

Board Office Use: Legislative File Info.	
File ID Number	19-0743
Introduction Date	05/08/19
Enactment Number	19-0659
Enactment Date	5/8/19 If



# Memo

**To** Board of Education  
**From** Kyla Johnson-Trammell, Superintendent  
Elizabeth Henry, Director, Continuous School Improvement - Elementary Network 4

**Board Meeting Date** May 8, 2019  
**Subject** Amendment No. 1 to Professional Services Contract  
Contractor: Swun Math, Cypress, CA  
Services For: 923-Elementary School Network 4

**Action Requested and Recommendation** Approval by the Board of Education of Amendment No. 1 to Professional Services Contract \_\_\_\_\_ between Oakland Unified School District and Swun Math, Cypress, CA \_\_\_\_\_, for the latter to continue to provide student achievement in mathematics through the development and implementation of a daily 90-minute math model for grades TK-5 students at Futures and Community United Elementary Schools; the funding amount of this contract has been reduced as both sites will pay their portion directly,

for the period of 10/1/18 through 06/28/19 in an amount not to exceed 185,000.

**Prior Contract** The Agreement was previously approved by the Board on 12/12/18 (Enactment No. 18-1902 ).

**Modification** This amendment modifies the scope of work and compensation. All other provisions remain the same.

**Competitively Bid** Was this contract competitively bid? No  
If no, exception: Special Services (financial, economic, accounting, legal or administrative services)

**Fiscal Impact** Funding resource(s): School Improvement Grant - 3 sites (Piedmont/La Escuelita/Markham)

**Attachments**

- Contract Amendment
- Copy of original contract and all prior amendments (if any)

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**AMENDMENT NO. 1 TO**  
**Professional Services Contract**

This Amendment amends \_\_\_\_\_ Professional Services Contract \_\_\_\_\_ between Oakland Unified School District (OUSD) and Swun Math, Cypress, CA (Contractor) entered into on 10/1/18 (OUSD Enactment No. 18-1902). The parties agree to amend that Agreement as follows:

<p><b>1. Services:</b>      <input checked="" type="checkbox"/> The scope of work is <u>unchanged</u>.      <input type="checkbox"/> The scope of work has <u>changed</u>.</p> <p><b>If the scope of work has changed:</b> Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p><input type="checkbox"/> Revised scope of work attached. <b>OR</b> <input checked="" type="checkbox"/> CONTRACTOR agrees to provide the following amended services: Consultant will continue to provide student achievement in mathematics through the development and implementation of a daily 90-minute math model for grades TK-5 students at Futures and Community United Elementary Schools. The funding for these services has been decreased as both school sites will pay their portion directly.</p>
<p><b>2. Term (duration):</b>      <input checked="" type="checkbox"/> The term of the contract is <u>unchanged</u>.      <input type="checkbox"/> The term of the contract has <u>changed</u>.</p> <p><b>If the term has changed:</b> The contract term began on <u>10/1/18</u> and expires on _____. The parties agree to extend the contract through <u>06/28/19</u>.</p>
<p><b>3. Compensation:</b>      <input type="checkbox"/> The contract price is <u>unchanged</u>.      <input checked="" type="checkbox"/> The contract price has <u>changed</u>.</p> <p><b>If the compensation has changed:</b> The contract price is amended by</p> <p style="padding-left: 40px;"><input type="checkbox"/> Increase of \$ _____ to original contract amount.</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Decrease of \$ <u>25,000</u> to original contract amount.</p> <p>The new contract total is <u>One hundred eighty five thousand</u> Dollars ( <u>185,000</u> )</p>

- 4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.
- 5. 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/>).

6. **Approval:** Approval requires signature by the Board of Education and/or the Superintendent as its designee. This Amendment 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**

Aimee Eng 5/9/19  
 \_\_\_\_\_ Date  
 President, Board of Education  
 Superintendent  
 Chief or Deputy Chief  
[Signature] 5/9/19  
 \_\_\_\_\_ Date  
 Secretary, Board of Education

**CONTRACTOR**

[Signature] 4.12.19  
 \_\_\_\_\_ Date  
 Contractor Signature  
Si Swun, CEO  
 \_\_\_\_\_  
 Print Name, Title

Form approved by OUSD General Counsel for 2018-19 FY

FOR OUSD PURPOSES ONLY – The following information is not part of the Contract.

