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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Christian Nelson, Director, Oakland Adult and Career Education

Board Meeting Date December 11, 2019

Subject Memorandum of Understanding: 400/Oakland Adult and Career Education Services for: United Parcel Service Northern CA District

Action Requested and Approval of a Memorandum of Understanding between the District and United Parcel Service Northern California District, Oakland, CA, for the latter to provide classroom space at the program site for the purposes of conducting adult education classes and programming services at their real property located at 8400 Pardee Drive, Oakland, CA 94621, for the Oakland Adult and Career Education Department, for the period of July 1, 2019 through June 30, 2022.

Recommendation Background Oakland Unified School District, Adult and Career Education (“District”) provides courses to OUSD school, community based organizations, churches, business and government agencies 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. United Parcel Service is the owner/leaseholder of the real properties located at 8400 Pardee Drive, in Oakland, California (“Program Site”), and provides space to the District to conduct an Adult Education High School Equivalency course and program services to United Parcel Service employees lacking a diploma or GED.

Competitively Bid Was this contract competitively bid? No. Exception: No fee for services; in kind partnership.

Fiscal Impact Funding resource(s): No fiscal impact

Attachments

- Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT
UNDER ITS ADULT AND CAREER EDUCATION DEPARTMENT AND
United Parcel Service Northern CA District
(ADULT EDUCATION GED CLASSES)**

This Memorandum of Administrative Understanding ("MOU") is entered into by and between the Oakland Unified School District, a California public school district under its Adult Career and Education Department (hereinafter "OUSD/ACE"), and UPS (hereinafter "the Agency"). OUSD/ACE and the Agency may be referred to herein individually as a "Party" or collectively as the "Parties." This MOU shall serve as the foundation for the programming of adult education classes between OUSD/ACE and the Agency.

RECITALS

WHEREAS, the Agency is the owner / leaseholder of the real property located at 8400 Pardee Dr, Oakland, CA 94621 ("Program Site"); and

WHEREAS, the Agency desires to provide space at the Program Site to OUSD/ACE for the purposes of conducting adult education classes and programming services and OUSD/ACE desires to provide the programming and educational services at the Program Site under the terms and conditions contained herein:

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Agency and OUSD/ACE agree as follows:

RESPONSIBILITIES OF THE PARTIES

1. OUSD/ACE shall provide the Agency and Program Site with the services of instructor(s) for agreed upon scheduled hours to meet the educational needs of the students. The agreed upon schedule of hours under this MOU.
2. The instructor(s) shall be responsible for providing appropriate instruction in accordance with the standards set by the California Department of Education, OUSD/ACE, and the Agency.
3. The Agency shall be responsible for providing a suitable area at no charge (preferably a separate room) for the appropriate performance of all classes under this MOU. If a lobby or any other multi-purpose room must be utilized, no other activity shall occur in that area during the scheduled class session(s), so that it is as free from interruptions, distracting influences, and outside noises as possible.
4. The Agency shall provide OUSD/ACE adequate storage space for supplies, equipment and teacher needs.

5. The Agency agrees to provide a safe work environment to all OUSD/ACE employees while on the premises of the Agency. The Agency further warrants that at the time of the signing of this MOU and/or at the time of delivery of possession of the Program Site, the facilities are in clean, safe and sanitary condition, are in repair and free from rodents and vermin; and are in compliance with all other applicable laws and regulations such as those of the City of Oakland relating to health and safety and as further specified herein.

6. The Agency shall, at its own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county or municipal relating to any use and occupancy of the Program Site, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of any portion of the Program Site, the Agency shall procure and maintain it throughout the term of this MOU, with any reasonably necessary assistance from OUSD/ACE. The Agency agrees that it will provide sufficient and ongoing custodial services to the Program Site at the sole cost and expense of the Agency. Sufficient custodial services shall include, at a minimum, daily cleaning of the Program Site classrooms and restrooms.

INSTRUCTION RELATED PROVISIONS

7. All adult education class sessions should have at least ten (10) students in attendance for each session. The OUSD/ACE generally requires at least ten (10) to twenty (20) students to be enrolled.

8. Instructional assistants, volunteers, or other personnel provided by OUSD/ACE will be used to assist in the instructional process and shall work under the immediate supervision of the certificated adult education teacher during the time the classes are in session.

9. Teacher selection, placement, and evaluation are solely the responsibility of the OUSD/ACE Program Administrator. Agency concerns about staff performance should be communicated directly to the OUSD/ACE Program Administrator; in no case shall such concerns be directed to the staff member.

10. Adult education instructors employed by the Oakland Unified School District and assigned to the agency program will receive the appropriate rate of pay as bargained for by their "employee representatives".

11. Any additional hours of work requested of the instructors by the Agency will be a matter of separate negotiations between the instructors and the Agency. Any terms and conditions of such additional employment will not affect, nor be affected by, the terms and conditions of employment reached between the school district and the bargaining unit.

12. It will not be a condition of continued employment in, or assignment to, the Agency program that Oakland Unified School District-funded instructors consent to work any additional hours.

13. For the hours the instructors are assigned by the Oakland Unified School District, matters of discipline, grievances, and other terms of employment will be governed solely by Oakland Unified School District personnel policies.

