

Board Office Use: Legislative File Info.	
File ID Number	13-0622
Introduction Date	April 10, 2013
Enactment Number	13-0643
Enactment Date	4/10/13 ea



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Maria Santos, Deputy Superintendent
 Board Meeting Date April 10, 2013
 Subject **AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT
 AND YMCA OF EAST BAY**

Action Requested Ratification of Agreement with the YMCA of the East Bay

Background The YMCA of the East Bay is partnering with Frick Middle School to provide youth development and healthy living services, including obesity prevention and family nights to the students at Frick.

Discussion The YMCA of the East Bay is partnering with Frick Middle School to provide youth development and healthy living services, including obesity prevention and family nights to the students at Frick. The term of the Agreement is February 1, 2013 through June 28, 2013 at no cost to the District.

Recommendation Ratification of Agreement with the YMCA of the East Bay

Fiscal Impact No cost to the District

Attachments

- Agreement

**AGREEMENT BETWEEN
THE
OAKLAND UNIFIED SCHOOL DISTRICT
AND
YMCA OF THE EAST BAY**

This Agreement, entered into on _____ by and between the **OAKLAND UNIFIED SCHOOL DISTRICT, 1025 Second Avenue, Oakland, California 94606**, hereinafter referred to as DISTRICT, and YMCA of the East Bay, 2330 Broadway, Oakland, hereinafter referred to as PROVIDER.

WITNESSETH

WHEREAS, the DISTRICT has a vital interest in the overall development and health and wellness of all students and in inviting needed resources into its schools; and

WHEREAS, Frick Middle School, located at 2845 64th Street, has identified youth development and healthy living services, especially obesity prevention services, as a much needed component of the educational structure of the school; and

WHEREAS, the YMCA is a nationally recognized service provider that strengthens the foundations of community through programs for youth development, healthy living and social responsibility;

NOW, therefore, the parties hereto do mutually agree as follows:

I

RESPONSIBILITIES OF THE SCHOOL SITE/DISTRICT

The District will:

- 1) Allow the Provider to offer youth development and healthy living services to students and families on the school site

II

RESPONSIBILITIES OF THE PROVIDER

The Provider agrees to the following:

- 1) Ensure that site staff is culturally and linguistically competent to work with the school's diverse population of students.
- 2) Provide supervision, training, administration, materials and supplies to support the work of the staff placed at Frick Middle School
- 3) Work with students and families referred by the school or the lead agency of the onsite health center to offer obesity prevention services, family nights and YMCA Model United Nations program
- 4) Collaborate with school administrators, and agree to communicate any concerns that may arise while providing services at sites.
- 5) Have all site staff fingerprinted and medically tested for tuberculosis prior to delivering services.

III
COMPENSATION

There is no obligation for either party to reimburse or compensate the other for any costs or expenses associated with cooperative activities related to this MOU. YMCA and OUSD agree that to the extent their relationship may now or in the future entail any financial commitments to each other such commitments will be set forth in a separate, written agreement signed by both parties.

IV
INDEPENDENT CONTRACTOR

PROVIDER is, for all purposes arising from this Agreement, an independent contractor. No officer, agent, or employee of PROVIDER or DISTRICT shall be deemed an officer, agent, or employee of the other party hereto. Neither PROVIDER nor DISTRICT, nor any officer, agent, or employee thereof shall be entitled to any benefits to which employees of the other party hereto are entitled, including, but not limited to overtime, retirement benefits, workers' compensation benefits, and injury leave or other leave benefits.

V
INDEMNIFICATION

see addendum JGM

- A. PROVIDER agrees to defend, indemnify, and save free and harmless the DISTRICT, its officers, agents, and employees against any and all losses, injuries, claims, actions, causes of action, judgment, and liens arisen from, or alleged to have arisen from PROVIDER's performance, or lack thereof, under this Agreement.
- B. DISTRICT agrees to defend, indemnify, and save free and harmless the PROVIDER, its officers, agents, and employees against any and all losses, injuries, claims, actions, causes of action, judgment, and liens arisen from, or alleged to have arisen from DISTRICT's performance, or lack thereof, under this Agreement.
- C. The DISTRICT and PROVIDER hereby represent and warrant that for the term of this Agreement, both will, at its own expense, maintain general liability insurance. The DISTRICT and PROVIDER agree to carry a minimum coverage of \$1,000,000 per claim up to an annual aggregate of \$3,000,000 for bodily injury and property damage liability combined.