OUSD Internal Routing			
Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.			
	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager	<u>[Signature]</u>		<u>4/13/19</u>
2. Resource Manager (if restricted funds)			
3. Network Superintendent/Executive Director	<u>[Signature]</u>		<u>4/13/19</u>
4. Chief/Deputy Chief	<u>[Signature]</u>		<u>4/13/19</u>
5. Legal (if increase takes contract above \$90,200)			
6. Superintendent, Board of Education	Signature on the legal contract		

**Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds)**

Please select:

- Action Item included in Board Approved SPSA (no additional documentation required)–Item Number: \_\_\_\_\_
- Action Item added as modification to Board Approved SPSA – Submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.
  - a. Relevant page of SPSA with action item highlighted. Page must include header with the word "Modified", modification date, school site name, both principal and school site council chair initials and date.
  - b. Meeting announcement for meeting in which the SPSA modification was approved.
  - c. Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
  - d. Sign-in sheet for meeting in which the SPSA modification was approved.

## EXHIBIT "A" SCOPE OF WORK

[IF A CONTRACTOR PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES MAY BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

- 1. Description of Services to be Provided:** Provide a description of the service(s) the contractor will provide. Be specific about what service(s) OUSD is purchasing and what *this* Contractor will do.

The scope of work is unchanged; the contract funding has been decreased as both school sites will pay their portion directly.

Swun will continue to increase student achievement in mathematics through the development and implementation of a daily 90-minute math model for grades TK-5 students for Futures and Community United Elementary Schools. Key features of this program include a pacing guide utilizing Swun math CCS Lessons, common pre-and post-trimester exams, teaching strategies (Phase I lesson design/ Phase II Inquiry based Instruction, group work techniques, academic language development, writing skills, etc.), monthly coaching support and site visits by contractor for both teachers and principals.



**Directions**

Services beyond the original contract cannot be provided until the amendment is fully approved and PO is increased by Procurement.

- To be eligible for an amendment, term end date of the contract cannot not be expired. If expired, a new contract is necessary.
- Insert the amendment number (i.e. if this is the first amendment enter "1," second enter "2," etc.) at the top of the amendment.
- If contract total amount has increased, the scope of work must change.
- OUSD contract originator creates new requisition with the original PO number referenced in the item description.

When the contract amendment is approved, Procurement will add additional funds to the original Purchase Order.

Attachment Checklist	<ul style="list-style-type: none"> <li>Contract amendment packet including Board Memo and Amendment Form</li> <li>Board approved copy of the original contract and any prior Amendments.</li> </ul>
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**Contractor Information**

Contractor Name	Swun Math, Cypress, CA	Contractor's Contact	Si Swun
OUSD Vendor ID #	005251	Title	Owner
Street Address	10073 Valley View # 116	City, State	Cypress, CA
Telephone	714-600-1130	Zip Code	CA
		Email (required)	dberger@swunmath.com

**Compensation and Terms**

Current Contract Amount	\$210,000.00	OUSD Vendor ID #	005251	Start Date of Original Contract	10/01/18
Amount of Increase		Original PO #	PO19-05158	Current Term End Date	06/30/19
Amount of Decrease	25,000	New Requisition #	N/A	New Term End Date*	06/30/19
New Total Contract Amount	185,000	% Change		*Must be no more than five years from the start date	

**Budget Information** (If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition)

Requisition No.	Budget Number	Resource Name	Amount
N/A			\$ 0.00
			\$ 0.00
			\$ 0.00
			\$ 0.00

**Contract History**

Agreement	OUSD Enactment #	Exact Name of Contract	Contract Amount
	18-1902	Swun Math LLC	210,000
Amend #	OUSD Enactment #	General Description of Reason for Amendment	Increase/Decrease Amount
1		Decrease PO by \$25K as sites will pay their portion directly.	25,000

**OUSD Contract Originator Information**

Name of OUSD Contact	Latashi Russell	Email	latashi.russell@ousd.org
Site/Dept. Name	School Improvement Grant	Site #	923
		Phone	879-2278

**Approval and Routing (in order of approval steps)**

Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.

