Board Office Use: Legislative File Info.	
File ID Number:	16-2133
Introduction Date:	10/13/2016
Enactment Number:	16-1660
Enactment Date:	10/13/2016

OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To: Board of Education

From: Antwan Wilson, Superintendent

Board Meeting Date: 10/13/2016

Subject: Professional Service Contract

Contractor: joe bates of Oakland , Ca

Services for: 306-SKYLINE

Board Action Requested and Recommendation: Ratification by the Board of Education of a Professional Services Contract between the District and joe bates, Oakland , Ca, for the latter to provide: Behavioral interventionists observe and interact with individuals, groups and communities to assist with the healthy functioning of students while at school. The position focuses on specific behaviors that disrupt, exclude otherwise negatively impact the person or group. The Behavior Interventionist collaborates with public and private health agencies, workplaces and counseling centers to employ practitioners or engage behavioral interventions for Skyline scholars. The position is aimed at modifying negative behaviors through behavior plans, such interventions often rely on families, schools or other support systems to assist with monitoring, implementation and adjustment. The Behavioral Interventionist set goals for behavioral changes, monitor the client, assess

Background: (A one paragraph explanation of why the consultant's services are needed.)

Reduce dropout rates and increase attendance rates

Discussion: (QUANTIFY what is being purchased.)

Behavioral interventionists observe and interact with individuals, groups and communities to assist with the healthy functioning of students while at school. The position focuses on specific behaviors that disrupt, exclude otherwise negatively impact the person or group. The Behavior Interventionist collaborates with public and private health agencies, workplaces and counseling centers to employ practitioners or engage behavioral interventions for Skyline scholars. The position is aimed at modifying negative behaviors through behavior plans, such interventions often rely on families, schools or other support systems to assist with monitoring, implementation and adjustment. The Behavioral Interventionist set goals for behavioral changes, monitor the client, assess progress and modify behavioral plans if necessary. They may also provide referral to another expert if the case requires it.

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OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Fiscal Impact: Funding Resource name(s) (detailed below) not to exceed $40,000.00.

$40,000.00 MEASURE N

Attachments: Professional Services Contract including Scope of Work

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office With *Every* Consent Agenda Contract.

Legislative File ID No. 16-2133

Department: 306-SKYLINE

Vendor Name: joe bates

Contract Term: Start Date: 08/22/2016 End Date: 06/30/2017

Annual Cost: $ $40,000.00

Approved by: BERNARD MCCUNE

Is Vendor a local Oakland business? Yes ☑ No ☐

Why was this Vendor selected?

Worked with Vendor previously at OUSD

Summarize the services this Vendor will be providing.

Was this contract competitively bid? Yes ☑ No ☐

If No, answer the following:

1) How did you determine the price is competitive?

Price compared with other vendors

2) Please check the competitive bid exception relied upon:

___ **Educational Materials**

___ **Special Services** contracts for financial, economic, accounting, legal or administrative services

___ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)

✔ **Professional Service Agreements** of less than $87,800.00 (increases a small amount on January 1 of each year)

___ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)

___ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)

___ **Emergency** contracts [requires Board resolution declaring an emergency]

___ **Technology** contracts

- ___ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the $87,800.00 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
- ___ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
- ___ Western States Contracting Alliance Contracts (WSCA)
- ___ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]

___ **Piggyback" Contracts** with other governmental entities

___ **Perishable Food**

___ **Sole Source**

___ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price

___ **Other, please provide specific exception**

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OAKLAND UNIFIED SCHOOL DISTRICT

PROFESSIONAL SERVICES CONTRACT 2016-2017

This Agreement is entered into between joe bates of 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 and advice in financial, economic, accounting, engineering, legal, and administrative matters 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:

1. **Services**: CONTRACTOR shall provide the ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.

2. **Terms**: CONTRACTOR shall commence work on 08/22/2016, or the day immediately following approval by the Superintendent if the aggregate amount CONTRACTOR has contracted with the District is below $87,800.00 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed $87,800.00, whichever is later. The work shall be completed no later than 06/30/2017.

3. **Compensation**: OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement. The compensation under this Contract shall not exceed Forty Thousand Dollars and 00/100 Dollars ($40,000.00) [per fiscal year], at an hourly billing rate not to exceed $40.00 per hour. 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.

   If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

   OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: N/A.

   Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

   The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by the District and in that case must be replaced by CONTRACTOR without delay.

4. **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 $0.00.

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.

6. **Invoicing**: Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: Contractor name, Contractor address, invoice date, invoice number, purchase order number, name of school or department service was provided to, period of service, name of the person performing the service, date service was rendered, brief description of services provided, number of hours of service, hourly rate, total payment requested.

