreement, and Consultant shall perform the services referenced herein on the revised Projects, so long as generally consistent with the work described herein.

In addition to the management of the Measure ES Bond Program, Consultant will also manage the continued execution of the work under the Measure BB Bond and will work in concert with District staff to oversee existing consultants and any

necessary new consultants in the execution of that work. The scope of work enumerated herein shall include the management of both Measure ES and Measure BB.

Consultant will invoice District on a monthly basis equivalent to 1/12 of the Annual Fee. Although Consultant's time will vary on a monthly basis, it is assumed that Consultant will perform the services under this Agreement with a minimum of 228 days annually, exclusive of District holidays or vacation days.

#### Scope of Work

1. Consultant shall report directly to the District's Associate Superintendent, Business and Fiscal Services, Chief Financial Officer, or designee for all Program-wide services, who shall have signature authority for District.
2. Consultant shall assist District with identification of potential Measure ES projects and prioritization of projects within the above-listed allocations.
3. In conjunction with Architects, Consultant shall assist District with development of project-specific budgets.
4. Consultant shall provide professional program management services to assist District in the execution, performance, and timely delivery of all construction contracts, procurement contracts, A/E contracts, hazardous materials abatement contracts, procurement of FF&E, other contracts, professional services, and any other services required for completion of the Program and the Projects. Such services shall include:
  - a. Management of contracts with A/E consultants, environmental consultants, hazardous materials abatement consultants, geotechnical consultants, construction contractors, and other entities or services required to obtain integrated and functioning Projects set forth in the Program and full performance of each contract;
  - b. Review, coordination and recommendations for actions on deliverables and submittals of consultants, architects, engineers, and contractors on each Project;
  - c. Coordination of the Program and the Projects with various local and State governmental agencies with jurisdiction;
  - d. Overall program management and oversight of District's various Program, Project, or Construction Management Consultants;
  - e. Advice regarding all aspects of the Program and the Projects, including evaluation of schedule and budget requirements;
  - f. Consultation on risk management, including contract development, implementation, and administration;
  - g. Retention of other consultants as necessary for the performance of its services;
  - h. Other services referenced throughout the Agreement and this Attachment A.
5. Consultant is not required to, and shall not, duplicate the services of District's other consultants, including Program Management Consultants, Project Managers, Construction Managers, Contractors, Inspectors, Architects,

Engineers, or other Consultants; and does not assume their liabilities or responsibilities if their work is deficient, unless District specifically requests Consultant to duplicate said services.

6. Consultant will be required to work with, meet with, and attend meetings with District staff, members of the community, other government agencies, architects, engineers, construction managers, contractors, and with such other consultants as becomes necessary, to the extent necessary to manage and coordinate all aspects of the design and construction or procurement of each Project, the Program and performance of Consultant's duties under this Agreement.
7. Consultant shall use its best efforts to cause to be completed all services required under this Agreement and all Projects in accordance with the Master Schedule.
8. Deliverables, if defined under this Agreement, or determined during the period of this agreement, shall be reviewed with the designated representatives of District. Deficiencies in deliverables shall be promptly remedied.
9. Consultant shall make recommendations for the engagement of other consultants, including Architects and Engineers, or securing additional information by District as required for efficient and successful completion of the Program and each Project. If requested, Consultant shall engage such consultants or secure such data on behalf of District following District procedures, and shall support District in negotiation of fees and preparing and processing agreements as required. These consultants, upon request or approval of District, may be retained either by District or Consultant by amendment to the Agreement.
10. Consultant shall assist District with development and implementation of a Community Relations and Public Information Program, which utilizes the resources of District, Consultant, Project A/E teams, and other consultants. The program will be responsive to the requirements and timetables of external agencies and processes. If requested, Consultant will develop an internally defined outreach effort to assist Project or Program progress.
11. If desired by District, Consultant shall coordinate review of design documents by outside consultants (constructability reviews) and shall provide recommendations for each Project and the Program related to project delivery methods, feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction costs.
12. Consultant shall coordinate the work of A/E consultants, including monitoring and coordination of DSA submission, review, and approval.
13. If necessary, Consultant shall coordinate facilities evaluations, assessments, and needs analyses, by others. Consultant shall consolidate and analyze any reports related to such evaluations and report the same to District, and shall make specific Project recommendations for current and future Projects based upon such evaluations.

14. Consultant shall review existing files and project documents for current Projects (both Measure BB Projects and Measure ES Projects) in an effort to become familiar with ongoing work and shall advise District regarding current issues.
15. Consultant shall advise and assist District regarding all necessary activities during the advertising and bidding phase of each Project.
16. Consultant shall endeavor to ensure that contractors, A/E teams, and inspectors complete all required documentation necessary to effect project closeout and obtain DSA certification in a timely manner.
17. District shall provide Consultant with all necessary access to District sites in order to effectively oversee Projects and Program. Consultant shall coordinate with District for access to the same for other consultants, contractors, and vendors.
18. Consultant shall confer and coordinate with District's legal counsel regarding legal matters, claims, or other necessary issues.

END OF ATTACHMENT A