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## Board Cover Memorandum

**To** Board of Education

**From** Sondra Aguilera, Acting Superintendent  
Kim Jones, Director - Oakland Adult & Career Education

**Meeting Date** September 14, 2022

**Subject** Services Agreement with The Salvation Army – No Cost

**Ask of the Board**  Approve Service Agreement/Contract  
 Ratify Service Agreement/Contract

**Services** Approval by the Board of a No-Cost Services Agreement by and between the District and the Alameda County Command Salvation Army, Oakland, CA, for the latter to provide the Oakland Adult and Career Education (OACE) with two classroom spaces at the Garden Ave location (2794 Garden St., Oakland, CA) to be used for adult education, daily ESL and HSE programming and additional space as needed for OACE events; refer and outreach to students from it's Family Services and Vocational programs to OACE for College and Career Readiness, Job Training and Job Placement assistance; accept referrals of qualified OACE students into the Family Services and Vocational programs based on need and availability.

**Term** Start Date: May 1, 2022 End Date: June 30, 2023

**Not-To-Exceed Amount** \$0

**Competitively Bid** No. This no-cost agreement is under the bidding threshold.  
[Not-to-exceed among from the Service Agreement/Contract, such as in-kind contributions of employee time or District space.

**In-Kind Contributions Funding Source(s)** N/A. No-cost agreement.

**Background** The Adult and Career Education (OACE) provides courses to many community based organizations throughout the City of Oakland.

These courses are taught by adult education teachers to provide adult learners with skills and knowledge in many subject areas. The Salvation Army will provide two classroom spaces at the 2794 Garden Avenue, Oakland, CA location to be used for adult education, daily ESL and HSE programming and additional space as needed for OACE events.

**Attachment(s)**

- Service Agreement/Contract with the Salvation Army

## SERVICES AGREEMENT 2021-2022 – NO COST

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“THE SALVATION ARMY,” together with OUSD, “PARTIES”): **The Salvation Army, 2794 Garden St., Oakland, CA 94601**

The PARTIES hereby agree as follows:

1. **Term.**

a. This Agreement shall start on the below date (“Start Date”):

**May 1, 2022**

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

b. The work shall be completed no later than the below date (“End Date”):

**June 30, 2023**

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2. **Services.** THE SALVATION ARMY shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, THE SALVATION ARMY shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment.** THE SALVATION ARMY agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.

4. **Inspection and Approval.** THE SALVATION ARMY agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any records or other materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. One example of such records or other materials is proof of THE SALVATION ARMY compliance with Section 16.b (Fingerprinting/Criminal Background Investigation). The Services performed by THE SALVATION ARMY must meet the approval of OUSD, and OUSD reserves the right to direct THE SALVATION ARMY to redo the Services, in whole or in part, if OUSD, in its sole discretion, determines that the Services were not performed in accordance with this Agreement.
  
5. **Data and Information Requests.** THE SALVATION ARMY shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. THE SALVATION ARMY shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to THE SALVATION ARMY in writing otherwise, based on OUSD's determination that the Services are not related to community school outcomes. If and when THE SALVATION ARMY's programs and school site(s) change (either midyear or in subsequent years), THE SALVATION ARMY shall promptly update the information in the database.
  
6. **Confidentiality and Data Privacy.**
  - a. OUSD may share information with THE SALVATION ARMY pursuant to this Agreement in order to further the purposes thereof. THE SALVATION ARMY and all THE SALVATION ARMY's 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.
  - b. THE SALVATION ARMY understands that student data is confidential. If THE SALVATION ARMY will access or receive identifiable student data, other than directory information, in connection with this Agreement, THE SALVATION ARMY

agrees to do so only after THE SALVATION ARMY and OUSD execute a separate data sharing agreement.

- (i) If THE SALVATION ARMY is a software The Salvation Army, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E (available here).
  - (ii) If THE SALVATION ARMY is not a software The Salvation Army, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).
  - (iii) Notwithstanding Paragraph 28 (Indemnification), should THE SALVATION ARMY access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, THE SALVATION ARMY shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
- c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

7. **Copyright/Trademark/Patent/Ownership.** THE SALVATION ARMY understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, 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. 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 THE SALVATION ARMY, its employees, or its subcontractors in connection with the Services performed under this Agreement. THE SALVATION ARMY cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the

name of OUSD. OUSD may, with THE SALVATION ARMY's prior written consent, use THE SALVATION ARMY's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

