

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	13-1567
Introduction Date	June 26, 2013
Enactment Number	13-1336
Enactment Date	6-26-13 <i>J</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** June 26, 2013

**Subject** **Approval of AGREEMENT WITH Ujimaa Foundation, LLC To Provide Transportation from Lakeview Elementary School Site to Burckhalter Elementary School**

**Action Requested** Approval of the Agreement With Ujimaa Foundation, LLC

**Background**

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

As part of the support for certain eligible families of Lakeview Elementary School, the District has agreed to provide transportation from the Lakeview School site to Burckhalter Elementary School.

**Discussion**

*One paragraph summary of the scope of work.*

The Agreement is for the period from August 1, 2013 to June 30, 2014 for Ujimaa Foundation, LLC to transport certain students from the former Lakeview Elementary School to Burckhalter School in the District. Ujimaa Foundation, LLC will be paid \$42,000 annually.

**Recommendation**

Approval of the Agreement with Ujimaa Foundation, LLC

**Fiscal Impact**

GP -- \$42,000

**Attachments**

- Agreement

**AGREEMENT FOR THE PROVISION OF  
TRANSPORTATION SERVICES  
THE OAKLAND UNIFIED SCHOOL DISTRICT,  
AND  
UJIMAA FOUNDATION**

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## **AGREEMENT FOR THE PROVISION OF TRANSPORTATION SERVICES**

THIS AGREEMENT ("Agreement") is entered into as of August 1, 2013 between the Ujimaa Foundation, LLC ("Contractor") and the District School District (the "District"), for Contractor to transport certain students from the former Lakeview Elementary School to Burckhalter Elementary School. The parties specifically agree that all buses used must be S.P.A.B. certified and that this agreement is subject to Section 546 of the California Vehicle Code which provides: A "school pupil activity bus" is any motor vehicle, other than a schoolbus, operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, or by a passenger charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th-grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when the pupils are received and discharged at off-highway locations where a parent or adult designated by the parent is present to accept the pupil or place the pupil on the bus.

The driver of a school pupil activity bus shall be subject to the regulations adopted by the California Highway Patrol governing schoolbus drivers, except that the regulations shall not require drivers to duplicate training or schooling that they have otherwise received which is equivalent to that required pursuant to the regulations, and the regulations shall not require drivers to take training in first aid. However, a valid certificate to drive a school pupil activity bus shall not entitle the bearer to drive a schoolbus.

NOW THEREFORE, for a valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

### **ARTICLE 1 - Term**

The term of this Agreement shall commence on August 1, 2013 and shall terminate June 30, 2014; after the initial term, the Agreement may be extended yearly for additional one year terms upon mutual agreement of both parties. The Agreement may be terminated by the District at any time with 90 days prior written notice to the Contractor.

### **ARTICLE 2 - Fees For Services**

The Contractor shall be paid the \$42,000 annually. The Contractor shall invoice the District in eleven equal monthly installments, commencing August 15, 2013. Contractor shall be paid therefore within thirty (30) days after the District's receipt of the Contractor's invoice for the provision of the Services.

### **ARTICLE 3 - Vehicles**

The Contractor agrees to supply, at its sole cost and expense, such vehicles ("Vehicles") as may be necessary to lawfully perform the Services. All such Vehicles shall fully comply with all applicable laws and regulations. The Contractor shall be solely responsible for all Vehicles used in transporting students.

#### **ARTICLE 4 - Contractors Personnel**

The Contractor shall, at its sole cost and expense, provide qualified and properly licensed personnel, as required by laws and regulations and as deemed appropriate by the Contractor to perform the Services. While Contractor may use independent Contractor drivers to provide Services under this Agreement, Contractor shall at all times remain responsible for the provision of Services under this Agreement. The Contractor expressly represents and warrants to the District that its personnel, including independent Contractor drivers, are trained, tested and properly licensed to perform the Services.

Contractor must ensure compliance with all state and federal laws and ensure that 1) all drivers are at least 21 years old; 2) are properly licensed; 3) are properly insured; 4) and the driver has not been convicted of reckless driving or driving under the influence of drugs or alcohol within the past five years. Contractor will conduct DMV checks of all drivers prior to commencement of the school year and January 2014 and at any other time there is reason to believe a driver may be non-compliant.

