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Enactment Number	12-0202
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**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education
From Tony Smith, Ph.D., Superintendent
 By: Maria Santos, Deputy Superintendent, Instruction, Leadership & Equity-in-Action
 Vernon Hal, Deputy Superintendent, Business & Operations
 John Santoro, Director, Early Childhood Education

Board Meeting Date
(To be completed by Procurement) January 25, 2012

Subject **AUTHORIZATION TO SUBCONTRACT WITH KIDANGO, INC., A PRIVATE, NOT-FOR-PROFIT CHILD DEVELOPMENT AGENCY, YMCA OF THE CENTRAL BAY AREA, AND THE BERKELEY UNIFIED SCHOOL DISTRICT A PORTION OF THE DISTRICT'S FISCAL YEAR 2011-2012 CHILD DEVELOPMENT FUNDING AND APPROVAL OF SUBCONTRACT AGREEMENTS**

Action Requested Approval of Resolution Authorizing the District to Subcontract with Kidango, the YMCA of the Central Bay Area, and the Berkeley Unified School District a portion of the District's FY 2011-2012 Child Development Funds and Approval of the Subcontracts with both entities.

Background
A one paragraph explanation of why the consultant's services are needed.

The District, for the fourth consecutive year is under earning its State child development grant and risks the State reducing the District's annual ECE funding. The District has under earned the State grant for several reasons, including, 1) the District has demolished several centers (Yuk Yau Annex and Centro Annex) which the District is in the process of replacing, and 2) portions of the Stonehurst Center are currently unusable. The District has identified Kidango, a nonprofit public benefit corporation, with locations throughout Alameda County, the YMCA of the Central Bay Area, previously known as the Berkeley-Albany YMCA, and the Berkeley Unified School District as qualified subcontractors. The District seeks to subcontract an amount, not to exceed \$1,250,000 of the District's State funding for Child Development Centers for the period of July 1, 2011 to June 30, 2012 to Kidango, Inc; and an amount, not to exceed \$500,000 for the same period to the YMCA of the Central Bay Area; and an amount not to exceed \$350,000 for the same period to the Berkeley Unified School District. In addition, State regulations authorize the District, as the administrator of the Subcontracts to recover from Kidango the YMCA of the Central Bay Area, and the Berkeley Unified School District an administrative contract management fee which will be approximately 7.5% of the subcontract amount.

Discussion
One paragraph summary of the scope of work.

Although the District has under earned its State child development contract for four consecutive years, approval of Resolution authorizing the District to Subcontract with Kidango, the YMCA of the Central Bay Area, and the Berkeley Unified School District a portion of the District's FY 2011-12 child development funds and approval of the Subcontracts with both entities will protect the District's State Funding from reductions in future years.



- Recommendation** Approval of Resolution Authorizing the District to Subcontract with Kidango, the YMCA of the Central Bay Area, and the Berkeley Unified School District a portion of the District's FY 2011-2012 Child Development Funds and Approval of the Subcontracts with both entities.
- Fiscal Impact** Child Development Fiscal Year 2011-2012 Grant will be reduced by an amount not to exceed \$2,100,000.00. The District will earn an administrative fee for the subcontracts of approximately \$157,500.00.
- Attachments**
- Resolution
 - Subcontract with Kidango, Inc.
 - Subcontract with YMCA of the Central Bay Area
 - Subcontract with Berkeley Unified School District

**RESOLUTION
OF THE
GOVERNING BOARD
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 1112-0135

AUTHORIZING SUBCONTRACTING TO KIDANGO, A PRIVATE, NOT-FOR-PROFIT CHILD DEVELOPMENT AGENCY, THE YMCA OF THE CENTRAL BAY AREA, AND THE BERKELEY UNIFIED SCHOOL DISTRICT A PORTION OF THE OAKLAND UNIFIED SCHOOL DISTRICT'S FISCAL YEAR 2011-2012 CHILD DEVELOPMENT FUNDING

WHEREAS, Oakland Unified School District ('the District') is under earning its State child development contract for the 2011-12 fiscal year; and

WHEREAS, the 2011-12 fiscal year is the fourth fiscal year of under earning of the contract;

WHEREAS, the District has under earned the State contract for several reasons, including, but not limited to: 1) the District has demolished several centers (Yuk Yau Annex and Centro Annex) which were deemed unusable and which the District is in the process of replacing and 2) portions of the Stonehurst Center are currently unusable;

