

Board Office Use: <b>Legislative File Info.</b>	
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Introduction Date	10/08/2014
Enactment Number	14-1755
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# Memo

**To** Board of Education

**From** Allen Smith, Chief of Schools  
Jacqueline Minor, General Counsel

**Board Meeting Date** October 8, 2014

**Subject** **MOU Between The District And JCC East Bay Dba Kids Club For Before And After School Programs For Cleveland Elementary Schools**

**Action Requested** **Ratification of MOU Between The District And JCC East Bay Dba Kids Club For Before And After School Programs For Cleveland Elementary Schools**

**Background** The District issued RFP 2014-5-1-JMCEH for on-site before and after school services and programs for Joaquin Miller Elementary School and Cleveland Elementary School. The programs at the Schools are entirely self-supporting. The tuition and program fees for the before and after school programs is paid by families. After a thorough evaluation process, including interviews by Evaluation Committees at both Schools and ranking by Evaluation Committee members, the District issued a notice of intent to award the contract for the provision of before and after school services for Cleveland Elementary School and Joaquin Miller Elementary School to JCC East Bay, dba Kids Club. Both Schools' Evaluation Committees ranked Kids Club as the first choice.

**Discussion** The MOU is for a three year term and is modeled after the Agreements used for after school programs funded with 21<sup>st</sup> Century funds. The JCC will pay \$236 per month use fee per month.

**Recommendation** **Ratification of MOU Between The District And JCC East Bay Dba Kids Club For Before And After School Programs For Cleveland Elementary Schools**

**Fiscal Impact** N/A -- The tuition and program fees for the before and after school programs is paid by families; District will receive revenues of \$2,832 per year after the license is approved

**Attachments**

- MOU Between The District And JCC East Bay Dba Kids Club For Before And After School Programs For Cleveland Elementary Schools

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**OAKLAND UNIFIED SCHOOL DISTRICT AND**  
**JEWISH COMMUNITY CENTER OF THE EAST BAY, INC.**  
**BEFORE AND AFTER SCHOOL PROGRAMS**  
**FOR CLEVELAND ELEMENTARY SCHOOL**

**PREAMBLE**

The Oakland Unified School District (the “District” or “OUSD”) issued RFP 2014-5-1-JMCEH for on-site before and after school services and Programs for Cleveland Elementary School (“the Program” or “program”). The Program at the School is entirely self-supporting. The tuition and program fees for the before and after school program is paid by families. After a thorough evaluation process, including interviews by the Evaluation Committees and ranking by Evaluation Committee members, OUSD issued a notice of intent to award the contract for the provision of before and after school services for Cleveland Elementary School to Jewish Community Center Of The East Bay, a California non-profit corporation (hereafter “JCC”). The Cleveland School’s Evaluation Committee ranked JCC as the first choice. In addition to this Agreement, OUSD will enter into a Joint-Use Lease Agreement with the JCC for the school to provide space on the school campus for the before and after school programs. The Joint Use fee will be a fixed rent, based upon actual square footage allocated for the Program in an amount not to exceed in the sum of \$ per month for the period from August 25, 2014 to August 24, 2015. Commencing August 25, 2015, the amount of rent to be paid under the Joint-Use Lease Agreement will be modified and fixed based upon the adjusted rent formula set forth in Section 5.2 of the Joint-Use Lease Agreement. All rent shall be subject to the forgiveness provision set forth in Section 5.3 of the Joint-Use Lease Agreement.

**THE AGREEMENT**

This Agreement is entered into between OUSD and the JCC (“CONTRACTOR”). The Parties agree as follows:

1. **Services:** CONTRACTOR shall serve as the lead agency for the Program, consisting of before and after school programs at Cleveland. In addition to providing direct services and programs to students, CONTRACTOR shall assume overall responsibility for the coordination of the enrichment programs offered by independent contractors and other service providers at both School sites. As lead agency, CONTRACTOR’s responsibilities include coordination of all other service providers and compliance by them with school procedures, the safe movement of students between programs, compliance by all vendors at the site with insurance, TB testing and fingerprinting requirements, providing oversight in

the event of incidents or accidents, reporting as required by mandated reporter laws, ensuring effective communications with families, and coordinating with school site administration as necessary. Notwithstanding the foregoing, the breach of the obligations, duties or performance on the part of any service provider under its agreement with CONTRACTOR shall not be deemed a breach on the part of CONTRACTOR under this Agreement, if and so long as CONTRACTOR takes timely and appropriate remedial action against such service provider.

