

Board Office Use: Legislative File Info.	
File ID Number	15-2092
Introduction Date	10/28/15
Enactment Number	15-1741
Enactment Date	10/28/15 <i>2A</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students.

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel

Board Meeting Date October 28, 2015

Subject **Professional Services Agreement with Cypress Mandela Training Center**

Action Requested **Approval of the Professional Services Agreement with Cypress Mandela Training Center**

Background Cypress Mandela Training Center is the premier workforce pre-apprenticeship program in the Bay Area. Over the years, the program has had longstanding relationships with the District. The Training Program is a 16 week Pre-Apprenticeship program that provides instructional training, job readiness skills, college credits, green technology pathways, environmental certification training, job placement assistance. The program is daily from 7:00 AM to 3:30 PM at the training facility located at 977- 66th Avenue, Oakland, two blocks from the Coliseum Bart station.

Discussion The term of the Agreement is three years, from October 1, 2015 to June 30, 2018. The District will co-sponsor up to 25 individuals for the 16 week program that commences October 26, 2015. In sponsoring the program, the District is creating a local workforce qualified to work on District bond related construction projects and meeting the requirements of the Project Labor Agreement workforce development with the Building Trade Council. Among other things, Cypress Mandela will offer small progress incentives to participants who are referred to the program by the District. The District is notifying the last 3 graduating classes from McClymonds High School and is heavily advertising this opportunity in West Oakland. The program is open to all, regardless of where the participant lives. In anticipation of the Fremont High School construction project, the District expects to co-sponsor another Cypress Mandela program. The Agreement is for an amount not to exceed \$110,000.

Recommendation **Approval of the Professional Services Agreement with Cypress Mandela Training Center**

Fiscal Impact Funding resource name: General Purpose

Attachments • Agreement

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OAKLAND UNIFIED
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PROFESSIONAL SERVICES CONTRACT 2015-2016

This Agreement is entered into between **Cypress Mandela Training Center at 977- 66th Avenue, Oakland, CA** (CONTRACTOR) and Oakland Unified School District (OUSD). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

- Services:** CONTRACTOR shall provide the ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.
- Terms:** This is a three year Agreement. CONTRACTOR shall commence work on October 15, 2015.
- Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement in the amount of \$110,000.00. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

Payment for Work shall be made in two payments of \$55,000 each within forty-five (45) days of the submission of invoices by CONTRACTOR

- Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement except: N/A _____, which shall not exceed a total cost of N/A .

5. CONTRACTOR Qualifications / Performance of Services:

CONTRACTOR Qualifications: CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

Standard of Care: CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

- Notices:** All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

OUSD Representative:

Name: Jacqueline P. Minor
Jacqueline.minor@ousd.org
Office of General Counsel

CONTRACTOR:

Art Shanks, Executive Director
Cypress Mandela
977- 66th Avenue, Oakland, CA
ashanks@cypressmandela.org

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.

7. **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.

8. **Insurance:**

1. Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California 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.

- 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.

9. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONTRACTOR agrees to require like compliance by all its subcontractor(s). CONTRACTOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.
10. **Drug-Free / Smoke Free Policy:** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
11. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD 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 OUSD 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.
12. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
13. **Limitation of OUSD Liability:** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
14. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition

Professional Services Contract

Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. (<https://www.sam.gov/>)

15. **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.
16. **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.

OAKLAND UNIFIED SCHOOL DISTRICT

☒ President, Board of Education

☐ Superintendent or Designee

Secretary, Board of Education

Date

Date

CONTRACTOR

Contractor Signature

Date

Print Name, Title

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By: [Signature]

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

EXHIBIT "A" SCOPE OF WORK

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

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

Cypress Mandela Training Program is a 16 week Pre-Apprenticeship program that provides instructional training, job readiness skills, college credits, green technology pathways, environmental certification training, job placement assistance. The program is daily from 7:00 AM to 3:30 PM at the training facility located at 977- 66th Avenue, Oakland, two blocks from the Coliseum Bart station. The District in collaboration with Cypress Mandela will co-sponsor up to 25 individuals for the 16 week program that commences October 26, 2015. In sponsoring the program, the District is creating a local workforce qualified to work on District bond related construction projects and meeting the requirements of the Project Labor Agreement workforce development with the Building Trade Council. Among other things, Cypress Mandela will offer a small progress incentives to participants who are referred to the program by the District. The District is notifying the last 3 graduating classes from McClymonds High School and is heavily advertising this opportunity in West Oakland. The program is open to all, regardless of where the participant lives. In anticipation of the Fremont High School construction project, the District expects to co-sponsor another Cypress Mandela program.