WHEREAS, due to the anticipated 2011-2012 State budget "trigger reductions" and mid-year budget reductions, under earning of the contract increases the likelihood that the State may reduce the State child development contract for the 2012-13 fiscal year;

WHEREAS, subcontracting a portion of the District's State contract funding is authorized and permissible under State regulations;

WHEREAS, subcontracting will not prevent the District from continuing to enroll families or to open new classrooms in the District's ECE program;

WHEREAS, the District has identified Kidango, a nonprofit public benefit corporation, with locations throughout Alameda County, the YMCA of the Central Bay Area, previously known as the Berkeley Albany YMCA, and the Berkeley Unified School District as a qualified subcontractors;

WHEREAS, Kidango, the Berkeley Unified School District and the YMCA of the Central Bay Area have many years of experience in providing quality and comprehensive child care and education, have experience in administering subcontracts from Local Education Agencies, such as the District, and have no audit, performance or fiscal exceptions that would make them ineligible;

WHEREAS, the District's ECE program, as the subcontracting entity, may recover from both Kidango, the Berkeley Unified School District and the YMCA of the Central Bay Area a 7.5% administrative contract management fee; and

WHEREAS, Kidango, the Berkeley Unified School District and the YMCA of the Central Bay Area have the facility capacity to earn the funds the District will subcontract;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Oakland Unified School District authorizes the District, subject to the requirement that Kidango comply with all the terms and conditions in the original funding to the District, to subcontract an amount, not to exceed \$1,250,000 of the District's State funding for Child Development Centers for the period of July 1, 2011 to June 30, 2012 to Kidango, Inc; and

BE IT FURTHER RESOLVED that the Governing Board of the Oakland Unified School District authorizes the District, subject to the requirement that the YMCA of the Central Bay Area comply with all the terms and conditions in the original funding to the District, to subcontract an amount, not to exceed \$500,000 of the District's State funding for Child Development Centers for the period of July 1, 2011 to June 30, 2012 to the YMCA of the Central Bay Area; and

BE IT FURTHER RESOLVED that the Governing Board of the Oakland Unified School District authorizes the District, subject to the requirement that the Berkeley Unified School District comply with all the terms and conditions in the original funding to the District, to subcontract an amount, not to exceed \$350,000 of the District's State funding for Child Development Centers for the period of July 1, 2011 to June 30, 2012 to the YMCA of the Central Bay Area.

PASSED BY THE FOLLOWING VOTE:

AYES: David Kakishiba, Noel Gallo, Christopher Dobbins, Vice President Jumoke Hodge, President Jody London

NAYS: None

ABSTAINED: None

ABSENT: Alice Spearman, Gary Yee

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted at a Regular Meeting of the Governing Board of the Oakland Unified School District held on January 25, 2012.



Edgar Rakestraw, Jr. Secretary
Governing Board

Subcontract
Between
The Oakland Unified School District
And
Kidango, Inc

This Subcontract ("Subcontract") is entered into by the Oakland Unified School District (the "District") and Kidango, Inc ("Kidango"), with its offices in Fremont, California. Kidango is a child care provider, offering child care programs throughout Alameda County.

RECITALS

WHEREAS, the Board of Education of the District on September 7, 2011 in Board Enactments 10-1712 and 10-1713 accepted funding from the California Department of Education for the District's Early Childhood Education programs for the 2011-12 fiscal year; and

WHEREAS, the District is under earning its State child development contract for the 2011-12 fiscal year; and

WHEREAS, the 2011-12 fiscal year is the third fiscal year of under earning of the contract;

WHEREAS, the District has under earned the State contract for several reasons, including, but not limited to: 1) the District has demolished several centers (Yuk Yau Annex and Centro Annex) which were deemed unusable and which the District is in the process of replacing, 2) portions of the Stonehurst Center are currently unusable;

WHEREAS, due to the anticipated 2011-2012 State budget "trigger reductions" and mid-year budget reductions, under earning of the contract increases the likelihood that the State may reduce the State child development contract for the 2012-13 fiscal year;

WHEREAS, subcontracting a portion of the District's State contract is authorized and permissible under State regulations;

WHEREAS, subcontracting will not prevent the District from continuing to enroll families or to open new classrooms in the District's ECE program;

WHEREAS, the District has identified Kidango, a nonprofit public benefit corporation, with locations throughout Alameda County, as a qualified subcontractor;

