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File ID Number	12-0868
Introduction Date	April 4, 2012
Enactment Number	12-1012
Enactment Date	4-4-12



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date April 4, 2012

Subject AMENDMENT TO SUBCONTRACT WITH KIDANGO, INC.

Action Requested Authorization to Amend the Subcontract With Kidango, Inc., a private, not-for-profit Child Development Agency.

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 identified Kidango, a nonprofit public benefit corporation, with locations throughout Alameda County, as a qualified Subcontractor with whom the District could transfer some of its ECE funding. The Board approved a subcontract with Kidango in early 2012 in the amount of \$1.25 million dollars. By this Subcontract, the District seeks to increase the amount of the subcontract with Kidango by \$601,381. State regulations authorize the District, as the administrator of the Subcontracts to recover from Kidango 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 the Amendment to Subcontract authorizing the District to increase the Subcontract amount by \$601,381 and approval of the Amendment to the Subcontract will protect the District's State Funding from reductions in future years.

Recommendation Approval of the Amendment to the Subcontract with Kidango, Authorizing the District to increase Subcontract amount to \$601,381, a portion of the District's FY 2011-2012 Child Development Funds.

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

- Amendment to Subcontract Agreement

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**AMENDMENT TO THE
SUBCONTRACT
Between
OAKLAND UNIFIED SCHOOL DISTRICT
And
KIDANGO, INC.**

This Amendment is entered into between the Oakland Unified School District ("OUSD") and KIDANGO INC., a private, not-for-profit, child development agency, (hereinafter "KIDANGO"). The parties entered into a Subcontract on January 25, 2012, approved by the Board of Education as Enactment 12-0202. The parties agree to amend that Subcontract as follows:

1. The District hereby agrees to increase the Subcontract amount by \$601,381 for a total Subcontract amount not to exceed \$1,851,381 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%.
2. Except as expressly provided above, the Subcontract is unchanged.
3. This Amendment to the Subcontract between the CONSULTANT and the District constitutes the entire understanding and Subcontract between the Parties. All understandings, Subcontracts, covenants, and representations express or implied, oral or written between the Parties concerning the subject of this Amendment. This is an integrated Subcontract. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

IN WITNESS WHEREOF, the Parties hereto agree to be bound and have executed this Amendment to the Subcontract.

KIDANGO, INC.



Paul Miller, Executive Director

Oakland Unified School District



Dr. Anthony Smith
Superintendent

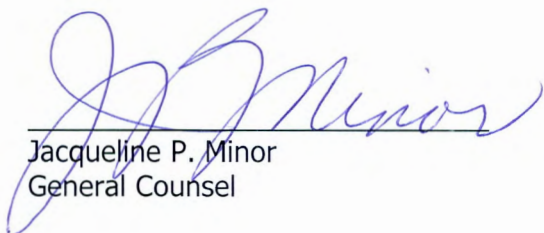


Jody London
President, Board of Education



Edgar Rakestraw
Secretary, Board of Education

Approved As to Form



Jacqueline P. Minor
General Counsel

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 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 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.

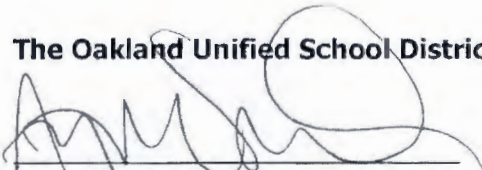
16. Incorporation of Recitals and Exhibits. The Recitals and each exhibit attached hereto are hereby incorporated herein by reference

Kidango, Inc



Paul Miller, Executive Director

The Oakland Unified School District




Anthony Smith, PhD, Superintendent



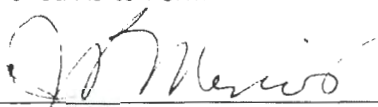
Jody London
President, Board of Education

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Edgar Rakestraw
Secretary, Board of Education

Approved As to Form



Jacqueline Minor, General Counsel