#### **ARTICLE 5 - Contractors Insurance**

Commercial General Liability Insurance: 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 and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

- Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.
  - Contractor does not employ anyone in the manner subject to the workers' compensation laws of California.
- ii. Contractor shall maintain Commercial General Liability insurance, including automobile coverage with limits of Five Million Dollars (\$5,000,000) 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.

Endorsement 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 Contractor. The policy shall protect Contractor and the District 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.

#### **ARTICLE 6 - Additional Requirements**

- A. Burckhalter will ensure that all parent/guardians sign District approved written consent and release including emergency contact info, health info and authorization for medical treatment. Consent form will also include whether parents provide written consent for their children to walk to or from before or after school program and/or designate authorized adults who may pick their child up. Parents must be informed that there is no District insurance covering transport or any loss or injuries resulting from transport.
- B. Parent/guardians will be provided a contact number for driver/dispatch.
- C. Contractor shall have a copy of the consent and medical authorization for each student.
- D. The ratio of students to adults during transport shall be no more than 1:15.
- E. Contractor shall use vans no larger than 15 passenger for transport of students under this Agreement.
- F. Contractor's drivers shall have available at all times the cell phone contact for the Co-Principals at Burckhalter.
- G. Vans will be inspected by District approved inspector prior to start of school year. Thereafter all transport vehicles must be regularly inspected for safety and must contain all equipment legally required for transport of children.
- H. Contractor agrees to continue performing all recommended vehicle maintenance through a reputable commercial service (currently Valero) per manufacturer guidelines.
- I. Contractor shall ensure that students receive instruction in safe conduct during van transport; and drivers shall receive safety and emergency instructions and have immediate access to health and emergency contract information for each student riding in his/her vehicle.
- J. Contractor drivers will maintain a daily log of students who arrive and are transported, with time of arrival and departure noted on log ("daily log"). All daily logs will be maintained and secured for two years.
- K. Holding area at Lakeview will be designated by District and available for use as deemed necessary by Contractor.

- L. The vans will not await late arrivals. Parents who are late will need to arrange alternate transportation for their child that day at their own expense.
- M. Transport vehicles will transport children directly to/from Burckhalter Elementary without any side trips, unless parent/guardians have signed consent and release of liability for side trips in advance and the consent and releases are already on file at Burckhalter.
- N. Contractor shall provide at least two monitors to assist at the departure and drop off and to ride with students on the vans during the morning and afternoon transports.

#### **ARTICLE 7 - Fingerprint Clearance**

The Contractor shall require each employee or independent Contractor driver in a position requiring contact with students to be fingerprinted and cleared by the state Department of Justice (DOJ) and Federal Bureau of Investigations (FBI) verifying that none of its employees and independent Contractor drivers has been convicted of or pleaded nolo contendere to a felony or any sex offense.

#### **ARTICLE 8 - Health and Safety (Tuberculosis Testing)**

The Contractor shall require that all independent Contractor drivers and other individuals who may come in contact with student(s) provide verification of having been tested for tuberculosis (TB) and cleared to work with students, as evidenced by a state licensed medical doctor's signature. The Contractor shall keep a copy of said information in the independent Contractor driver or employee file.

#### **ARTICLE 9 - Drug and Alcohol Testing**

The Contractor shall require that all employees and independent Contractor drivers and other individuals who may come in contact with student(s) shall be subjected to pre-employment or pre-contract, just cause and on-going random drug and alcohol testing in accordance with the requirements of federal law. Contractor agrees to immediately dismiss any employee or independent Contractor driver who tested positive for drugs or alcohol in violation of applicable law, rule or regulation.

#### **ARTICLE 10 - Assignment of Contractor's Rights**

Except as it relates to the hiring of independent Contractor drivers, the Contractor shall have no right to assign its rights or obligations under this Agreement, it being understood that this is a personal services agreement.

#### **ARTICLE 11 - Indemnity of the District**

Contractor agrees to hold harmless, indemnify, and defend the District and its 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 Agreement. Contractor 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 Contractor in connection with the performance of this Agreement. This provision survives termination of this Agreement.