WHEREAS, Kidango has many years of experience in providing quality and comprehensive child care and early childhood education, has experience in administering subcontracts with Local Education Agencies, such as the District, and has no audit,

performance or fiscal exceptions that would make it ineligible to subcontract with the District;

WHEREAS, under State regulations the District's ECE program, as the subcontracting entity responsible for managing and administering the subcontract with Kidango, may recover from Kidango a 7.5 percent (7.5%) administrative contract management fee; and

WHEREAS, Kidango has the facility capacity to earn the funds the District will subcontract;

RESOLVED, that the District and Kidango agree to enter into this Subcontract and agree to the following terms and conditions:

- 1. Term:** This Subcontract shall become effective on the date approved by the Board of Education of the District and shall expire on July 1, 2012.
- 2. Subcontract Amount:** The District hereby agrees to subcontract an amount, not to exceed \$1,250,000 of the District's State funding for Early Childhood programs for the fiscal year ending June 30, 2012 to Kidango. Kidango will receive the reimbursement rate in the Contracts between the California Department of Education and Oakland Unified School District minus the maximum management and administration cost allowable by the Education Code for both the District and Kidango which is 15%.
- 3. Subcontract Management and Administration Fee:** Kidango agrees that the District will withhold a management and administration fee of 7.5% to cover the expenses incurred by the District in managing and administering the Subcontract. Said fee shall be deducted from the gross amount due to the Kidango each month based on the invoice and this agreement.
- 4. Incorporation by Reference of Terms and Conditions:** The (a) Funding terms and conditions and program requirements for the California Preschool Child Development programs and the Child Care and Development programs for the fiscal year 2011-12, including as they may be subsequently amended by the State ("**FY 2010-11 terms and conditions**") and (b) the federal certifications and the standard provisions for State contracts that are attached to the FY 2011-12 terms and conditions, and incorporated by reference herein and apply without change or modification to this Subcontract.
- 5. Identification of Specific Requirements:** (a) Kidango will provide OUSD with the following documentation for each child claimed: 1) Current NOA for FY; 2) Income calculation worksheet and income need and verification documentation; 3) Completed 9600 form.
- 6. Reporting Requirements:** (a) Kidango will submit 801A family file data online to the State Department of Education, Child Development Division no later than the 10th of every month for the service period of the previous month; (b) Kidango will submit

801B data to the State Department of Education, Child Development Division by the mandated deadline each month.

7. Payment Process Required Documentation: (a) All monthly attendance accounting documentation must be submitted by contract type and match (exactly) the 801A file that is submitted by the agency to the Child Development Division; (b) All claims must be supported by (exactly) the 9400 report; (c) Kidango must submit the CDFS 8501 HR (for CSPP) and CDFS 9500 HR report of attendance and expenditures to OUSD as required.

6. Notice: All final claims and invoices must be submitted no later than July 10, 2012. All notices and invoices provided for under this Subcontract shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail with postage prepaid to the other party at the address set forth below

The District

Oakland Unified School District
Early Child Education Programs
495 Jones Avenue
Oakland, CA 94603
Attn: John Santoro, Director

Kidango, Inc

44000 Old Warm Springs Blvd
Fremont, CA 94538
Attn: Paul Miller, Executive Director

6. Insurance

Workers Compensation Insurance: Kidango shall procure and maintain at all times during the term of this Subcontract, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

General Liability Insurance: Kidango shall maintain general liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance must be attached. Inclusion of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against Kidango. The policy shall protect Kidango and the District in the same manner as though each were separately issued.

7. Indemnification: Kidango agrees to hold harmless, indemnify, and defend the District and its Board of Education, officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Subcontract. Kidango also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Kidango in connection with the performance of this Subcontract. This provision survives termination of this Subcontract.

8. Assignment: The obligations of Kidango under this Subcontract shall not be assigned by Kidango without the express prior written consent of the District.

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

10. Termination: the District may at any time terminate this Subcontract upon written notice to Kidango. In addition, the District may terminate this Subcontract for cause should Kidango fail to perform any part of this Subcontract. In the event of termination for cause, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the services pursuant to this Subcontract, Kidango shall pay the additional cost.

11. Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Kidango's services under this Subcontract and Kidango certifies its compliance with these provisions as follows: "Kidango certifies that Kidango has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Kidango's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of Kidango, who may have contact with the District pupils in the course of providing services pursuant to the Subcontract, 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. Kidango further certifies that it has received and reviewed fingerprint results for each of its Employees and has requested and reviewed subsequent arrest records for all providing services under this Subcontract.

