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# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Christian Nelson, Director, Oakland Adult and Career Education

**Board Meeting Date** April 10, 2019

**Subject** Memorandum of Understanding  
Contractor: Center Point  
Services For: Oakland Adult and Career Education

**Action Requested and Recommendation** Approval by the Board of Education of a Memorandum of Understanding between the District and Center Point, Oakland, CA, for the latter to provide classroom space as the owner/leaseholder for real property located at 333 Telegraph Street, Oakland, CA 94601, for OUSD’s Oakland Adult and Career Education to provide programming for Adult Education classes, for the period of January 28, 2019 through January 28, 2022, at no cost to the District.

**Background**  
*(Why do we need these services? Why have you selected this vendor?)*

Oakland Unified School District, Oakland Adult and Career Education (“District”) will provide Adult Education courses to many community-based organizations throughout the City of Oakland. These courses are taught by District Adult Education teachers to provide adult learners with skills and knowledge in many subject areas. Center Point is the owner/leaseholder of the real property located at 333 Telegraph Street, Oakland, California 94601 (“Program Site”), and provides space to the District at no cost to conduct Adult Education classes between District and the agency.

**Competitively Bid** Was this contract competitively bid? No  
If no, exception: 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  
CENTER POINT  
(ADULT EDUCATION CLASSES PROGRAMMING)**

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/OACE"), and Center Point a *California 501c3 corporation* (hereinafter, the "Agency"). OUSD/OACE 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/OACE and the Agency.

**RECITALS**

**WHEREAS**, the Agency is the owner / leaseholder of the real property located at 3333 Telegraph Street, Oakland, CA 94601 ("Program Site"); and

**WHEREAS**, the Agency desires to provide space at the Program Site to OUSD/OACE for the purposes of having OUSD/OACE provide adult education classes and programming services and OUSD/OACE 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/OACE agree as follows:

**RESPONSIBILITIES OF THE PARTIES**

1. OUSD/OACE shall provide adult education programming to students at the Program Site with the services of OUSD employee-instructor(s) for agreed upon scheduled hours to meet the educational needs of the students. The agreed upon schedule of hours is set forth in 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 and OUSD/OACE and is supervised and managed by OUSD/OACE.

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. Agency represents that the Program Space meets all legal requirements, including without limitation accessibility requirements under the Americans with Disabilities Act. 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/OACE adequate storage space for supplies, equipment and teacher needs.

5. The Agency agrees to provide a safe work environment to all OUSD/OACE employees while on the premises of the Agency. *No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property or on Program Site. No students, staff, visitors, contractors, or subcontractors are permitted to smoke or possess or use drugs at the Program Site.* 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. Agency represents that the Program Space meets all legal requirements, including without limitation accessibility requirements under the Americans with Disabilities Act.

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/OACE. 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/OACE generally requires at least ten (10) to twenty (20) students to be enrolled.

8. Instructional assistants, volunteers, or other personnel provided by OUSD/OACE 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, supervision, 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". OUSD/OACE sets the hours for the Adult Education instructors and no additional hours shall be permitted under this MOU. The Parties acknowledge and agree that it is not their intent to create any joint employer relationship. If Agency elects to hire an OUSD/OACE employee for work outside of the terms of this MOU that does not conflict with this MOU, each employment relationship is separate and distinct as set forth in this Agreement.

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 instructor's 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/OACE 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/OACE Program Administrator and the Agency.

16. Only OUSD/OACE shall be entitled to collect apportionment or supplemental federal funding under Workforce Innovation and Opportunity Act ("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 January 28, 2019 and unless sooner terminated under any provision hereof, this Agreement shall end on January 28, 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-funded 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 instructor's 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/OACE, 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/OACE 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/OACE as an additional insured shall not affect OUSD/OACE'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 Management Officer, 1000 Broadway, Suite 440, Oakland, California, 94607.

#### **INDEMNIFICATION**

23. The Agency agrees to hold harmless, indemnify, and defend OUSD/OACE 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/OACE 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.

The OUSD agrees to hold harmless, indemnify, and defend Agency 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 arising from OUSD/OACE's gross negligence in the performance 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 680  
Oakland, CA 94607  
Attn: Kyla Johnson-Trammell  
Telephone: (510) 879-8200

**Center Point**  
135 Paul Drive  
San Rafael, CA 94603  
Attn: Maurice Lee  
Telephone: (559) 341-4907

## 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/OACE 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. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

31. Approval: This Agreement is not effective until it is formally approved by OUSD's Governing Board. OUSD/OACE 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. Conflict of Interest. The Agency shall abide by and be subject to all applicable OUSD policies, regulations, statutes or other laws regarding conflict of interest. OUSD shall be permitted to hire an officer or employee of Agency for OUSD services in connection with or unrelated to this Agreement and Agency shall be permitted to hire any officer or employee of OUSD to perform any service by this Agreement, provided that the agreement attached hereto as Exhibit A is fully executed prior to the performance of any services by the officer or employee. Agency affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Agency's family, business or financial interest and the services provided under this MOU, and in the event of change in either private interest or services under this MOU, 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.

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

36. 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.

37. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion



Agency 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/>).

38. Relationship of Parties. This is not an employment contract. Agency, in the performance of this Agreement, shall be and act as an independent Agency. Agency 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. Agency 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 Agency's employees. In the performance of the work herein contemplated, Agency is an independent Agency 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.