VI
AMENDMENT

No changes in the responsibilities of DISTRICT and/or PROVIDER to be performed herein shall become effective until mutually agreed upon by the DISTRICT and PROVIDER in writing. Such changes as are mutually agreed to by the DISTRICT and PROVIDER, which require additional services or a reduction in services to be performed by PROVIDER under the Agreement and an adjustment to the amount to be paid to PROVIDER as provided herein shall be incorporated in written amendments to this Agreement.

VII
TERM AND TERMINATION OF AGREEMENT

- A. The term of this Agreement shall commence on February 1, 2013 and shall continue until June 28, 2013.
- B. Notwithstanding the foregoing, this Agreement may be terminated upon thirty (30) days' written notice by either party hereto. Said termination shall not be deemed to be a breach of this Agreement and/or tortuous conduct.

VIII
NOTICES

Any notice permitted or required under the provisions of this Agreement shall be in writing and signed by the party giving or serving the same and either in person or delivered by mail, addressed to the party as follows:

PROVIDER: YMCA of the East Bay
DISTRICT: Oakland Unified School District


SCHOOL: Frick Middle School
2845 64th Avenue
Oakland, Ca 94605


CC: Oakland Unified School District
1025 Second Avenue, 2ND Floor Annex
Oakland, CA 94606

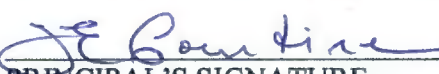
IX
CONTRACT DOCUMENTS

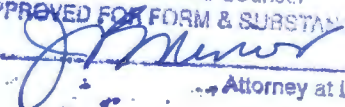
The Contract Documents consist of this Agreement only.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date shown below:

~~YMCA of the East Bay~~

~~YMCA of the East Bay Authorized Representative~~ _____ Date 2/14/13

David Kakishiba
President, Board of Education
OUSD Authorized Representative _____ Date _____

Edgar _____, Secretary
Education

SCHOOL SITE PRINCIPAL: Jerome Gourdine

PRINCIPAL'S SIGNATURE _____ Date 3/18/13

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  Attorney at Law

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at www.epls.gov/eplsearch.do.

Addendum required



ADDENDUM PROFESSIONAL SERVICES CONTRACT 2012-13

A. Conduct of Consultant. CONSULTANT will adhere to the following staff requirements and provide OUSD with evidence of staff qualifications which include:

1. **Tuberculosis Screening**
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 contract with OUSD pupils in providing services to the District under this Agreement.

B. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the 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, the 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 or sexual orientation.

C. 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 drugs on these sites.

D. Indemnification: CONTRACTOR and DISTRICT (the Parties) agrees to hold harmless, indemnify, and defend the others officers, Boards, 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. The Parties also agrees to hold harmless, indemnify, and defend the other's board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials in connection with the performance of this Agreement. This provision survives termination of this Agreement

E. Insurance:

1. Commercial General Liability Insurance: 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 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 One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. 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.

2. The Parties agree that OUSD is permissibly self-insured under the laws of the State of California. Proof of such self insurance shall be provided upon requests.

F. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: THE district 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 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.epls.gov/epls/search.do>)

G. Assignment: The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.

H. 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.



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

I. **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.

J. **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.

OAKLAND UNIFIED SCHOOL DISTRICT

CONTRACTOR

Date

[Handwritten Signature] 3/12/13
Contractor Signature Date

Superintendent or Designee

President, Board of Education

[Handwritten Signature]

4/11/13
Date

Print Name, Title

David Johnson, Senior Vice President

[Handwritten Signature] 4/11/13

Secretary, Board of Education

Approved as to Form

[Handwritten Signature]
Jacqueline P. Minor
General Counsel