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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Andrea Bustamante, Executive Director, Community Schools and Student Services Dept.  
Ali Metzler, Coordinator, Community School Leadership

**Board Meeting Date** October 10, 2018

**Subject** Memorandum of Understanding  
Contractor: Bytes for Bits  
Services For: Community Partnerships, Community Schools and Student Services Dept.

**Action Requested and Recommendation** Approval by the Board of Education of a Memorandum of Understanding between the District and Bytes for Bits, Oakland, CA, for the latter to provide a weekly after school program that teaches 3<sup>rd</sup> through 5<sup>th</sup> grade students the fundamentals of software coding; students work in Scratch, a visual coding tool, where they click virtual blocks together like Legos to make characters move and interact; lesson plans are modular so each student can progress at their own pace; each class introduces some base concepts and then has a number of challenges that allow students to bring their creativity to the task, creating a fun and educational environment where students can get comfortable with the concepts of code and craft something that is their own at Crocker Highlands Elementary School, for the period of July 1, 2018 through June 30, 2021, at no cost to the District.

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

Bytes for Bits seek to develop the necessary Science, Technology, Engineering and Mathematics (STEM) skills within a creative and collaborative environment. They aim to create a child's foundational self-confidence in coding, increasing the likelihood that they will opt-in for coding classes once reaching middle and high school levels. The course is designed to inspire, educate, and equip third through fifth graders with little or no prior programming experience.

**Competitively Bid** Was this contract competitively bid? No  
If no, exception: No cost to OUSD for services.

**Fiscal Impact** Funding resource(s): No Fiscal Impact

**Attachments**

- Memorandum of Understanding
- Scope of Work
- Certificate of Insurance
- Statement of Qualifications

**MEMORANDUM OF UNDERSTANDING, NO COST TO OAKLAND UNIFIED  
SCHOOL DISTRICT**

**I. Parties**

The purpose of this Memorandum of Understanding ("MOU") is to establish a relationship between Oakland Unified School District ("OUSD") and \_\_\_\_Bytes for Bits\_\_\_\_\_ [CONTRACTOR—name of your organization].

WHEREAS, the CONTRACTOR's services or program described in this MOU will be provided at no cost to OUSD (or students or parents unless otherwise agreed upon by both parties); and

BOTH PARTIES HEREBY enter into this MOU to enable CONTRACTOR to provide said program(s) selected in Section II of the MOU.

**II. Site Name(s)**

Unless otherwise further agreed to in writing by the parties, the School Sites governed by this MOU are the following (attach separate document if more space is needed):

\_\_\_\_Crocker Highlands Elementary School

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**III. CONTRACTOR Responsibilities/Scope of Services**

A. Provide a description of the services that your program(s) will be providing to OUSD. Please be specific by answering all of the following questions.

1. A detailed description of the type of services your program(s) will provide to OUSD (reference Exhibit A: Scope of Work)

2. A description of your organization and relevant experience (reference Exhibit B: Statement of Qualifications)

3. Please disclose all costs to parents or students (if applicable). If no such costs, leave blank or write "N/A."

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Bytes for Bits provides after school classes at the school site, teaching computer coding to kids in grades 1-5. Classes are one hour in length, and typically run 8-11 sessions per semester depending on the school's preference. Our cost is \$36/child/class

4. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract: (Check all that apply.)

- Ensure a high quality instructional core
- Develop social, emotional and physical health
- Create equitable opportunities for learning
- High quality and effective instruction
- Prepare students for success in college and careers
- Safe, healthy and supportive schools
- Accountable for quality
- Full service community schools district

B. Ensure that all CONTRACTOR personnel, including subcontractors, will comply with any policy and systems in place at OUSD and School(s). This includes, but is not limited to the following:

1. Drug and Smoke Free—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 at these School(s).
  2. Anti-Discrimination—It is the policy of OUSD that in connection with CONTRACTOR's services under this MOU there shall be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, age, or other legally protected class. Therefore, the CONTRACTOR agrees to comply with all applicable Federal and California laws.
  3. Conflict of Interest—CONTRACTOR shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any OUSD employee to perform the services in this MOU, and affirms that to the best of its knowledge no such conflict presently exists. CONTRACTOR agrees to alert OUSD in writing if and when a potential conflict arises.
  4. Family Education Rights and Privacy Act—CONTRACTOR shall observe all District policies and regulations, and state and federal laws, including the Family Education Rights and Privacy Act of 1974, commonly known as FERPA, related to the confidentiality of pupil and personnel records. A separate Data Sharing Agreement is required if CONTRACTOR seeks identifiable student information.
- C. Tuberculosis Screening: CONTRACTOR is required to screen employees and agents who will be present at OUSD sites during the current school year. CONTRACTOR affirms that each person has current proof of negative TB testing on file and TB results are monitored. Please see Section IV for the relevant documentation that is required.
- D. Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this MOU. CONTRACTOR certifies its compliance with these provisions as follows:

CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the MOU, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1.