39. Public Document. This contract, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

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

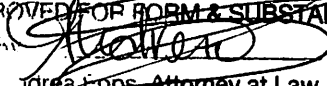
**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
Aimee Eng, President, Board of Education

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kyla Johnson-Trammell, Superintendent

\_\_\_\_\_  
Date

APPROVED AS TO FORM:   
OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
Andrea Pops, Attorney at Law  
3/15/19

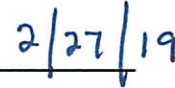
OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>

\_\_\_\_\_  
Andrea Epps, Staff Attorney

\_\_\_\_\_  
Date

Center Point





\_\_\_\_\_  
Maurice Lee, ~~Vice President~~ COO

\_\_\_\_\_  
Date

#### EXHIBIT A

#### Agreement to Allow Distinct & Separate Employment by OUSD and AGENCY

As set forth in the Memorandum of Understanding between AGENCY and Oakland Unified School District ("OUSD"), this Agreement ("Agreement") allows for the employment of the EMPLOYEE, \_\_\_\_\_, for distinct and separate employment roles with OUSD and with AGENCY. These two employment positions do not overlap in duties, hours, or control by the respective employers, OUSD or AGENCY. As used in this Agreement, "Parties" means Employee, OUSD, and AGENCY.

1. Employment Position. OUSD shall provide Employee with a written document describing the position that Employee shall perform for OUSD. AGENCY shall provide Employee with a written document describing the position that Employee shall perform for AGENCY. None of the duties performed for either employer shall interfere or conflict with their responsibilities for the other employer.
2. Hours of Work. OUSD shall inform Employee of the hours of work for the OUSD employment position. AGENCY shall inform Employee of the hours of work for the AGENCY position. None of the work hours shall be overlapping. Employee shall not work any hours beyond the regular working hours for either OUSD or AGENCY unless express written approval is given by the Employer for whom the extra hours are being worked.
3. Control & Supervision – OUSD Employment. During the employment position and working hours performed for OUSD, EMPLOYEE will devote their full services to OUSD and shall not engage in any work that conflicts with or compromises EMPLOYEE's best efforts to OUSD. EMPLOYEE shall be supervised by designated OUSD personnel and OUSD will provide the information, tools, and equipment necessary for such employment. OUSD shall control all aspects of the employment relationship for the work performed for OUSD. EMPLOYEE shall not use the information, tools, or equipment of OUSD in

performing the work for AGENCY, without OUSD's express permission. All work product of the EMPLOYEE shall belong to the employer for whom the services were being provided at the time the work was created. AGENCY shall not have any control or supervision over EMPLOYEE during the EMPLOYEE's OUSD work hours.

4. Control & Supervision – AGENCY Employment. During the employment position and working hours performed for AGENCY, EMPLOYEE will devote their full services to AGENCY and shall not engage in any work that conflicts with or compromises EMPLOYEE's best efforts to AGENCY. EMPLOYEE shall be supervised by designated AGENCY personnel and AGENCY will provide the information, tools, and equipment necessary for such employment. AGENCY shall control all aspects of the employment relationship for the work performed for AGENCY. EMPLOYEE shall not use the information, tools, or equipment of AGENCY in performing the work for OUSD, without AGENCY's express permission. All work product of the EMPLOYEE shall belong to the employer for whom the services were being provided at the time the work was created. OUSD shall not have any control or supervision over EMPLOYEE during the EMPLOYEE's AGENCY work hours.

5. Workers Compensation Liability Insurance. As required by California and federal law, each employer shall maintain workers compensation liability insurance for Employee's behalf for the employment position for which EMPLOYEE is employed by each of them.

6. Wages. OUSD is separately and independently liable for all wages and benefits earned by EMPLOYEE for performance of the OUSD employment position. OUSD shall have no liability for any portion of wages and benefits earned by EMPLOYEE for performance of the AGENCY employment position, and AGENCY agrees to indemnify, defend, and hold harmless OUSD from any such claim. Similarly, AGENCY is separately and independently liable for all wages and benefits earned by EMPLOYEE for performance of the AGENCY employment position. AGENCY shall have no liability for any portion of wages and benefits earned by EMPLOYEE for performance of the OUSD employment position, and OUSD agrees to indemnify, defend, and hold harmless OUSD from any such claim.

7. No Joint Employer Relationship. The Parties acknowledge and agree that it is not their intent to create any joint employer relationship and, instead, each employment relationship is separate and distinct as set forth in this Agreement. Notwithstanding, EMPLOYEE understands and agrees personnel information may be exchanged between OUSD and AGENCY.

8. Termination. Subject to any applicable employment laws, any Party may terminate this Agreement or any employment relationship created under this Agreement with two weeks written notice to the other Parties.

9. 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.

10. Integration/Entire Agreement of Parties: This Agreement and the Memorandum of Understanding between AGENCY and OUSD from which this Agreement stems, constitute 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 all Parties.

11. 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.

12. 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.

13. Employment Contingent on Governing Board Approval: OUSD shall not be bound by the terms of this Agreement or employment of EMPLOYEE until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to EMPLOYEE absent formal approval. This Agreement

shall be deemed to be approved when it has been signed all Parties and employment of EMPLOYEE has been approved by the Governing Board.

OAKLAND UNIFIED SCHOOL DISTRICT

- 
- President, Board of Education
  - Superintendent or Designee

AGENCY

Center Point, Inc.

EMPLOYEE

Maurice Lee COO M