

Board Office Use: Legislative File Info.	
File ID Number	20-0025
Introduction Date	1/22/20
Enactment Number	20-0137
Enactment Date	1/22/2020 lf



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 January 22, 2020

Subject Memorandum of Understanding
Services for: Fremont Adult and Continuing Education
(Fremont Unified School District)

Action Requested and Approval of a Memorandum of Understanding between Oakland Unified School District, and Fremont Adult and Continuing Education. Services of the Bank Work\$ Program will be delivered through Oakland Adult and Career Education in Oakland, CA in partnership with Fremont Adult and Continuing Education in Fremont, CA.

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

Oakland Unified School District, Adult and Career Education ("District") in partnership with the Fremont Adult and Continuing Education is responsible for implementing the BankWork\$ program in Oakland, CA and in Fremont, CA, including curriculum support, data collection, career navigation, staff training, and all other duties as outlined in the agreement with the BankWork\$ national organization. The Bank Work\$ program trains adults for employment in the Financial Services industry.

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 Fremont Adult and Continuing Education, Bank Work\$ Program.

MEMORANDUM OF UNDERSTANDING
BETWEEN Fremont Adult and Continuing Education, Fremont Unified School District, AND Oakland Adult and Career Education, Oakland Unified School District

1. **Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between **Fremont Adult and Continuing Education (Fremont Unified School District)**, whose address is 4700 Calaveras Ave., Fremont, CA 94538, and **Oakland Adult and Career Education (Oakland Unified School District)**, whose address is 2607 Myrtle Street, RM 122, Oakland, CA 94607.

2. **Purpose.** The purpose of this MOU is to establish the terms and conditions under which the BankWork\$ Program will be delivered through Oakland Adult and Career Education in Oakland, CA in partnership with Fremont Adult and Continuing Education in Fremont, CA.

3. **Term of MOU.** This MOU is effective upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect through December 31, 2020. This MOU may be terminated, without cause, by either party upon 60 day written notice, which notice shall be delivered by hand or by certified mail to the addresses listed above.

4. **Responsibilities of Fremont Adult and Continuing Education.**
- Fremont Adult and Continuing Education is responsible for implementing the BankWork\$ program in Fremont, CA and in Oakland, CA, including curriculum support, data collection, career navigation, staff training, and all other duties as outlined in the agreement with the BankWork\$ national organization (See attached agreement).
 - Fremont Adult and Continuing Education will use funding from the philanthropic support of bank partners to reimburse Oakland Adult and Career Education for the cost of the instructor salary and benefits, not to exceed 18 hours per week of instruction during the class session. Should insufficient funding be available to pay for instructor salary and benefits, course sessions may be cancelled or postponed until funding is available. Fremont Adult and Continuing Education will not use any state and/or federal funding it receives to pay for the cost of the instructor for Oakland Adult and Career Education. All non-instructional teacher hours pertaining directly to the implementation and support of the BankWork\$

Program will be paid directly by Fremont Adult and Continuing Education via contract with the instructor.

- Fremont Adult and Continuing Education will also be responsible for any costs associated with curriculum or course materials.
- Fremont Adult and Continuing Education is responsible for ensuring that students are assessed and oriented to the BankWork\$ Program in both the Fremont and Oakland locations.
- Fremont Adult and Continuing Education is responsible for procuring bank partners and financial support of the program.
- Fremont Adult and Continuing Education will assist Oakland Adult and Career Education with BankWork\$ advertising and marketing for the Oakland location.
- Fremont Adult and Continuing Education is responsible for organizing program events including mock interviews and the culminating graduation/hiring event. The graduation/hiring event will be held with both Oakland and Fremont graduates in the same location at the end of each cohort.
- Fremont Adult and Continuing Education administrators and BankWork\$ career navigators and instructor will work closely with the Oakland instructor and Oakland administrators to determine mutually agreed upon dates for each 8-week cohort. Cohorts will take place simultaneously in both locations.