CONTRACTOR further certifies that it has received and reviewed fingerprint results for each of its Employees and CONTRACTOR has requested and reviews subsequent arrest records for all Employees who may come into contact with OUSD pupils in providing services to the District under this MOU. [Please see Section IV for the relevant documentation that is required.]

In the event that OUSD, in its sole discretion, at any time during the term of this MOU, desires the removal of any CONTRACTOR related person, employee, representative or agent from any OUSD school; site; and/or property, CONTRACTOR shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.

#### **E. Insurance**

1. General Liability: EITHER (a) CONTRACTOR maintains general liability insurance that names OUSD as an additional insured, for operations, students, volunteers, and personnel at location where CONTRACTOR provides programs/services with at least \$1 Million in coverage, and furnish certificate of said insurance to OUSD OR (b) CONTRACTOR is not required to maintain general liability insurance under this MOU if the Risk Management Officer signs a waiver of insurance. Please see Section IV for the relevant documentation that is required.

2. Workers' Compensation: If CONTRACTOR employs any person to perform work in connection with this MOU, 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 and federal laws, when applicable. The CONTRACTORS' Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. Please see Section IV for the relevant documentation that is required.

Check one of the boxes below:

CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

CONTRACTOR does not employ anyone in the manner subject to the workers' compensation laws of California.

F. Communication—CONTRACTOR agrees to communicate with School(s) and OUSD staff, both formally and informally, to ensure, to the best of the program's ability, that the CONTRACTOR'S services are aligned with the School(s) and OUSD's mission and objectives and are adequately meeting student's needs. At the request of School(s) or OUSD staff, CONTRACTOR shall provide reasonable

data and information to students participating in the CONTRACTOR's program.

G. Confidentiality—CONTRACTOR shall maintain strict confidentiality of all information about individual students received under this MOU and will not disseminate such information without the express written consent of OUSD. CONTRACTOR will comply with FERPA, and will be allowed to use the data received to solicit funding to continue to expand its services/program, so long as there is no information from which the identity of any student in the CONTRACTOR's program as a participant could be made.

H. Register With/Update Provider Database—In order to maintain accurate up-to-date information on the services provided, Contractor shall register in OUSD's provider database, update schools of operation prior to commencing services during subsequent school years, and update during the current school year when Contractor's schools of operation change.

#### IV. Required Documents

CONTRACTOR CANNOT commence the services agreed to in this MOU until it has submitted the following documents:

##### A. TB and Fingerprinting Clearance

###### Contractor (Individual):

Submit clearance letter from authorized agency verifying individual has been Fingerprinted/Criminal Background Checked for this current fiscal year. Additionally, please provide documentation from health care provider showing negative TB status of individual within the last four years.

###### Contractor (Agency):

Attach clearance letter from Agency/Community-Based Organization/Non-Profit Organization on agency letterhead verifying all personnel, including subcontractors, have been Fingerprinted/Criminal Background Checked and have TB clearance for this current fiscal year and signed by authorized personnel.

##### B. Insurance

###### Contractor (Individual/Agency):

Please attach documentation of either proof of insurance, or a waiver signed by the Risk Management Officer. The additional insured address must read: Oakland Unified School District, Attention: Risk Management, 1000 Broadway Suite 440, Oakland, CA 94607. Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

#### V. Responsibilities of Oakland Unified School District

A. Space—Provide a suitable classroom or space at the participating School(s), to be agreed upon by School(s) and the CONTRACTOR.

B. Janitorial Service—Provide necessary services to maintain this space, which may include janitorial services, maintenance, utilities, and technology support.

#### VI. Duration

This MOU is for the 07/01/2018 -- 06/30/2021 period.



**VII. Termination**

Either party may terminate this MOU at any time, without cause, with 30 day written notice to the other party. This MOU may be amended by mutual consent of the parties. All amendments must be in writing and signed by both parties.

**VIII. Defense/Indemnity/Hold Harmless**

Each party to this MOU agrees to defend, indemnify and hold harmless the other for and from any claims, causes of action, or any other proceeding of any type or kind that is made against the other where such claim, cause of action or other proceeding arises from the conduct, act, omission, or commission by the other party.

**IX. Jurisdiction**

This MOU shall be performed in Oakland, California and is governed by the laws of the State of California. The Alameda County Superior Court or the United States District Court for the Northern District of California shall have jurisdiction over any civil action arising out of or relating to this MOU.

**X. Notices**

Any notice provided for in this MOU shall be in writing and effective upon receipt at the address set forth below in this section, delivered by any of the following means: personal delivery; certified U.S. mail, return receipt requested; or electronic mail. Either party may change the addresses below by giving notice of such change pursuant to this section.