	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager			4/11/19
2. Resource Manager (if restricted funds)			
3. Network Superintendent/Executive Director			4/11/19
4. Chief/Deputy Chief			4/13/19
5. Legal (if increase takes contract above \$92,600)			
6. Superintendent, Board of Education	Signature on the legal contract		

Procurement-Date Received: \_\_\_\_\_

**THIS FORM IS NOT A CONTRACT**

Board Office Use: Legislative File Info.	
File ID Number	18-2229
Introduction Date	12/12/2018
Enactment Number	18-1902
Enactment Date	12/12/2018



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
SONDRA AGUILERA

**Board Meeting Date** 12/12/2018

**Subject** Professional Service Contract  
**Contractor:** Swun Math, LLC of 90630, CA  
**Services for:** 923-Network 4

**Action Requested and Recommendation** Approval by the Board of Education of a Professional Services Contract between the District and Swun Math, LLC, 90630, CA, for the latter to provide: to increase student achievement in mathematics through the development and implementation of a daily 90-minute math model for grades TK-5 students in Oakland USD for Futures and CUES Elementary for the period of 10/01/2018 through 06/28/2019 in an amount not to exceed \$210,000.00.

**Background** To increase student achievement in mathematics  
*(Why do we need these services. Why have you selected this vendor?)*

**Competitively Bid** Was this contract competitively bid? \_\_\_ Yes  No  
If No, List Bid Exception: Special Services (Financial, Accounting, Legal or Administrative services)

**Fiscal Impact** Funding Resource name(s) (detailed below) not to exceed \$210,000.00.

**Resource Name(s)** \$210,000.00 School Improvement Grant Sig

**Attachments:** Professional Services Contract including Scope of Work

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Enactment Number	18-1902
Enactment Date	12/12/2018



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

## PROFESSIONAL SERVICES CONTRACT 2018-2019

This Agreement is entered into between Swun Math, LLC

(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 described in Exhibit "A," attached hereto and incorporated herein by reference.
2. **Terms:** The term of this Agreement shall be from 10/01/2018 (or the day immediately following approval by the Superintendent if the aggregate amount CONTRACTOR has contracted with the District is below \$90,200.00 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed \$90,200.00, whichever is later) to 06/28/2019. The work shall be completed no later than 06/28/2019.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement. The compensation under this Contract shall not exceed Two Hundred Ten Thousand Dollars and 00/100 Dollars (\$210,000.00) [per fiscal year], at an hourly billing rate not to exceed N/A per hour. This sum shall be for full performance of this Agreement 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.

If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: N/A

Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by OUSD and in that case must be replaced by CONTRACTOR without delay.

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 required by 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.
- 3. **District Approval.** The work completed herein must meet the approval of OUSD and shall be subject to OUSD's general right of inspection and supervision to secure the satisfactory completion thereof.
- 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. **Invoicing:** Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: Contractor name, Contractor address, invoice date, invoice number, purchase order number, name of school or department service was provided to, period of service, name of the person performing the service, date service was rendered, brief description of services provided, number of hours of service, hourly rate, total payment requested.
- 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:

**OUSD Representative:**

Name: ELIZABETH HENRY  
Site /Dept.: 923-Network 4  
Address: 1000 Broadway, Suite 600  
Oakland, CA 94607  
Phone: 5108792278  
Email: Elizabeth.Henry@ousd.org

**CONTRACTOR:**

Name: Swun Math, LLC  
Title: CEO  
Address: 10073 Valley View  
90630, CA 90630  
Phone: 714-600-1130  
Email: sswun@swunmath.com

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.

- 9. **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.
  - 10. **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 Risk Management.) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.
11. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.



12. **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.
13. **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.

14. **Termination:**

1. **For Convenience by OUSD:** OUSD may at any time terminate this Agreement and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by OUSD shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by CONTRACTOR or no later than three (3) calendar days after the day of mailing, whichever is sooner.
2. **With Cause by District.** OUSD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
  - i. material violation of this Agreement by the CONTRACTOR; or
  - ii. any act by CONTRACTOR exposing OUSD to liability to others for personal injury or property damage; or
  - iii. CONTRACTOR is adjudged bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors, or a receiver is appointed on account of CONTRACTOR's insolvency.