7. **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:	**CONTRACTOR:**
Name: VINNIE BLYE	Name: joe bates
Site /Dept.: 306-SKYLINE	Title: Owner
Address: 12250 Skyline Blvd	Address: 5217 bancroft ave
Oakland, CA 94619	Oakland , Ca 94601
Phone: 4827109	Phone: 510-875-4495
Email: Vinnie.Blye@ousd.org	Email: joebates5@yahoo.com

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.

8. **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.

9. **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.

      ☒ 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.

      iii. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars ($1,000,000) per claim.

      OR

      iv. CONTRACTOR is not required to maintain any insurance under this agreement. (Completed and approved Waiver of Insurance Form is required from OUSD's Risk Management.) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

10. **Licenses and Permits**: CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

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

12. **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.

13. **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.

14. **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.

15. **Copyright/Trademark/Patent/Ownership**: CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORs in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.

16. **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.

17. **Termination**: OUSD may at any time terminate this Agreement upon 30 days prior 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.

18. **Conduct of CONTRACTOR**: By signing this Agreement, CONTRACTOR certifies compliance with the following requirements and will provide OUSD with evidence of staff qualifications, which include:

    1. **Tuberculosis Screening**: CONTRACTOR is required to screen employees who will be working at OUSD sites for more than six hours. CONTRACTOR affirms that each employee has current proof of negative TB testing on file and TB results are monitored.

    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.

    In the event that OUSD, in its sole discretion, at any time during the term of this contract, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an 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.

19. **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.

20. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors**. OUSD may evaluate CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law. The OUSD's evaluation may include, without limitation:

    1. Requesting that OUSD employee(s) evaluate the CONTRACTOR and the CONTRACTOR's employees and subcontractors and each of their performance.

    2. Announced and unannounced observance of CONTRACTOR, CONTRACTOR's employee(s), and/or subcontractor(s).

21. **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.

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. **Conflict of Interest**: CONTRACTOR shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

    CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

    Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.

24. **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 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/).

25. **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.

26. **Incorporation of Recitals and Exhibits**: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

27. **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.

28. **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.

29. **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.

30. **Contract Contingent on Governing Board Approval**: OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

31. W-9 Form: If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.

OAKLAND UNIFIED SCHOOL DISTRICT	**CONTRACTOR**
_____	joe bates
☐ President, Board of Education	Contractor Signature
☒ Superintendent or Designee	joe bates, Owner
_____	_____
Secretary, Board of Education	Print Name, Title

Form approved by OUSD General Counsel for 2015-16 FY

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.

Behavioral interventionists observe and interact with individuals, groups and communities to assist with the healthy functioning of students while at school. The position focuses on specific behaviors that disrupt, exclude otherwise negatively impact the person or group. The Behavior Interventionist collaborates with public and private health agencies, workplaces and counseling centers to employ practitioners or engage behavioral interventions for Skyline scholars. The position is aimed at modifying negative behaviors through behavior plans, such interventions often rely on families, schools or other support systems to assist with monitoring, implementation and adjustment. The Behavioral Interventionist set goals for behavioral changes, monitor the client, assess progress and modify behavioral plans if necessary. They may also provide referral to another expert if the case requires it.

2. **Specific Outcomes:** What are the expected outcomes from the services of this Contract? Be specific. For example, as a result of the service(s): 1) How many more Oakland children are graduating from high school? 2) How many more Oakland children are attending school 95% or more? 3) How many more students have meaningful internships and/or paying jobs? 4) How many more Oakland children have access to, and use, the health services they need? Provide details of program participation (Students will…) and measurable outcomes (Participants will be able to…). NOT THE GOALS OF THE SITE OR DEPARTMENT.

   Improve student attendance rates
   Improve graduation rates
   Improve communication with families
   Reduce disparities in student achievement and student access to career pathways based on race, ethnicity, gender, socio-economic status, English Learner status, special needs-status, and residency.

3. **Alignment with District Strategic Plan:** Indicate the goals and visions supported by the services of this contract: (Check all that apply.)

   - ☒ Ensure a high quality instructional core
   - ☐ Develop social, emotional and physical health
   - ☒ Create equitable opportunities for learning
   - ☐ High quality and effective instruction
   - ☐ Prepare students for success in college and careers
   - ☒ Safe, healthy and supportive schools
   - ☐ Accountable for quality
   - ☐ Full service community district

4. **Alignment with Community School Strategic Site Plan – CSSSP (required if using State or Federal Funds):**
   Please select:

   ☐ **Action Item included in Board Approved CSSSP** (no additional documentation required) – Item Number(s):

   ☐ **Action Item added as modification to Board Approved CSSSP** – Submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.

   1. Relevant page of CSSSP with action item highlighted. Page must include header with the word “Modified”, modification date, school site name, both principal and school site council chair initials and date.
   2. Meeting announcement for meeting in which the CSSSP modification was approved.
   3. Minutes for meeting in which the CSSSP modification was approved indicating approval of the modification.
   4. Sign-in sheet for meeting in which the CSSSP modification was approved.