Kidango initial: 

12. No Rights in Third Parties. This Subcontract does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

13. Litigation: This Subcontract shall be governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state

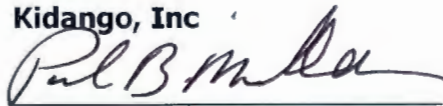
court litigation initiated to enforce or interpret this Subcontract. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.

14. Contract Contingent on Governing Board Approval: The District shall not be bound by the terms of this Subcontract until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to Kidango absent formal approval. This Subcontract shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

15. Integration/Entire Subcontract of Parties: Except as expressly provided in this Subcontract, all other ***FY 2010-11 terms and conditions*** shall remain unchanged and in full force and effect as originally stated. The Subcontract constitutes the entire understanding and agreement between the Parties in connection with the subject matter of this Subcontract. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Subcontract. This is an integrated subject matter of this Subcontract. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Subcontract. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

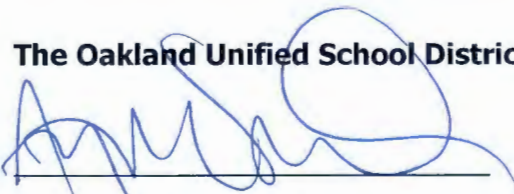
16. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference

Kidango, Inc



Paul Miller, Executive Director

The Oakland Unified School District




Anthony Smith, PhD, Superintendent



Jody London
President, Board of Education

LEGISLATIVE FILE	
File ID No.	12-0274
Introduction Date	1/25/12
Enactment Date	12-02-02
Reschedule Date	1-25-12
By	B



Edgar Rakestraw
Secretary, Board of Education

Approved As to Form



Jacqueline Minor, General Counsel

Subcontract
Between
The Oakland Unified School District
And
The YMCA of the Central Bay Area, Inc

This Subcontract ("Subcontract") is entered into by the Oakland Unified School District (the "District") and the YMCA of the Central Bay Area, previously known as the Berkeley-Albany YMCA ("YMCA"), with its main offices in Berkeley, California. The YMCA offers comprehensive child care and development programs in Berkeley, Albany and Emeryville.

RECITALS

WHEREAS, the Board of Education of the District on September 7, 2011 in Board Enactments 10-1712 and 10-1713 accepted funding from the California Department of Education for the District's Early Childhood Education programs for the 2011-12 fiscal year; and

WHEREAS, the District is under earning its State child development contract for the 2011-12 fiscal year; and

WHEREAS, the 2011-12 fiscal year is the fourth fiscal year of under earning of the contract;

WHEREAS, the District has under earned the State contract for several reasons, including, but not limited to: 1) the District has demolished several centers (Yuk Yau Annex and Centro Annex) which were deemed unusable and which the District is in the process of replacing, 2) portions of the Stonehurst Center are currently unusable;

WHEREAS, due to the anticipated 2011-2012 State budget "trigger reductions" and mid-year budget reductions, under earning of the contract increases the likelihood that the State may reduce the State child development contract for the 2012-13 fiscal year;

WHEREAS, subcontracting a portion of the District's State contract is authorized and permissible under State regulations;

WHEREAS, subcontracting will not prevent the District from continuing to enroll families or to open new classrooms in the District's ECE program;

WHEREAS, the District has identified the YMCA as a qualified subcontractor;

WHEREAS, the YMCA has many years of experience in providing quality and comprehensive child care and early childhood education, has experience in administering subcontracts with Local Education Agencies, such as the District, and has no audit,

performance or fiscal exceptions that would make it ineligible to subcontract with the District;

WHEREAS, under State regulations, the District's ECE program, as the subcontracting entity responsible for managing and administering the subcontract with YMCA, may recover from the YMCA a 7.5% percent (7.5%) administrative contract management fee; and

WHEREAS, the YMCA has the facility capacity to earn the funds the District will subcontract;

RESOLVED, that the District and the YMCA agree to enter into this Subcontract and agree to the following terms and conditions:

Term: This Subcontract shall become effective on the date approved by the Board of Education of the District and shall expire on July 1, 2012.

1. Subcontract Amount: The District hereby agrees to subcontract an amount, not to exceed \$500,000 of the District's State funding for Early Childhood programs for the fiscal year ending June 30, 2012 to the YMCA.