8. **Compensation.** THE SALVATION ARMY agrees to provide the Services at no cost to OUSD. However, OUSD understands and acknowledges that THE SALVATION ARMY shall impose the following costs on families and students:  
**There is no cost to students.**
9. **Equipment and Materials.** THE SALVATION ARMY shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
10. **Termination.**
  - a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to THE SALVATION ARMY. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD 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 OUSD, the ability of THE SALVATION ARMY to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to THE SALVATION ARMY. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD 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 OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD 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, THE SALVATION ARMY shall provide OUSD with all materials produced, maintained, or collected by THE SALVATION ARMY pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- 11. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

#### **OUSD**

Name: Joshua R. Daniels  
Site/Dept: Office of General Counsel  
Address: 1000 Broadway, Suite 300  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: [ousdlegal@ousd.org](mailto:ousdlegal@ousd.org)

#### **THE SALVATION ARMY**

Name: Privilege Chadwick

Title: Vocational Training Manager  
Address: Alameda County Command, Salvation Army  
City, ST Zip: 2794 Garden St, Oakland, CA 94601  
Phone: (510) 437-9437  
Email:

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

**12. Status.**

- a. This is not an employment contract. THE SALVATION ARMY, in the performance of this Agreement, shall be and act as an independent contractor. THE SALVATION ARMY understands and agrees that it and any and all of its employees shall not be considered employees 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. THE SALVATION ARMY 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 THE SALVATION ARMY's employees.
- b. If THE SALVATION ARMY is a natural person, THE SALVATION ARMY verifies all of the following:
  - (i) THE SALVATION ARMY is free from the control and direction of OUSD in connection with THE SALVATION ARMY's work;
  - (ii) THE SALVATION ARMY's work is outside the usual course of OUSD's business; and
  - (iii) THE SALVATION ARMY is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If THE SALVATION ARMY is a business entity, THE SALVATION ARMY verifies all of the following:
  - (i) THE SALVATION ARMY is free from the control and

direction of OUSD in connection with the performance of the work;

- (ii) THE SALVATION ARMY is providing services directly to OUSD rather than to customers of OUSD;
- (iii) the contract between OUSD and THE SALVATION ARMY is in writing;
- (iv) THE SALVATION ARMY has the required business license or business tax registration, if the work is performed in a jurisdiction that requires THE SALVATION ARMY to have a business license or business tax registration;
- (v) THE SALVATION ARMY maintains a business location that is separate from the business or work location of OUSD;
- (vi) THE SALVATION ARMY is customarily engaged in an independently established business of the same nature as that involved in the work performed;
- (vii) THE SALVATION ARMY actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
- (viii) THE SALVATION ARMY advertises and holds itself out to the public as available to provide the same or similar services;
- (ix) THE SALVATION ARMY provides its own tools, vehicles, and equipment to perform the services;
- (x) THE SALVATION ARMY can negotiate its own rates;
- (xi) THE SALVATION ARMY can set its own hours and location of work; and
- (xii) THE SALVATION ARMY 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.

**13. Qualifications and Training.**

- a. THE SALVATION ARMY represents and warrants that THE SALVATION ARMY has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. THE SALVATION ARMY will performed 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 laws, codes, rules, regulations, and/or ordinances. All THE SALVATION ARMY employees and agents shall have sufficient skill and experience to perform the work assigned to them.

- b. THE SALVATION ARMY 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 THE SALVATION ARMY was selected, at least in part, on such representations and warrants.

14. **Certificates/Permits/Licenses/Registration.** THE SALVATION ARMY'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.

15. **Insurance.**

- a. **Commercial General Liability Insurance.** Unless specifically waived by OUSD as noted in **Exhibit A**, THE SALVATION ARMY 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 OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD 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 OUSD upon request. 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 THE SALVATION ARMY. The policy shall protect THE SALVATION ARMY 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.

- b. Workers' Compensation Insurance. THE SALVATION ARMY 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.

16. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, THE SALVATION ARMY is required to screen employees who will be working at OUSD sites for more than six hours. THE SALVATION ARMY agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, THE SALVATION ARMY agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, THE SALVATION ARMY shall obtain an x-ray of the lungs. THE SALVATION ARMY, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, for all THE SALVATION ARMY employees, subcontractors, volunteers, and agents providing the Services, THE SALVATION ARMY shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. THE SALVATION ARMY confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. THE SALVATION ARMY shall provide the results of the investigations and subsequent arrest notifications to OUSD.

