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| Enactment Date | 11/12/2020 er |



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Lusa Lai, Principal, Franklin Elementary School

Board Meeting Date November 12, 2020

Subject Memorandum of Understanding
Contractor: The Junior Center of Art & Science (The Junior Center)
Services For: Franklin Elementary School

Action Requested and Recommendation Approval by the Board of Education of Memorandum of Understanding between the District and The Junior Center of Art & Science, Oakland, CA, for the latter to provide creative youth development based, arts-integrated instruction where arts learning is infused throughout classroom learning. The residency builds upon existing arts learning and creates an opportunity for direct services to all 5th grade students. This program provides a comprehensive approach for whole school arts learning, including arts professional development for the school’s teaching team, and family inclusion and education components through family showcase events at the school, for the period of November 13, 2020 through June 30, 2021, in an amount not to exceed \$12,500.00.

Background The Junior Center’s mission is to cultivate curiosity and creative exploration through the arts and sciences. Located in the heart of Oakland on the shores of Lake Merritt, the Junior Center aims to serve all youth throughout Oakland and beyond. They value the necessity of equity and representation in the fields of art and science and invest in the future of these fields by providing equitable access to our programs. Creativity and imagination are two cornerstones of their art and science exploration. They design their programs to support *innovation and creative inquiry* as well as to be fun, interactive and learner-driven.

Competitively Bid Was this contract competitively bid? No
If no, exception: This contract was not competitively bid.
Exception: Under \$95,200

Fiscal Impact Funding resource(s): 9334/Measure G Parcel Tax in the amount of \$12,500.00.

Attachments ● Memorandum of Understanding

October 15, 2020



Memorandum of Understanding
between

The Junior Center of Art & Science (The Junior Center)
558 Bellevue Avenue, Oakland, CA 94610

and

Oakland Unified School District
1000 Broadway, Ste. 300, Oakland, CA 94607

Board of Trustees

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Coordinator
Bethany Vanderwest,
Admin Assistant

The Junior Center's mission is to cultivate curiosity and creative exploration through the arts and sciences. Located in the heart of Oakland on the shores of Lake Merritt, we aim to serve all youth throughout Oakland and beyond.

Founded in 1954, and independent nonprofit organization.
TAX ID #94-1236838

INTENT

It is the purpose of this MOU to specify the agreement between Oakland Unified School District ("District") and the Junior Center of Art and Science to provide arts instruction at Franklin Elementary over the course of FY21 at \$12,500. The term of this agreement shall be from the date fully executed, through June 30, 2021.

The Junior Center of Art & Science will provide a one year creative youth development based, arts-integrated residency where arts learning is infused throughout classroom learning. The residency builds upon existing arts learning and creates an opportunity for direct services to all 5th grade students. This program provides a comprehensive approach for whole school arts learning including arts professional development for the school's teaching team and family inclusion and education components through family showcase events at the school.

Compensation for any Services performed prior to the Start Date or after the End Date shall be at the District's sole discretion and in an amount solely determined by the District. The Junior Center agrees that it shall not expect or demand payment for the performance of such services. The Junior Center acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly the District, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the District Governing Board, the District Superintendent, or the District General Counsel, stating that the District has validly and properly executed this Agreement.

\$12,500 will be invoiced by The Junior Center in total and is to be paid in 2 installments of \$6250. The District agrees to complete the payment within 30 days of receipt of invoices, which shall be on or around the following days: 10/30/2020 and 3/1/2021.

Invoices furnished by the Junior Center under this Agreement must be in a form acceptable to the District.

a. All amounts paid by District shall be subject to audit by District. Invoices shall include, without limitation: Junior Center name, Junior Center address, invoice date, invoice number, purchase order number, name of school or department to which Services

were provided, name(s) of the person(s) performing Services, date(s) Services were rendered, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).

b. If District, at its sole discretion, determines an invoice fails to include the required elements, District will not pay the invoice and will inform Junior Center of the missing items; Junior Center shall resubmit an invoice that includes the required elements before District will pay the invoice.

c. District reserves the right to add or change invoicing requirements. If the District does add or change invoicing requirements, it shall notify Junior Center in writing and the new or modified requirements shall be mandatory under receipt by Junior Center of such notice.

d. To the extent that Junior Center has described how the Services may be provided both in-person and not in-person, Junior Center's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.

e. All invoices furnished by Junior Center under this Agreement shall be delivered to District via email unless District requests, in writing, a different method of delivery.