A. Subcontract Management and Administration Fee: The YMCA agrees that the District will withhold a management and administration fee of 7.5% to cover the expenses incurred by the District in managing and administering the Subcontract. Said fee shall be deducted from the gross amount due to the YMCA each month based on the invoice and this agreement.

B. Incorporation by Reference of Terms and Conditions: The (a) Funding terms and conditions and program requirements for the California Preschool Child Development programs and the Child Care and Development programs for the fiscal year 2011-12, including as they may be subsequently amended by the State ("**FY 2010-11 terms and conditions**") and (b) the federal certifications and the standard provisions for State contracts that are attached to the FY 2010-11 terms and conditions, are incorporated by reference herein and apply without change or modification to this Subcontract.

2. Identification of Specific Requirements: (a) The YMCA will provide OUSD with the following documentation for each child claimed: 1) Current NOA for FY; 2) Income calculation worksheet and income need and verification documentation; 3) Completed 9600 form.

3. Reporting Requirements: (a) The YMCA will submit 801A family file data online to the State Department of Education, Child Development Division no later than the 10th of every month for the service period of the previous month; (b) YMCA will submit 801B data to the State Department of Education, Child Development Division by the mandated deadline each month.

4. Payment Process Required Documentation: (a) All monthly attendance accounting documentation must be submitted by contract type and match (exactly) the 801A file that is submitted by the agency to the Child Development Division; (b) All claims must be supported by (exactly) the 9400 report; (c) The YMCA must submit the CDFS 8501 HR (for CSPP) and CDFS 9500 HR report of attendance and expenditures to OUSD as required.

5. Notice: All final claims and invoices must be submitted no later than July 10, 2012. All notices and invoices provided for under this Subcontract shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail with postage prepaid to the other party at the address set forth below

The District

Oakland Unified School District
Early Child Education Programs
495 Jones Avenue
Oakland, CA 94603
Attn: John Santoro, Director

The YMCA

YMCA Early Childhood Services
2009 10th Street
Berkeley, CA 94710
Attn: Pamm Shaw, Executive Director

6. Insurance

Workers Compensation Insurance: The YMCA shall procure and maintain at all times during the term of this Subcontract, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

General Liability Insurance: The YMCA shall maintain general liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance must be attached. Inclusion of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against the YMCA. The policy shall protect the YMCA and the District in the same manner as though each were separately issued.

7. Indemnification: The YMCA agrees to hold harmless, indemnify, and defend the District and its Board of Education, officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Subcontract. The YMCA also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to the YMCA in connection with the performance of this Subcontract. This provision survives termination of this Subcontract.

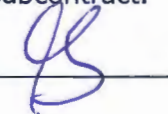
8. Assignment: The obligations of the YMCA under this Subcontract shall not be assigned by the YMCA without the express prior written consent of the District.

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

10. Termination: the District may at any time terminate this Subcontract upon written notice to the YMCA. In addition, the District may terminate this Subcontract for cause should the YMCA fail to perform any part of this Subcontract. In the event of termination for cause, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the services pursuant to this Subcontract, the YMCA shall pay the additional cost.

11. Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to YMCA's services under this Subcontract and the YMCA certifies its compliance with these provisions as follows: "the YMCA certifies that the YMCA has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all the YMCA's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the YMCA, who may have contact with the District pupils in the course of providing services pursuant to the Subcontract, 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. The YMCA further certifies that it has received and reviewed fingerprint results for each of its Employees and has requested and reviewed subsequent arrest records for all providing services under this Subcontract.

YMCA initial: _____



12. No Rights in Third Parties. This Subcontract does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

13. Litigation: This Subcontract shall is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state

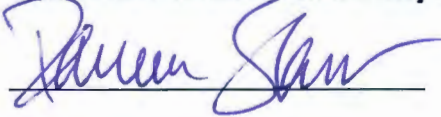
court litigation initiated to enforce or interpret this Subcontract. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.

14. Contract Contingent on Governing Board Approval: The District shall not be bound by the terms of this Subcontract until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to the YMCA absent formal approval. This Subcontract shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

15. Integration/Entire Subcontract of Parties: Except as expressly provided in this Subcontract, all other ***FY 2010-11 terms and conditions*** shall remain unchanged and in full force and effect as originally stated. The Subcontract constitutes the entire understanding and agreement between the Parties in connection with the subject matter of this Subcontract. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Subcontract. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

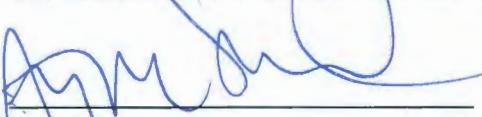
16. Incorporation of Recitals and Exhibits. The Recitals and each attachment hereto are hereby incorporated herein by reference.