Written notice by OUSD shall contain the reasons for such intention to terminate and, unless within three (3) calendar days after that notice the condition or violation shall cease or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, OUSD may secure the required Services from another CONTRACTOR. If the expense, fees, and/or costs to OUSD exceeds the cost of providing the Services pursuant to this Agreement, CONTRACTOR shall immediately pay the excess expense, fees, and/or costs to OUSD upon the receipt of OUSD's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to OUSD.

Upon termination, CONTRACTOR shall provide OUSD with all documents produced maintained or collected by CONTRACTOR pursuant to this Agreement, whether or not such documents are final or draft documents.

15. **Conduct of CONTRACTOR:** By signing this Agreement, CONTRACTOR certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, which include:

1. **Tuberculosis Screening:** CONTRACTOR is required to screen employees who will be working at OUSD sites for more than six hours. CONTRACTOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code 49406 within the prior 60 days. If tuberculosis risk factors are identified, CONTRACTOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, the CONTRACTOR agent shall obtain an x-ray of the lungs. At his/her discretion, CONTRACTOR agent may choose to submit to the examination instead of the risk assessment.
2. **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 Agreement and 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 Agreement, 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 Agreement."

In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an 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.

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. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate CONTRACTOR in any manner which is permissible under the law. OUSD's evaluation may include, without limitation:
1. Requesting that OUSD employee(s) evaluate CONTRACTOR and CONTRACTOR's employees and subcontractors and each of their performance.
  2. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).

18. **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.
19. **Confidentiality:** CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement. Contractors will be permitted access to student data only where permissible under state and federal law and only after executing OUSD's Confidentiality Agreement Regarding Student Data.
20. **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.
21. **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/>).
22. **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.
23. **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.
24. **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.
25. **Calculation of Time:** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
26. **Copyright/Trademark/Patent/Ownership:** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD (specifically excluding any underlying pre-existing intellectual property). OUSD may, with CONTRACTOR's prior written consent, use CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
27. **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.
28. **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.
29. **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.

Professional Services Contract

- 30. **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.
- 31. **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.
- 32. **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.
- 33. **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.
- 34. **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.
- 35. **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.
- 36. **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.
- 37. **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

*Amie Eng*

12/17/2018 12:

President, Board of Education

Date

Superintendent

Chief or Deputy Chief

*John P. ...*

12/17/2018

Secretary, Board of Education

Date

CONTRACTOR

Swun Math, LLC

10/10/2018

Contractor Signature

Date

Si Swun, CEO

Print Name, Title

Form approved by OUSD General Counsel for 2018-19 FY



Amendment

- 6. **Approval:** Approval requires signature by the Board of Education and/or the Superintendent. Amendment shall be deemed approved when it has been signed by the Board of Education, or as its designee.

OAKLAND UNIFIED SCHOOL DISTRICT

- President, Board of Education
- Superintendent
- Chief or Deputy Chief

Secretary, Board of Education

Date

Form approved by OUSD General Counsel for 2018-19 FY

CONTRACTOR



Contractor Signature

SI SWAN, CE

Print Name, Title

## EXHIBIT "A" SCOPE OF WORK

[IF A CONTRACTOR PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES MAY BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

1. **Description of Services to be Provided:** Provide a description of the service(s) the contractor will provide. Be specific about what service(s) OUSD is purchasing and what *this* Contractor will do.

See Attached Scope of Work

2. **Specific Outcomes:** What are the expected outcomes from the services of this Contract? Be specific. For example, as a result of the service(s): 1) How many more Oakland children are graduating from high school? 2) How many more Oakland children are attending school 95% or more? 3) How many more students have meaningful internships and/or paying jobs? 4) How many more Oakland children have access to, and use, the health services they need? Provide details of program participation (Students will...) and measurable outcomes (Participants will be able to...). NOT THE GOALS OF THE SITE OR DEPARTMENT.

Goal: to increase student achievement in mathematics through the development and implementation of a daily 90-minute math model for grades TK-5 students in Oakland USD for Futures and CUES Elementary. Key features of this program include a pacing guide utilizing Swun math CCS Lessons, common pre-and post-trimester exams, teaching strategies (Phase I lesson design/ Phase II Inquiry based Instruction, group work techniques, academic language development, writing skills, etc.), monthly coaching support/site visits by contractor for both teachers and principals.