The District will provide the following:

- Full participation in the design and implementation of the Franklin Elementary Arts Incentive Grant (AIG) 2022 Action Plan.
- Full participation in Franklin Elementary AIG leadership team meetings.
- Full participation of all Franklin Elementary 5th grade classrooms and classroom teachers.
- Proper space/location for instruction at Franklin Elementary, and/or virtually, as required by any operative Shelter-in-Place order and/or District distance learning program.
- Secure storage for art supplies at Franklin Elementary, to the extent consistent with any operative Shelter-in-Place order.
- On-going communication between Junior Center and Franklin AIG leadership team to track effectiveness and advancement of program and partnership throughout the duration of the program.
- Payment for services rendered as invoiced by the Junior Center as noted above.

The Junior Center will provide the following:

- An instructor that will meet at the agreed upon time and schedule to provide services at Franklin Elementary and/or virtually, as required by any operative Shelter-in-Place order and/or District distance learning program.
- Materials and supplies needed to implement the instruction of such classes/programming that are not already provided at the school and/or virtually.
- Criminal Background checks as necessary.
- Assurance in writing that all Junior Center staff working at Franklin Elementary have a TB test on file, indicating negative results done within the last 3 years.
- An insurance certificate.
- a. Commercial General Liability Insurance. Unless specifically waived by District as noted in Exhibit A, Junior Center 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 District and shall name District as an additional insured with the additional insured endorsement provided to District within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to the District upon request. Endorsement of District as an additional insured shall not affect District's rights to any claim, demand, suit or judgment made, brought or recovered against Junior Center. The policy shall protect Junior Center and 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.

- b. Workers' Compensation Insurance. Unless specifically waived by District as noted in Exhibit A, Junior Center 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.
- Advanced notification if the Junior Center instructor will be unable to come to Franklin on the agreed upon scheduled dates of instruction.

All programming will occur as Franklin ES calendars allow. The District will take steps to ensure consistency within the Franklin schedule.

Confidentiality and Data Privacy.

The District may share information with the Junior Center pursuant to this MOU in order to further the purposes thereof. The Junior Center and all its agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged. The Junior Center understands that student data is confidential. If the Junior Center will access or receive student data in connection with this Agreement, it agrees to do so only after executing a separate Data Sharing Agreement. All confidentiality requirements, including in the Data Sharing Agreement, extend beyond the termination of this Agreement.

Termination.

a. For Convenience by District. District may at any time terminate this Agreement upon thirty (30) days prior written notice to the Junior Center. District shall compensate Junior Center for services satisfactorily provided through the date of termination. Upon approval by District legal counsel, the District Superintendent or an District Chief or Deputy may issue the termination notice without approval by the District Governing Board, in which case this Agreement would terminate upon ratification of the termination by the District Governing Board or thirty (30) days after the notice was provided, whichever is later.

b. Due to COVID-19. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of District, the ability of Junior Center to perform the Services, District may terminate this Agreement upon seven (7) days prior written notice to Junior Center. Upon approval by District legal counsel, the District Superintendent or an District Chief or Deputy may issue the termination notice without approval by the District Governing Board, in which case this Agreement would terminate upon ratification of the termination by the District Governing Board or seven (7) days after the notice was provided, whichever is later.

c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by District legal counsel, the District Superintendent or an District Chief or Deputy may issue the termination notice without approval by the District Governing Board, in which case this Agreement would terminate upon ratification of the termination by the District Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

d. Upon termination, Junior Center shall provide District with all materials produced, maintained, or collected by Junior Center pursuant to this Agreement, whether or not such materials are complete or

incomplete or are in final or draft form.

Status

This is not an employment contract. Junior Center, in the performance of this Agreement, shall be and act as an independent contractor. Junior Center understands and agrees that it and any and all of its employees shall not be considered employees of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Junior Center 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 Junior Center's employees.

Junior Center verifies all of the following:

- (i) Junior Center is free from the control and direction of District in connection with the performance of the work;
- (ii) Junior Center is providing services directly to District rather than to customers of District;
- (iii) the contract between District and Junior Center is in writing;
- (iv) Junior Center has the required business license or business tax registration, if the work is performed in a jurisdiction that requires Junior Center to have a business license or business tax registration;
- (v) Junior Center maintains a business location that is separate from the business or work location of District;
- (vi) Junior Center is customarily engaged in an independently established business of the same nature as that involved in the work performed;
- (vii) Junior Center actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from District;
- (viii) Junior Center advertises and holds itself out to the public as available to provide the same or similar services;
- (ix) Junior Center provides its own tools, vehicles, and equipment to perform the services;
- (x) Junior Center can negotiate its own rates;
- (xi) Junior Center can set its own hours and location of work; and
- (xii) Junior Center is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

Qualifications and Training.

a. Junior Center represents and warrants that Junior Center has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Junior Center will perform the Services 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. All Junior Center employees and agents shall have sufficient skill and experience to perform the work assigned to them.

b. Junior Center represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in 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, if Junior Center was selected, at least in part, on such representations and warrants.