The YMCA of the Central Bay Area, Inc



Pam Shaw, Executive Director

The Oakland Unified School District



Anthony Smith, PhD, Superintendent



Jody London
President, Board of Education

LEGISLATIVE FILE

File ID No. 12-0274

Introduction Date 1/25/12

Enactment No. 12-0202

Enactment Date 1-25-12

3


Edgar Rakestraw
Secretary, Board of Education

Approved As to Form



Jacqueline Minor, General Counsel

Subcontract
Between
The Oakland Unified School District
And
The Berkeley Unified School District

This Subcontract ("Subcontract") is entered into by the Oakland Unified School District (the "District") and Berkeley Unified School District of Berkeley, California. The Berkeley Unified School District Child Development Program ("Berkeley") offers comprehensive child care and development programs in Berkeley, California.

RECITALS

WHEREAS, the Board of Education of the District on September 7, 2011 in Board Enactments 10-1712 and 10-1713 accepted funding from the California Department of Education for the District's Early Childhood Education programs for the 2011-12 fiscal year; and

WHEREAS, the District is under earning its State child development contract for the 2011-12 fiscal year; and

WHEREAS, the 2011-12 fiscal year is the fourth fiscal year of under earning of the contract;

WHEREAS, the District has under earned the State contract for several reasons, including, but not limited to: 1) the District has demolished several centers (Yuk Yau Annex and Centro Annex) which were deemed unusable and which the District is in the process of replacing, 2) portions of the Stonehurst Center are currently unusable;

WHEREAS, due to the anticipated 2011-2012 State budget "trigger reductions" and mid-year budget reductions, under earning of the contract increases the likelihood that the State may reduce the State child development contract for the 2012-13 fiscal year;

WHEREAS, subcontracting a portion of the District's State contract is authorized and permissible under State regulations;

WHEREAS, subcontracting will not prevent the District from continuing to enroll families or to open new classrooms in the District's ECE program;

WHEREAS, the District has identified BERKELEY as a qualified subcontractor;

WHEREAS, BERKELEY has many years of experience in providing quality and comprehensive child care and early childhood education, has experience in administering subcontracts with Local Education Agencies, such as the District, and has no audit,

performance or fiscal exceptions that would make it ineligible to subcontract with the District;

WHEREAS, under State regulations, the District's ECE program, as the subcontracting entity responsible for managing and administering the subcontract with BERKELEY, may recover from BERKELEY a 7.5% percent (7.5%) administrative contract management fee; and

WHEREAS, BERKELEY has the facility capacity to earn the funds the District will subcontract;

RESOLVED, that the District and BERKELEY agree to enter into this Subcontract and agree to the following terms and conditions:

- 1. Term:** This Subcontract shall become effective on the date approved by the Board of Education of the District and shall expire on July 1, 2012.
- 2. Subcontract Amount:** The District hereby agrees to subcontract an amount, not to exceed \$350,000 of the District's State funding for Early Childhood programs for the fiscal year ending June 30, 2012 to BERKELEY. BERKELEY will receive the reimbursement rate in the Contracts between the California Department of Education and Oakland Unified School District minus the maximum management and administration cost allowable by the Education Code for both the District and BERKELEY which is 15%.
- 3. Subcontract Management and Administration Fee:** BERKELEY agrees that the District will withhold a management and administration fee of 7.5% to cover the expenses incurred by the District in managing and administering the Subcontract. Said fee shall be deducted from the gross amount due to BERKELEY each month based on the invoice and this agreement.
- 4. Incorporation by Reference of Terms and Conditions:** The (a) Funding terms and conditions and program requirements for the California Preschool Child Development programs and the Child Care and Development programs for the fiscal year 2011-12, including as they may be subsequently amended by the State ("**FY 2010-11 terms and conditions**") and (b) the federal certifications and the standard provisions for State contracts that are attached to the FY 2010-11 terms and conditions, are incorporated by reference herein and apply without change or modification to this Subcontract.
- 5. Identification of Specific Requirements:** (a) BERKELEY will provide OUSD with the following documentation for each child claimed: 1) Current NOA for FY; 2) Income calculation worksheet and income need and verification documentation; 3) Completed 9600 form.
- 6. Reporting Requirements:** (a) BERKELEY will submit 801A family file data online to the State Department of Education, Child Development Division no later than the 10th of every month for the service period of the previous month; (b) BERKELEY will

submit 801B data to the State Department of Education, Child Development Division by the mandated deadline each month.

