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| Board Office Use: <b>Legislative File Info.</b> |              |
| File ID Number                                  | 19-2688      |
| Introduction Date                               | 1-22-2020    |
| Enactment Number                                | 20-0105      |
| Enactment Date                                  | 1/22/2020 os |



# Memo

**To** Board of Education  
**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems & Services Officer  
Rebecca Littlejohn, Risk Management Officer *RL*

**Board Meeting Date** January 22, 2020

**Subject** Professional Services Contract 2019-2020  
Contractor: Bay City Surplus  
Services For: Risk Management

Professional Services Contract 2019-2020

**Action Requested and Recommendation** Approval by the Board of Education of \_\_\_\_\_ between the District and Bay City Surplus, \_\_\_\_\_, Oakland \_\_\_\_\_, for the latter to provide Contractor shall sell OUSD property that OUSD has specifically designated and has been previously formally declared surplus property by OUSD's Board of Education.

for the period of 12/12/2019 through 06/30/2021 in an amount not to exceed \$20,000.

**Background**  
*(Why do we need these services? Why have you selected this vendor?)*

Bay City Surplus sells surplus goods for school districts and public agencies. Money Received from the sale of surplus property shall be either deposited in the district reserve or general fund or credited to the fund from which the original purchase was made. (Education Code 17547)

**Competitively Bid** Was this contract competitively bid? No   
If no, exception: Zero Dollar

**Fiscal Impact** Funding resource(s):

**Attachments** • Professional Services Contract 2019-2020

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**OAKLAND UNIFIED SCHOOL DISTRICT**  
Community Schools, Thriving Students

## PROFESSIONAL SERVICES CONTRACT 2019-2020

This Agreement is entered into between Bay City Surplus (CONTRACTOR) and Oakland Unified School District (OUSD). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services:** CONTRACTOR shall provide the services ("Services" or "Work") as follows: CONTRACTOR shall sell OUSD property that OUSD has specifically designated and has been previously formally declared surplus property by OUSD's Board of Education..
2. **Term:** The term of this Agreement shall be from December 12, 2019 to June 30, 2021.
3. **Compensation:** The compensation under this Contract shall, per fiscal year (1) be limited to a maximum of 38% commission on all proceeds from the sale of OUSD surplus property and (2) the cumulative total of CONTRACTOR's commissions shall not exceed \$20,000. This sum shall be for full performance of this Contract and includes all fees, costs, and expenses incurred by CONTRACTOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs. CONTRACTOR shall remit to OUSD all proceeds, minus CONTRACTOR's commission as limited above, within thirty (30) days of the sale of any OUSD surplus property.
4. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
5. **CONTRACTOR Qualifications / Performance of Services:**
  1. **CONTRACTOR Qualifications:** CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.
  2. **Standard of Care:** CONTRACTOR represents that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable law, code, rule, regulation, and/or ordinance.
    - i. CONTRACTOR shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
    - ii. CONTRACTOR shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that CONTRACTOR or its employees may discover. CONTRACTOR shall use professional efforts in identifying any errors, inconsistencies, or omissions.
6. **Certificates/Permits/Licenses/Registration:** CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this agreement.
7. **Receipts:** Receipts of all sales and resulting proceeds shall be furnished by CONTRACTOR in a form acceptable to OUSD. All amounts retained by CONTRACTOR, as well as all amounts paid to OUSD, shall be subject to audit by OUSD. Receipts shall include, but not be limited to: CONTRACTOR name, CONTRACTOR address, receipt date, receipt number, period of service, name of the person performing the service, date service was rendered, description of surplus property sold, percentage and amount of commission retained by CONTRACTOR, and amount of monies paid to OUSD.
8. **Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:
9. OUSD Representative: \_\_\_\_\_ CONTRACTOR: \_\_\_\_\_

|              |   |          |  |
|--------------|---|----------|--|
| Name:        | Rebecca Littlejohn                            | Name:    | Richard Cash                           |
| Site /Dept.: | Risk Management                               | Title:   | Owner                                  |
| Address:     | 1000 Broadway, Suite 440<br>Oakland, CA 94607 | Address: | 3270 Ettie Street<br>Oakland, CA 94608 |
| Phone:       |   | Phone:   | (510) 290-5916                         |
| Email:       | Rebecca.littlejohn@ousd.org                   | Email:   |  |

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address.

10. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR 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 employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

11. **Insurance:**

1. Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
- ii. CONTRACTOR shall maintain Commercial General Liability insurance, including automobile coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of the Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance must be attached. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

OR

- iv. CONTRACTOR is not required to maintain any insurance under this agreement. (Completed and approved Waiver of Insurance Form is required from OUSD's .) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

12. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.

13. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, CONTRACTOR 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, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR 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, sexual orientation, or other legally protected class.

14. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.

15. **Termination:** OUSD may at any time terminate this Agreement upon 30 days prior written notice to CONTRACTOR. CONTRACTOR may retain commissions for services satisfactorily provided on sales made through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR 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, CONTRACTOR shall pay the additional cost.

16. **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.

17. **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.
18. **Conflict of Interest:** CONTRACTOR shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.



CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR'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.

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.
19. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals 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/>).
20. **Severability:** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
21. **Provisions Required By Law Deemed Inserted:** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
22. **Captions and Interpretations:** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
23. **Calculation of Time:** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
24. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
25. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
26. **Incorporation of Recitals and Exhibits:** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. CONTRACTOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
27. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
28. **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 controlled substances, alcohol or tobacco on these sites.
29. **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.
30. **Signature Authority:** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
31. **W-9 Form:** If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.
32. **Indemnification:** To the furthest extent permitted by California law, CONTRACTOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("the Indemnified

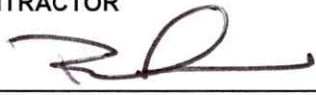
Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of or in any way related to the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend the Indemnified Parties from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR arising out of or in any way related to the performance of this Agreement. CONTRACTOR shall, to the fullest extent permitted by California law, defend the Indemnified Parties at CONTRACTOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that CONTRACTOR proposes to defend the Indemnified Parties. This provision survives termination of this Agreement.

- 33. **Contract Publicly Posted:** This contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- 34. **Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

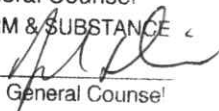
**OAKLAND UNIFIED SCHOOL DISTRICT**

 1/23/2020  
 President, Board of Education Date  
 Superintendent  
 Chief or Deputy Chief  
 1/23/2020  
 Secretary, Board of Education Date

**CONTRACTOR**

 12-18-19  
 Contractor Signature Date  
Richard Cash  
 Print Name, Title  
 owner, Bay City Surplus

**OAKLAND UNIFIED SCHOOL DISTRICT**

Office of the General Counsel  
 APPROVED FOR FORM & SUBSTANCE  
 By: 12/11/19   
 Joshua R. Daniels, General Counsel