14. In the event substitute teachers are required to temporarily fill any particular instructional vacancy, OUSD/ACE will provide such substitute personnel in accordance with its standard procedures for these matters.

15. The hours of instruction shall be observed as agreed upon. Any change shall be negotiated between the OUSD/ACE Program Administrator and the Agency.

16. Only OUSD/ACE shall be entitled to collect apportionment or supplemental federal funding under WIOA Title II from the California Department of Education for the operation of the classes hereunder.

17. All classes at the Program Site shall be operated by mutual agreement. Classes shall be maintained so long as they remain productive, students manifest interest in them, and attendance of each session totals a minimum of ten (10) or more persons.

TERM

18. The term of this MOU shall be for three (3) years. The commencement date shall be July 1, 2019 ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2022 ("Term"). If the Parties intend to further renew this MOU after the Term, this can only be done by a separate writing executed by the Parties that is approved by each Party's governing body prior to the end of the Term.

19. It will not be a condition of continued employment in, or assignment to, the Agency program that Oakland Unified School District-funded instructors consent to work any additional hours.

TERMINATION

20. Either party may terminate this MOU at anytime and for any reason by providing thirty (30) days formal written notice of the intent to terminate to the non-terminating Party.

21. For cause, termination may be made by either party upon fifteen (15) days written notice to the other party stating the grounds for such termination.

INSURANCE REQUIREMENTS

22. Unless specifically waived by OUSD/ACE, the following insurance is required:
- a. If the Agency employs any person to perform work in connection with this MOU, Agency 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' Workers' Compensation Insurance limits shall not be less than One Million Dollars (\$1,000,000) per accident or disease.
 - b. The Agency shall maintain general liability insurance of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to Agency and shall name OUSD/ACE as an additional insured. A Certificate of Insurance shall be attached to this MOU as evidence that the Agency has met the insurance requirements hereunder. Inclusion of OUSD/ACE as an additional insured shall not affect OUSD/ACE's rights to any claim, demand, suit or judgment made, brought or recovered against the Agency. The policy shall protect the Agency and OUSD/ACE 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.
 - c. The Agency shall forward all insurance documents to Oakland Unified School District, Risk Manager, 1000 Broadway, Suite 440, Oakland, California, 94607.

INDEMNIFICATION

23. The Agency agrees to hold harmless, indemnify, and defend OUSD/ACE 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 MOU. Agency also agrees to hold harmless, indemnify, and defend OUSD/ACE and its officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Agency in connection with the performance of this MOU. This provision survives termination of this MOU.

PROHIBITED USES

24. The Parties to this MOU shall not use the Program Site, or permit any portion of the premises on which the Program Site is located to be used, in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, the Parties shall not maintain, commit, or permit the maintenance or

commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Program Site.

NOTICE

25. Any notices required to be given under this MOU shall be in writing and shall be deemed effective when (a) personally delivered, (b) mailed by certified or registered mail, return receipt requested, or (c) deposited with a comparably reliable postal delivery service (such as Federal Express), addressed as follows:

Oakland Unified School District
1000 Broadway, Suite 300
Oakland, CA 94607
Attn: Kyla Johnson-Trammell
Telephone: 510-434-7777

United Parcel Service
8400 Pardee Dr.
Oakland, CA 94621
Attn: Mario Austin
Telephone: 510-836-2573

STANDARD PROVISIONS

26. **No Rights in Third Parties:** This MOU does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

27. **Limitation of Liability:** Notwithstanding any other provision of this MOU, in no event, shall OUSD/ACE 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 MOU for the services performed in connection with this MOU.

28. **Confidentiality:** The Agency 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 MOU.

29. **Integration/Entire Agreement of Parties:** This MOU constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This MOU may be amended or modified only by a written instrument executed by both Parties.

30. **Litigation:** If any litigation is initiated to enforce or interpret this MOU, the prevailing party shall be entitled to reasonable attorney's fees and costs. This Agreement shall be performed in Oakland, CA and is governed by the laws of the State of California.

31. Approval: This Agreement is not effective until it is approved. OUSD/ACE approval requires signature by the Superintendent, the Board of Education, and/or their designee.

32. Signature Authority: The person(s) signing this MOU on behalf of each Party has been given the proper authority and empowered to enter into this MOU.

33. Counterparts: This MOU and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

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

IN WITNESS WHEREOF, the Oakland Unified School District, a California public school district under its Adult and Career Education Department and AGENCY has executed this Memorandum of Understanding as of the date written below:

OAKLAND UNIFIED SCHOOL DISTRICT



12/12/19

Aimee Eng, President, Board of Education

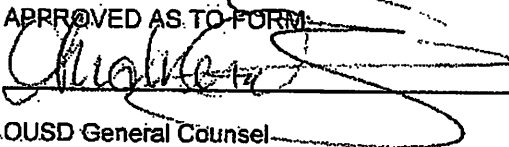
Date



12/12/19


Kyla Johnson-Trammell, Superintendent

Date

APPROVED AS TO FORM:


11/18/19
Date

United Parcel Service Northern CA District



10-1-19

Marlo Austin, District HR Operations Manager

Date