3. **Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds):**

Please select:

**Action Item included in Board Approved SPSA** (no additional documentation required) – Item Number: \_\_\_\_\_ Central - No CS!

**Action Item added as modification to Board Approved SPSA** – Submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.

1. Relevant page of SPSA with action item highlighted. Page must include header with the word "Modified", modification date, school site name, both principal and school site council chair initials and date.
2. Meeting announcement for meeting in which the SPSA modification was approved.
3. Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
4. Sign-in sheet for meeting in which the SPSA modification was approved.



**SWUN MATH**  
DEVELOPING MATH MINDS FOR TOMORROW

10073 Valley View #116 Cypress, CA 90630 • (714) 600 -1130

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Goal: to increase student achievement in mathematics through the development and implementation of a daily 90-minute math model for **grades TK-5** students in Oakland USD for Futures and CUES Elementary. Key features of this program include a pacing guide utilizing Swun math CCS Lessons, common pre-and post-trimester exams, teaching strategies (Phase I lesson design/ Phase II ***Inquiry based Instruction***, group work techniques, academic language development, writing skills, etc.), monthly coaching support/site visits by contractor for both teachers and principals.

- Math pacing guides that promote and support instruction of the essential CCS Standards as well as grade level and vertical alignment
- Lessons/Curriculum support for grades TK-5 Common Core Standards
- Web based CCS curriculum support for classroom and at home
- Standards-aligned benchmark assessments that spiral in key standards learned in earlier trimesters or quarters
- Math fluency assessments for Common Core Math Standards that require automaticity
- Formative unit assessments that enable teachers to adjust their instruction to meet student needs
- *Beyond the Basic Facts* intervention materials for grades K-5
- Content and instructional strategies-based professional development four times a year: teachers and administrators attend the same sessions to build common language, consistent expectations, and mutual support
- Monthly coaching and site support for teachers and site administrators (demonstration lessons, co-plan/co-teach, observations and debrief, teacher collaboration, development of quizzes, data cycles)
- Ongoing coaching and site support for site administrators as well as professional development on instructional leadership
- Coordination of services through quarterly meetings with site and district administrators
- 2 Parent workshops
- Swun Math will provide all Professional Development materials for teachers *only*. (all additional materials including consumables are the responsibility of the school/districts)
- All teachers manual will be included

**The following services are included in 2017-18 Contract:**

**K - 5 Math Pacing Guide Development**

Grades K- 5 Pacing Guides aligned with district Calendar

(One pacing guide per site teacher)

**Assessments**

**Grades K -5 Benchmark Assessments and Performance Tasks**

Includes 7 benchmark assessments/grade: pre-/post-trimester exams

(One master set per site teacher; site responsible for making class sets)

**Formative/Unit Assessments, Constructed Response Short and Extended**

Includes 10-14 formative/unit assessments per grade level

(One master set per site teacher; site responsible for making class sets)

Math Fluency Timed Assessments to be used to support learning

targets for each grade level (4 versions of addition,

subtraction, multiplication, division, integers, fractions, percents, proportions)

(one master set per site teacher; site responsible for making class sets)

**SWUN MATH PD & SITE SUPPORT SERVICES**

**Professional Development for Teachers & Administrators (1-2 Consultants)**

Site provides substitutes/release time.

Frontloading Trimester 1 – 2 days per grade

Trimester 2 – will coordinate with site

Trimester 3 – will coordinate with site

**Teacher/Site Coaching & Support (2-3 Swun Math consultants)**

**Futures** 2 day per site support visit/month x 9 months = \$ 80,000 (18 days of elementary support)

**CUES** 2 day per site support visit/month x 9 months = \$ 80,000 (18 days of elementary support)

**La Escuelita** (2 days of elementary support = \$10,000)

**Piedmont** (2 days of elementary support = \$10,000)

**Markham** (1 days of elementary support = \$5000)

**Admin/Site Coaching & Support for Elementary Grades (2 Swun Math consultants)**

5 Days PD days for leadership/teacher professional development and coaching = \$ 25,000

**Professional Development/Monthly coaching – \$210,000**