Waivers are not available for THE SALVATION ARMYs whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.

- c. THE SALVATION ARMY shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services.

THE SALVATION ARMY agrees to immediately remove or cause the removal of any employee, representative, agent, or person under THE SALVATION ARMY's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide THE SALVATION ARMY with a basis or explanation for the removal request.

**17. Incident/Accident/Mandated Reporting.**

- a. THE SALVATION ARMY shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. THE SALVATION ARMY shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. THE SALVATION ARMY shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of THE SALVATION ARMY is included on the list of mandated reporters found in Penal Code section 11165.7, THE SALVATION ARMY agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

**18. Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, THE SALVATION ARMY 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. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), THE SALVATION

ARMY agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if THE SALVATION ARMY or any employee, subcontractor, agent, or representative of THE SALVATION ARMY tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to THE SALVATION ARMY possible COVID-19 exposure.

- c. THE SALVATION ARMY agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to THE SALVATION ARMY or any employee, subcontractor, agent, or representative of THE SALVATION ARMY and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
  - d. THE SALVATION ARMY shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
19. **Assignment.** The obligations of THE SALVATION ARMY under this Agreement shall not be assigned by THE SALVATION ARMY without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
20. **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, THE SALVATION ARMY 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 SALVATION ARMY agrees to require like compliance by all its subcontractor (s). THE SALVATION ARMY 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.
21. **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, THE SALVATION ARMYS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

22. **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 subsequent act from constituting a violation of this Agreement.
23. **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.
24. **Conflict of Interest.**
  - a. THE SALVATION ARMY shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. THE SALVATION ARMY shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
  - b. THE SALVATION ARMY affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between THE SALVATION ARMY'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.
  - c. Through its execution of this Agreement, THE SALVATION ARMY acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event THE SALVATION ARMY receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, THE SALVATION ARMY agrees it shall notify OUSD in writing.
25. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, THE

SALVATION ARMY 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 The Salvation Army does not appear on the Excluded Parties List (<https://www.sam.gov/>).

26. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as 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.

27. **Indemnification.**

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

b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless THE SALVATION ARMY, its Board, agents, representatives, officers, consultants,

employees, trustees, and volunteers ("THE SALVATION ARMY 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 OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend THE SALVATION ARMY Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.

28. **Audit.** THE SALVATION ARMY shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of THE SALVATION ARMY transacted under this Agreement. THE SALVATION ARMY shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. THE SALVATION ARMY shall permit OUSD, 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 records and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to THE SALVATION ARMY and shall conduct audit(s) during THE SALVATION ARMY'S normal business hours, unless THE SALVATION ARMY otherwise consents.
29. **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.
30. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. THE SALVATION ARMY agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
31. **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.

32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
34. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
35. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
36. **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.

37. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
38. **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 have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. THE SALVATION ARMY agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
  - c. Notwithstanding Paragraph 10, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. Upon termination, THE SALVATION ARMY shall provide OUSD with all materials produced, maintained, or collected by THE SALVATION ARMY pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.
39. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD 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 THE SALVATION ARMY absent such formal approval or valid and proper execution.

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## EXHIBIT A

1A. **General Description of Services to be Provided:** *This includes the intended outcomes, relevant information on all programs, projects, and services, and the specific the site(s) for each program, project, or service.*

- Two classroom spaces at the Garden Ave location (2794 Garden St., Oakland, CA) to be used for adult education, daily ESL and HSE programming and additional space (on an as needed basis) for OACE events.
- Refer and outreach to students from it's Family Services and Vocational programs to OACE for College and Career Readiness, Job Training and Job Placement assistance.
- Accept referrals of qualified OACE students into the Family Services and Vocational programs based on need and availability.

1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

No, services would not be able to continue.

X Yes, services would be able to continue as described in 1A.

Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

Click or tap here to enter text.

2. **Waivers (Completed by OUSD Only):** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

Commercial General Liability Insurance. (Waiver only available, at OUSD's sole discretion, if THE SALVATION ARMY's employees, subcontractors, volunteers, and agents will have no contact (in-

person ***or virtual***) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)

Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if THE SALVATION ARMY has no employees.)

Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if THE SALVATION ARMY's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)

Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if THE SALVATION ARMY's employees, subcontractors, volunteers, and agents will have no contact (in-person ***or virtual***) with OUSD students.)