2. **Term:** The term of this MOU shall be August 25, 2014 to August 24, 2017 and may be extended by written agreement of both Parties or terminated as provided herein; provided however, that, in acknowledgement by the Parties that the first year is a “pilot program” for CONTRACTOR, the Parties further agree that *either* Party may terminate this Agreement upon not less than 60 days notice in writing to the other. It is anticipated, however, that in advance of any such notice the Parties will meet and confer with one another following which reasonable efforts will be made by both Parties to resolve any and all issues which have been identified as a basis for such notice of termination with the mutual goal of preserving this Agreement. This provision shall be read consistently with the agreements set forth in Section 21 below.
3. **Compensation:** The Program at the School is entirely self-supporting, and no additional fee shall be paid by OUSD to CONTRACTOR. The tuition and program fees for the before and after school Program is to be paid by families at no additional cost to the District, except as otherwise agreed in writing and incorporated into this Agreement.
4. **Program Fees Charged to Families:** CONTRACTOR agrees that during the term of this Agreement, no fees shall increase by more than 10% from the then-existing fees, unless there is 90 days prior written notice to the Site Principal. In the event the Site Principal objects to any increase beyond the permitted 10% over the then-existing fees, (or, in the case of adjustments made at the beginning of a new program year in which the fees are in excess of 10% more than the previous year’s monthly fees), the Parties shall meet and confer to understand the justification for the increase. The Site Principal may seek assistance the District if she/he believes the increase is not justified, and, failing a resolution of this issue, either party’s sole remedy against the other will be to terminate this Agreement in the manner provided in Section 2 above.
5. **Scholarship Participation.** CONTRACTOR shall not be required to participate in the funding of any scholarship program.
6. **Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
7. **Facilities:** OUSD will provide suitable space for the operation of the Program, including access and use of restroom areas, all of which shall be governed under a separate Joint-Use Lease Agreement. The terms of the Joint-Use Agreement shall be approved by CONTRACTOR in advance of its execution of this Agreement.

Additionally OUSD shall warrant that all facilities subject to the Joint-Use Agreement are code-compliant and suitable for the intended use – and that the facilities shall remain code-compliant and maintained in good order and repair by OUSD at its sole expense during the term of this Agreement and the Joint-Use Agreement.

8. **Program:**

- a. **Enrollment.** CONTRACTOR shall enroll students on a first come basis. Special circumstances which may warrant a change in the method of enrollment should be discussed with the Site Administrator and consensus reached as to how best to

meet the needs of the student(s) or families involved. Unless otherwise advised by OUSD, the Site Administrator shall be the school principal.

**b. Program Requirements.**

**i. Program Hours.** Subject to modification by the Site Administrator, the morning Programs at each School will begin at 7:00 AM and the afternoon Programs will begin after dismissal from the Schools and be available to families until 6:00 PM, Monday through Friday during school days. The CONTRACTOR and Site Administrator may agree that modified Program hours may be offered during school holidays, summer intersession and vacation. Any closure of the Program for staff professional development must be approved by the Site Administrator at least 30 days in advance of the planned closure.

**ii. Program Components**

CONTRACTOR shall provide after school Programming that is designed to meet the needs of each School by offering services, Programs, and activities designed to complement the regular school day, including but not limited to unstructured play, academic support/assistance and enrichment classes. Enrichment may, but is not required to include arts, youth development, leadership, recreation, sports, music, college interest, service learning and other youth development activities based upon student needs and interests. All Programs must offer both enrichment and recreation/physical fitness activities as core components of the after school Program and summer Program.

- c. Snacks/Supper/Beverages:** CONTRACTOR will commit to participate in the snack/beverage program provided by OUSD Nutrition Services, and to execute a separate food services agreement, if required, that is consistent with the terms of this Agreement; provided, however, any such food services agreement shall provide for the right of either party to terminate any obligations it may have to the other under the food services agreement at no liability to such terminating party, if this MOU terminates for any reason.
- d. Staff Ratio.** The staff to youth ratio shall not exceed 1:14, with no more than 14 youth for each qualified, adult staff supervisor; provided, however, that this provision is subject to modification under any addendum executed by the parties due to matters pertaining to the licensing requirement set forth in Section 18 below.
- e. Maintain Clean, Safe and Secure Environment.** CONTRACTOR shall maintain clean, safe, and secure Program environments for staff and students. CONTRACTOR, will initiate and establish additional cleanliness, safety, and security policies and protocol sufficient to ensure staff, student and family member safety.
- f. Meeting Participation.** CONTRACTOR will participate in regular meetings with the school principal or other identified designee to ensure collaboration with the school vision. This requirement shall be mutually binding upon OUSD.