**DISTRICT**

Contact: Marion McWilliams Title: General Counsel Address: Office of the General Counsel  
1000 Broadway, Suite 680 Oakland, CA 94607 Phone: 510-879-8535 Fax: 510-879-4046 Email:  
marion.mcwilliams@ousd.org

**CONTRACTOR**

Contact: Michael Leeder Title: Director Address:  
1743 Grove Street San Francisco, CA 94117 Phone:  
415-637-3841 E-mail: MICHAEL@Byter4bits.com

OUSD Sponsoring School/Department: Crocker Highlands, After School Programs

**XI. 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.

**XII. 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/>).

### **XIII. Integration and Modification**

This MOU constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This MOU may be amended or modified only in writing, signed by both Parties.

### **XIV. Assignment**

The rights and obligations of the each Party under this MOU shall not be assigned without the express prior written consent of the other Party.

### **XV. Waiver**

No delay or omission by either Party in exercising any right under this MOU shall operate as a waiver of that or any other right provided for in this MOU.

### **XVI. No Rights in Third Parties**

This MOU does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

### **XVII. Counterparts**

This MOU and all amendments and modifications to it may be executed in counterparts, and all counterparts together shall be construed as one document.

### **XVIII. Intellectual Property**

During the term of this MOU, any works created by or inventions of Contractor, his agents or employees, within the scope of the work contracted herein shall belong to the District together with all associated copy rights and patents. Contractor shall not publish any aspect of the work performed hereunder without prior written consent of the District.

### **XIX. Relationship of Parties**

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.

**XX. 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.

**XXI. Incorporation of Recitals and Exhibits**

The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. CONTRACTOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

**XXII. Public Document**

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.

IN WITNESS THEREOF, the parties to this agreement have duly executed it on the day, month and year set forth below.

**OAKLAND UNIFIED SCHOOL DISTRICT**

*Anna Coy* 11/15/18

President, Board of Education Date (mm/dd/year) Superintendent Chief or Deputy Chief

*[Signature]* 11/15/18 Secretary, Board of Education Date (mm/dd/year)

**CONTRACTOR**

*[Signature]* 6/27/18 Contractor Signature Date (mm/dd/year)

Michael Lecher Director Print Name, Title

Form approved by OUSD General Counsel for 2017-18 FY

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OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE

By: *[Signature]*  
Andrea Epps, Attorney at Law

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>



## **EXHIBIT "A" SCOPE OF WORK**

Description of Services to be Provided and Specific Expected Outcomes: Highlight each program that you provide to OUSD. Attach a separate document if more space is needed.

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Bytes for Bits is a weekly after school program that teaches the fundamentals of software coding. This course is designed to inspire, educate, and equip third through fifth graders with little or no prior programming experience. Students work in Scratch, a visual coding tool, where they click virtual blocks together like Legos to make characters move and interact.

Lesson plans are modular so each student can progress at their own pace. Each class introduces some base concepts and then has a number of challenges that allow students to bring their creativity to the task. Our objective is to create a fun and educational environment where students can get comfortable with the concepts of code and craft something that is their own.

## **EXHIBIT "B" STATEMENT OF QUALIFICATIONS**

Description of Organization and Relevant Experience: For individual consultants, a résumé will suffice. Attach a separate document if more space is needed.

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Bytes for Bits has been teaching afterschool and summer programs for elementary school children since 2015. The organization has taught at over a dozen schools, located across San Francisco, Piedmont, and Oakland. In aggregate, Bytes for Bits has over 500 hours of in-classroom experience, teaching over 1,000 new and repeat children, and provided over \$31,000 in tuition assistance.



## **ENDORSEMENT #1**

This endorsement, issued by **United States Liability Insurance Company**  
to **Bytes for Bits, LLC** forms a part of  
Policy Number **CL 1719386B** effective on **7/9/2018** (MO. DAY YR.) at 12:01 A.M.

### **Add/Remove/Amend General Liability Additional Insured Endorsement**

In consideration of a flat and fully earned additional premium of \$100 it is hereby agreed that the following

is(are) amended:

**CG2011 04/13 - Additional Insured - Managers or Lessors of Premises**

All other terms and conditions of this Policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person(s) Or Organization(s) (Additional Insured):**

Effective Date: 07/09/2018 12:01 AM  
Oakland Unified School District  
Risk Management  
1000 Broadway Suite 440  
Oakland, CA 94607

**Designation of Premises (Part Leased To You):**

660 Filbert Street  
San Francisco, CA 94133

**Additional Premium: \$**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II - Who is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of the person (s) or organization(s) shown in the Schedule.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or
  - 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



## CLEARANCE LETTER

I, Michael Leeder, declare that all Bytes for Bits contractors/personnel entering schools and/or interacting with students are screened for TB and their fingerprints are cleared by California Department of Justice and FBI with subsequent arrest notifications.

I declare under penalty of perjury pursuant to the laws of the State of California that the above statements are true and correct and of my personal knowledge.

Executed on June 22, 2018 in San Francisco, California

Michael Leeder  
Co-Founder and Director  
Bytes for Bits