7. Payment Process Required Documentation: (a) All monthly attendance accounting documentation must be submitted by contract type and match (exactly) the 801A file that is submitted by the agency to the Child Development Division; (b) All claims must be supported by (exactly) the 9400 report; (c) BERKELEY must submit the CDFS 8501 HR (for CSPP) and CDFS 9500 HR report of attendance and expenditures to OUSD as required.

6. Notice: All final claims and invoices must be submitted no later than July 10, 2012. All notices and invoices provided for under this Subcontract shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail with postage prepaid to the other party at the address set forth below

The District

Oakland Unified School District
Early Child Education Programs
495 Jones Avenue
Oakland, CA 94603
Attn: John Santoro, Director

Berkeley

Berkeley Unified School District
2134 Martin Luther King Jr Way
Berkeley, CA 94704
Attn: Maria Carriedo, Principal

6. Insurance

Workers Compensation Insurance: BERKELEY shall procure and maintain at all times during the term of this Subcontract, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

General Liability Insurance: BERKELEY shall maintain general liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to the District and shall name the District as an additional insured. Evidence of insurance must be attached. Inclusion of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered

against BERKELEY. The policy shall protect BERKELEY and the District in the same manner as though each were separately issued.

7. Indemnification: BERKELEY agrees to hold harmless, indemnify, and defend the District and its Board of Education, officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Subcontract. BERKELEY also agrees to hold harmless, indemnify, and defend the District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to BERKELEY in connection with the performance of this Subcontract. This provision survives termination of this Subcontract.

8. Assignment: The obligations of BERKELEY under this Subcontract shall not be assigned by BERKELEY without the express prior written consent of the District.

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

10. Termination: the District may at any time terminate this Subcontract upon written notice to BERKELEY. In addition, the District may terminate this Subcontract for cause should BERKELEY fail to perform any part of this Subcontract. In the event of termination for cause, the District may secure the required services from another contractor. If the cost to the District exceeds the cost of providing the services pursuant to this Subcontract, BERKELEY shall pay the additional cost.

11. Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to BERKELEY's services under this Subcontract and BERKELEY certifies its compliance with these provisions as follows: "BERKELEY certifies that BERKELEY has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all BERKELEY's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of BERKELEY, who may have contact with the District pupils in the course of providing services pursuant to the Subcontract, 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. BERKELEY further certifies that it has received and reviewed fingerprint results for each of its Employees and has requested and reviewed subsequent arrest records for all providing services under this Subcontract.

BERKELEY initial: *mc*

12. No Rights in Third Parties. This Subcontract does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

13. Litigation: This Subcontract shall is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Subcontract. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.

14. Contract Contingent on Governing Board Approval: The District shall not be bound by the terms of this Subcontract until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to BERKELEY absent formal approval. This Subcontract shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

15. Integration/Entire Subcontract of Parties: Except as expressly provided in this Subcontract, all other **FY 2010-11 terms and conditions** shall remain unchanged and in full force and effect as originally stated. The Subcontract constitutes the entire understanding and agreement between the Parties in connection with the subject matter of this Subcontract. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter of the Subcontract. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

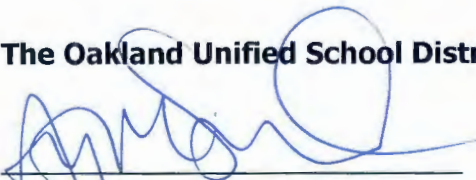
16. Incorporation of Recitals and Exhibits. The Recitals and each attachment hereto are hereby incorporated herein by reference.

The Berkeley Unified School District



Maria Carriedo, Principal

The Oakland Unified School District



Anthony Smith, PhD, Superintendent



Jody London
President, Board of Education



LEGISLATIVE FILE

File ID No. 12-0274
Introduction Date 1/25/12
Enactment No. 62-0202
Effective Date 1-25-12
B

Edgar Rakestraw
Secretary, Board of Education

Approved As to Form



Jacqueline Minor, General Counsel