**8. Field Trip Policy:** Absent further agreements in writing, CONTRACTOR shall not be required to provide field trips.

**9. 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. 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. Any notice required under this Agreement may be given by U.S. Mail, certified with return receipt, facsimile with proof of service or email. Persons holding the following positions shall be appropriate for the service of such notice:

For CONTRACTOR:

Chief Executive Officer, Amy Tobin, Jewish Community Center of the East Bay (JCC East Bay), 1414 Walnut Street, Berkeley, CA 94709, 510-848-0237 x \_\_, [amyt@jceeastbay.org](mailto:amyt@jceeastbay.org) | [www.jceeastbay.org](http://www.jceeastbay.org)

Chief Financial Officer, Ron Feldman, Jewish Community Center of the East Bay (JCC East Bay), 1414 Walnut Street, Berkeley, CA 94709, 510-848-0237 x 146 [ronf@jceeastbay.org](mailto:ronf@jceeastbay.org) | [www.jceeastbay.org](http://www.jceeastbay.org)

For OUSD:

Cleveland Elementary School, Attn: Mr. Peter Van Tassel, Principal  
Cleveland Elementary School  
745 Cleveland St, Oakland, CA 94606  
(510) 874-3600  
[peter.vantassel@ousd.k12.ca.us](mailto:peter.vantassel@ousd.k12.ca.us)

Jacqueline Minor, General Counsel  
[Jacqueline.minor@ousd.k12.ca.us](mailto:Jacqueline.minor@ousd.k12.ca.us)

**10. Conduct of CONTRACTOR:** By signing this Agreement, Contractor certifies compliance with:

- Child Abuse and Neglect Reporting Act guidelines for Mandated Reporters as required by California Penal Code § 11164 – 11174.
- Fingerprinting and background checks for all employees, contractors, agents and volunteers before they have contact with any District students (Education Code Section 45125.1(e).), CONTRACTOR shall not permit its employees or agents to come into contact with students until California Department of Justice and FBI clearance is ascertained.
- Current documentation of negative TB Test (PPD) on file for each CONTRACTOR agent, employees or volunteers who have contact with District students.

**11. Removal of Staff.** In the event that OUSD, in its sole discretion, at any time during the term of this MOU, desires the removal of any CONTRACTOR related persons, employee, representative or

agent from 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. In the event OUSD requests the removal of any CONTRACTOR related persons, employee, representative or agent from OUSD school site and/or property, the OUSD site administrator shall provide to the CONTRACTOR written, supporting rationale for the decision. The Network Superintendent for the School Site, after conferring with Legal, shall decide, taking all the facts and circumstances into account, if CONTRACTOR may reassign an employee or agent to another OUSD site. Prior to the removal or change of any CONTRACTOR staff member who is a regular part of the after school Program, CONTRACTOR shall inform the Site Administrator with as much notice as possible, and will work with the Site Administrator to ensure a smooth transition in staffing.

**12. Drug-Free / Smoke Free Policy.** CONTRACTOR understands that OUSD does not permit drugs, alcohol, and/or smoking at any time in any buildings and/or grounds on OUSD property. CONTRACTOR agrees to adhere to this policy for its students, staff, visitors, employees and or subcontractors.

**13. Non-Discrimination.** CONTRACTOR agrees to comply with applicable Federal and California laws prohibiting discrimination in providing services under this Agreement. Consistent with the policy of OUSD in connection with all work performed under Contracts, 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 or sexual orientation. 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. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s).

**14. Indemnification.**

a. OUSD agrees to indemnify, to defend at its sole expense, to save and hold harmless CONTRACTOR, its officers, agents, and employees, , from any and all liability and judgments of any kind whatsoever, in addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements and causes of action of any kind in law or equity (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts, or omissions of OUSD or its employees, agents, subcontractors or volunteers arising out of performance of its obligations in this Agreement.

b. CONTRACTOR agrees to indemnify, to defend at its sole expense, to save and hold harmless OUSD, its officers, agents, and employees from any and all liability and judgments of any kind whatsoever, in addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements and causes of action of any kind in law or equity (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts, or omissions of CONTRACTOR or its employees, agents, subcontractors of its performance of its obligations in this Agreement.

**15. Insurance.** Throughout the term of the MOU, CONTRACTOR shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A/VII" in Best Insurance Rating Guide, the following policies of insurance:

- a. Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury, sexual misconduct and harassment, death and property damage, such Liability Insurance to be in an amount not less than Five Million Dollars (\$5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000) from the aggregate of all occurrences within each policy year, which insurance may at the option of CONTRACTOR consist of One Million Dollars (\$1,000,000) in primary coverage with the balance in excess coverage.
- b. Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the contractor, or its contractors and subcontractors at or in connection with the Work.
- c. Auto insurance to the extent any vehicles are owned by CONTRACTOR, and used in the course of its performance under this Agreement, whether or not the same is/are parked at the School Site. As to any such vehicles, liability coverage shall be not less than One Hundred Thousand Dollars (\$100,000) single limit.
- d. Each insurance policy shall be issued in the name of CONTRACTOR and shall not be cancelable or reduced without thirty (30) days prior written notice to the District.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of OUSD and endorsed to name the OUSD, its officers, employees, volunteers or agents, as additional insured. Said Additional Insured endorsement shall be provided to OUSD upon CONTRACTOR’s execution of this MOU and before work commence under this MOU. If at any time said policies of insurance lapse or become canceled, this MOU shall become void. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or CONTRACTOR to OUSD.