### **ARTICLE 12 - Independent Contractor**

In providing the Services, the Contractor shall be and act as an independent Contractor in all respects and shall not, for any purpose hereunder, be or act as an employee or agent of the District. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between either of the parties to this Agreement with each other. The Contractor understands and agrees that as an independent Contractor, it will not be eligible to participate in any benefits or privileges given or extended by the District to its employees. The Contractor shall be solely responsible for the payment when due to appropriate taxing authorities of all federal and state income taxes and related obligations of any nature whatsoever on any consideration paid pursuant to this Agreement, as well as any interest, penalties or other sums due thereon and shall indemnify, defend and hold the District, its Board Members, Officers, employees and agents free and harmless therefrom.

### **ARTICLE 13 - Notices**

All notices or other communication required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered or certified mail, postage prepaid, return receipt requested, or by facsimile or email transmission followed by delivery of a "hard" copy, and shall be deemed received upon the date of receipt thereof.

Contractor: Blu Pride  
Executive Director  
Ujimaa Foundation  
835 Isabella Street  
Oakland, CA. 94607  
ph: 510- 282-2997  
fax: 510-251-0796  
[blupride@Ujimaafoundation.org](mailto:blupride@Ujimaafoundation.org)

The District: Denise Saddler, Executive Officer  
[Denise.saddler@ousd.k12.ca.us](mailto:Denise.saddler@ousd.k12.ca.us)  
510-544-9137

### **ARTICLE 14 - Entire Agreement**

This Agreement and the attached proposal constitute the entire Agreement between the parties with respect to the provision of the Service and may not be amended except by a writing signed by each of the parties.

## **ARTICLE 15 - Waivers**

The waiver by each party of a breach or violation of any provisions of this agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this agreement.

## **ARTICLE 16 - Force Majeure**

Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities by the Government, or any other occurrence which is beyond the control of the Contractor, when satisfactory evidence thereof is presented to the District.

## **ARTICLE 17 - Routing and Scheduling**

Prior to the start of any service under this Agreement, the District and Contractor shall cooperatively establish routes and schedules. If, at any time during the term of the Agreement, it is determined that service may be improved by the revisions to routing, scheduling, or vehicle assignment, the District and Contractor shall plan and institute such changes jointly. All routes and schedules shall initially be established by Contractor on such basis as may be determined by it to be most efficient, but shall be approved by the District.

Contractor shall notify the District whenever changes are necessary in routes or time schedules and Contractor shall make a reasonable effort to adjust its operations to incorporate such changes within five (5) business days after notice is given to the District. The District shall notify Contractor whenever changes are necessary in routes or time schedules and Contractor shall make a reasonable effort to adjust its operations to incorporate such changes within five (5) business days after notice is received from the District. The District and Contractor shall consult as to portions of routes that Contractor considers to be a safety concern due to traffic patterns or configurations. In the event Contractor believes any route presents an unacceptable safety risk to Contractor's property or students, Contractor may reject the route portion requested by the District and provide the District with alternative designations by written notice.

The District reserves the right to change school hours, bus routes and schedules at any time; provided however, that the Contractor will be given at least two (2) days prior written notice after the first few weeks following the start of school.

The Contractor shall notify the Co-Principals at Burckhalter in advance of any delay from normal schedule for any reason.

All accidents shall be reported to the District's Risk Manager at 510-273-0475 and Claims Manager at 510-273-3282.

In the event of a lost or missing student, the Contractor shall provide all assistance requested by the District to locate the student.



The District shall designate personnel who shall be responsible for coordination of the student transportation requirements furnished under this Agreement and who shall be that School District's liaison to Contractor. The District will designate a crisis management contact person for emergency contact with Contractor. By August 1<sup>st</sup> of each calendar year, the District shall inform Contractor of the name(s), contact telephone number(s) and address(es) of such management personnel.

### **ARTICLE 18 - Operations Personnel/Driver Qualifications**

Contractor shall employ or retain a sufficient number of qualified drivers and support personnel to assure the District of continuous, reliable, safe, and on time service. Contractor shall also employ or retain substitute drivers to assure the District of continuous and on time service.