Certificates/Permits/Licenses/Registration.

Junior Center'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.

Coronavirus/COVID-19.

a. Through its execution of this Agreement, Junior Center declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar)

order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

b. To the extent that Junior Center provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), Junior Center agrees to include additional information in its invoices as required by District if any Orders are issued by local or state authorities that would prevent Junior Center from providing Services in person.

c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), Junior Center agrees to notify District, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if Junior Center or any employee, subcontractor, agent, or representative of Junior Center tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to Junior Center possible COVID-19 exposure.

d. Junior Center agrees to immediately adhere to and follow any District directives regards health and safety protocols including, but not limited to, providing District with information regarding possible exposure of District employees to Junior Center or any employee, subcontractor, agent, or representative of Junior Center and information necessary to perform contact tracing.

e. Junior Center shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

Non-Discrimination.

It is the policy of District 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, Junior Center 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 District policy. In addition, Junior Center agrees to require like compliance by all its subcontractor (s). Junior Center 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.

Drug-Free/Smoke Free Policy.

No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, Junior CenterS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

Indemnification.

a. To the furthest extent permitted by California law, Junior Center shall indemnify, defend and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“District 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 Junior Center’s performance of this Agreement. Junior Center also agrees to hold harmless, indemnify, and defend District Indemnified Parties from any and all claims or losses incurred by any supplier, Junior Center, or subcontractor furnishing work, services, or materials to Junior Center arising out of the performance of this Agreement. Junior Center shall, to the fullest extent permitted by California law, defend District Indemnified Parties at Junior Center’s own expense, including attorneys’ fees and costs, and District shall have the right to accept or reject any legal representation that Junior Center proposes to defend District Indemnified Parties.

b. To the furthest extent permitted by California law, District shall indemnify, defend, and hold harmless Junior Center, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“Junior Center 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 District’s performance of this Agreement. District shall, to the fullest extent permitted by California law, defend Junior Center Indemnified Parties at District’s own expense, including attorneys’ fees and costs.

Audit.

Junior Center shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Junior Center transacted under this Agreement. Junior Center shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. Junior Center shall permit 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 Services covered by this Agreement. Audit(s) may be performed at any time, provided that District shall give reasonable prior notice to Junior Center and shall conduct audit(s) during Junior Center'S normal business hours, unless Junior Center otherwise consents.

Litigation.

This Agreement shall be deemed to 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.

Counterparts and Electronic Signature.

This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

W-9 Form.

If Junior Center is doing business with District for the first time, Junior Center acknowledges that it must complete and return a signed W-9 form to District.

Agreement Publicly Posted.

This Agreement, its contents, and all incorporated documents are public documents and will be made available by District to the public online via the Internet.

Signature Authority.

a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.


b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for District and only under limited circumstances, which required ratification by the District Governing Board. Junior Center agrees not to accept the signature of another other District employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.

Contract Contingent on Governing Board Approval.

District shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by District's Governing Board or (ii) validly and properly executed by the District Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to Junior Center absent such formal approval or valid and proper execution.

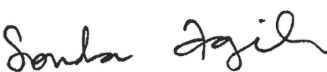
Any changes to this MOU should be made in writing, and agreed to by all parties.

BOTH PARTIES HEREBY AGREE TO THIS MEMORANDUM OF UNDERSTANDING:



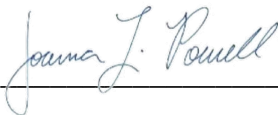
Dominique Enriquez, Executive Director
Junior Center of Art & Science


Date

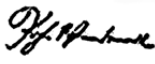


10/15/2020
Sondra Aguilera
Chief Academic Officer
Oakland Unified School District

Approved as to form by OUSD Staff Attorney Joanna Powell on 10/15/2020

Signature: 


Jody London, President, Board of Education
November 13, 2020


Kyla Johnson-Tramell, Secretary, Board of Education
November 13, 2020