**16. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** OUSD certifies to the best of 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 CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, CONTRACTOR verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**17. 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.



**18. Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement. OUSD shall obtain and keep current all use permits required and issued by the City of Oakland Fire Department.

**19. 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.

**20. Termination:** Either party may at any time and for any reason terminate this Agreement upon 60 days prior written notice to the other upon the terms and conditions set forth in Section 2 above. .

**21. 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, excepting insurers.

**22. 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.

**23. Dispute Resolution:**

a. Notwithstanding anything in this Agreement to the contrary, prior to the initiation of any litigation, disputes between OUSD and CONTRACTOR regarding this Agreement shall be handled as follows:

b. In the event of a dispute, the party initiating the dispute resolution process shall prepare and send to the other party a notice of dispute that shall include the following information: (1) the name, addresses and phone numbers of designated representatives of the party (the designated representatives must be an employees(s) of CONTRACTOR or the District); (2) a statement of the facts of the dispute, including information regarding the parties attempts to resolve the dispute; (3) the specific sections of the Agreement that are in dispute; and (4) the specific resolution sought by the party. Within five (5) business days from receipt of the notice of dispute the representatives from CONTRACTOR shall meet with representatives from OUSD in an informal setting to try to resolve the dispute.

c. If the informal meeting fails to resolve the dispute the party initiating the dispute resolution process shall notify the other party (the responding party) in writing that it intends to proceed to mediation of the dispute and shall request the State Mediation and Conciliation Service to appoint a mediator within ten (10) business days to assist the parties in resolving the dispute (if the State Mediation and Conciliation Service ("SMCS") is unable or refuses to provide a mediator the parties shall mutually agree upon a mediator with fifteen (15) days from notice that SMCS will be unable to provide a mediator). The initiating party shall request appointment of a mediator who is available to meet as soon as possible but not later than 30 calendar days after receipt of the request for appointment. The party initiating the dispute shall forward a copy of the notice of the dispute to the appointed mediator. The responding party shall file a written response with the mediator and serve a copy on the initiating party within seven (7) business days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party bases its case shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. All matters discussed in the mediation will be privileged and shall not be used for any purpose outside of the confines of the mediation, except upon the agreement of



both parties. If an agreement is reached, the agreement shall be reduced to writing and shall be signed by OUSD and CONTRACTOR.

d. The costs of the mediator shall be divided equally between and among the parties.

e. Neither party may commence a civil action related to the matters submitted to mediation until after the completion of the initial mediation session, or, if the party receiving the request fails to agree to mediate as provided herein, then such civil action may be commenced not earlier than 60 calendar days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

f. In order to preserve its rights, CONTRACTOR may elect to proceed with the claims presentation process under Government Code section 900 et. seq. at any time, unless the time to present such claim is extended in writing by OUSD while the parties proceed to mediation. Either party may file equitable remedies such as injunctive relief while proceeding through mediation in order to preserve the status quo.

**24. Litigation:** This Agreement shall be performed in Oakland, California and 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 Agreement.

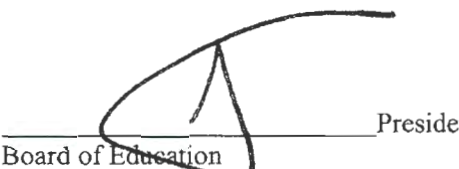
**25. Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

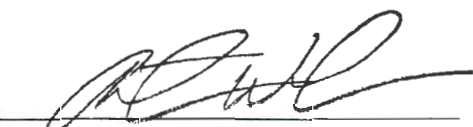
The Parties enter into this Agreement by signing below.

**Jewish Community Center Of The East Bay, Inc**

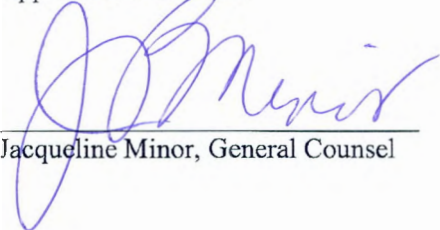
  
By: Amy Tobin  
Chief Executive Officer

**The Oakland Unified School District**

  
President,  
Board of Education  
Oakland Unified School District

  
Secretary, Board of Education  
Oakland Unified School District

Approved As to Form

  
Jacqueline Minor, General Counsel

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