Contractor shall take reasonable steps to prevent its employees from exposing any pupil to impropriety of word or conduct. Contractor shall **not** permit its drivers to smoke on the vehicle. Contractor shall require that drivers comply with all safety laws and regulations, including but not limited to the prohibition against driving under the influence of drugs or alcohol. Such prohibition shall extend to the use of prescription and non-prescription drugs that impair the safe operation of the vehicle.

Contractor shall be responsible for hiring and discharging personnel employed by Contractor; provided, however, that the District shall have the right to require Contractor to remove from service any employee who, in the District's sole discretion, is deemed unsuitable for the performance of transportation services for the District. The District may make sure request in writing and state the reasons therefore. Reasons may include failure of any driver to operate a vehicle in a safe manner, in accordance with the laws of the state of California and the ordinances of any city in which such vehicle operates, or a finding by the District that the personal habits and/or conduct of an employee are detrimental to the best interests of the District or to the welfare and bests interest of the students being transported

### **ARTICLE 19 - Discipline**

The Contractor will submit a written report of serious or persistent misconduct on the part of students to the designated person employed by the District within 24 hours of occurrence. The District shall then impose reasonable disciplinary measures upon the students in accordance with its discipline management program. The Contractor may refuse to transport any student who, based upon past conduct, presents a potential danger to other persons. The District notify driver of students who have current IEP behavior plans and the District will provide driver training if needed. The District will provide Contractor with IEP Behavior Plan information as necessary for implementation during transportation. Contractor agrees that it will use IEP Behavior Plan information only for this purpose and acknowledges that it is prohibited by law from sharing this information. Contractor has 'legitimate education interests' in any student information which it uses, maintains or has access; and that Contractor is under the direct control of the District with respect to the use and maintenance of information from educational records.

## **ARTICLE 20 - Compliance with the Law**

Notwithstanding any contrary provision in this Agreement, Contractor shall comply with federal, state and local laws, rules and regulations in providing transportation services described herein.

## **ARTICLE 21 - Dispute Resolution**

The parties agree to meet and confer in good faith on all matters and disputes under this Agreement. If a dispute is not resolved under the foregoing, and one party informs the other in writing that it reasonably believes that the difference between the parties are not likely to be reconciled through further negotiation, then the parties agree to submit such dispute to non-binding arbitration under the Commercial Rules of American Arbitration Association. Such arbitration will be held as promptly as possible in Alameda County, California and will be conducted before a panel of three (3) members. The District and the Contractor shall each select one arbitrator, and the third arbitrator shall be selected by agreement of the other two arbitrators so chosen. All costs and expenses associated with the arbitration shall be borne entirely by the non-prevailing party.

## **ARTICLE 22 - Severability**

In the event any of the provisions, or portions, or portions thereof, of this Agreement is held to be unenforceable or invalid, by any court of competent jurisdiction, the validity and enforceability of the remaining provision or portion of it shall not be affected.


## **ARTICLE 23 - Further Acts**

Each party shall perform any further acts and sign and deliver any further documents that are reasonably necessary to carry out the provisions of this Agreement.

**ARTICLE 24 - Counterparts**

This Agreement may be signed in one (1) or more counterparts, each of which shall constitute an original but all of which together shall be one (1) and the same document.

**UJIMAA FOUNDATION**



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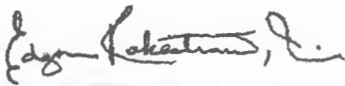
**OAKLAND UNIFIED SCHOOL DISTRICT**



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6/27/13

President, Board of Education

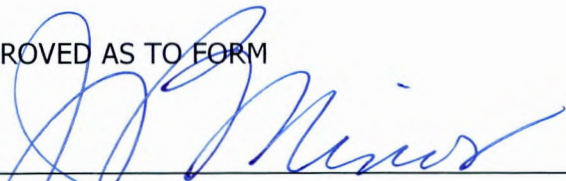


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6/27/13

Edgar Rakestraw, Jr., Secretary, Board of Education

APPROVED AS TO FORM



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Jacqueline P. Minor  
General Counsel