5. Responsibilities of Oakland Adult and Career Education.

- Oakland Adult and Career Education is responsible for hiring an instructor for the BankWork\$ Program in accordance with the Oakland Unified School District's Human Resources policies, any applicable laws and employee rules and regulations.
- Oakland Adult and Career Education is responsible for the evaluation and supervision of the instructor in accordance with the Oakland Unified School District's policies, any applicable laws and employee rules and regulations.
- Oakland Adult and Career Education is responsible for student enrollment into its student information system once assessments have been conducted and students are accepted into the program.
- Oakland Adult and Career Education is responsible for its own state and/or federal program monitoring.
- Oakland Adult and Career Education is responsible for billing teacher expenses to Fremont Adult and Continuing Education on a monthly basis for reimbursement.
- Oakland Adult and Career Education will assist Fremont Adult and Continuing Education with advertising and marketing the program in Oakland and surrounding areas.
- Oakland Adult and Career Education will not impede the ability of Fremont Adult and Continuing Education to implement the separate agreement with the BankWork\$ national organization (See attached agreement) in any way.

- All extraneous costs associated with the implementation of the BankWork\$ career training program in Oakland, including facilities, utilities, custodial services, and all other such costs will be the responsibility of Oakland Adult and Career Education.

6. General Provisions

A. Amendments. Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. Applicable Law. Fremont Adult and Continuing Education and Oakland Adult and Career Education shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this agreement, and shall execute all necessary certifications of compliance therewith.

D. Entirety of Agreement. This MOU, consisting of 5 (five) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

E. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

F. Sovereign Immunity. Fremont Adult and Continuing Education in the Fremont Unified School District and Oakland Adult and Career Education in the Oakland Unified School District and their respective governing bodies do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

G. Insurance. Oakland Adult and Continuing Education understands that the Fremont Unified School District does not provide liability, malpractice, or workers compensation insurance for the Oakland Adult and Career Education in the Oakland Unified School District. Oakland Adult and Career Education is responsible for the maintenance of insurance to provide protection for any claims arising out of service under this agreement.

H. Equal Employment Opportunity. In connection with the Performance of this agreement, the CONTRACTOR shall comply with all local, state and federal laws concerning employment and shall not discriminate against any employee or

applicant for employment on the basis of actual or perceived race, religious creed, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, gender, gender identity, gender expression, sex, or sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

I. Hold Harmless. Oakland Adult and Career Education in the Oakland Unified School District agrees to indemnify and defend FUSD, its employees, and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the performance of this Agreement. FUSD agrees to indemnify and defend OUSD, its Board Members, officers, employees, and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the performance of this Agreement. This provision survives termination of this MOU.

J. Dispute Resolution. Should any dispute arise out of this Agreement, the Parties should meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be equally shared by the Oakland Adult and Career Education in the Oakland Unified School District and Fremont Adult and Continuing Education in the Fremont Unified School District. If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of this settlement. Neither party shall be permitted to file legal action without first meeting in mediation and maintaining a good faith attempt to reach a mediated resolution.

K. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

7. **Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

[Oakland Adult and Continuing Education, Oakland Unified School District]



[Kyla Johnson-Trammell, Superintendent] 1/23/2020 Date



[Jody London, President, Board of Education] 1/23/2020 Date



[General Counsel] 11/19/19 Date

[Chris Nelson, Director, Oakland Adult and Continuing Education] Date

Fremont Adult and Continuing Education, Fremont Unified School District



[Marcus Battle, Associate Superintendent,
Business Services, Fremont Unified School District] 12/18/19 Date



[Heidi McFadden, Principal, Fremont Adult and Continuing Education] Date HMC



**BANKWORKS®
PROGRAM LICENSE AGREEMENT**

This BANKWORKS® PROGRAM LICENSE AGREEMENT (hereinafter this "Agreement"), effective as of 2/26/19 (hereinafter the "Effective Date"), is made and entered into by and between BWork\$ LLC, a Washington limited liability company having an address at 601 Union Street, Suite 3030, Seattle, WA 98101 (hereinafter "Licensor"), and Fremont Adult and Continuing Education, a California Public K-12 Unified School District having an address at 4700 Calaveras Ave., Fremont, CA 94538 (hereinafter "Licensee"). Licensor and Licensee may be referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Licensor is the sole owner, directly or by license, of all trademarks, copyright, know-how and other intellectual property rights associated with the BankWork\$® program, a proprietary career-training program designed to prepare trainees for entry-level jobs as bank tellers, customer service representatives and personal bankers, which program consists of an initial eight-week training program, job placement assistance and ongoing coaching for career advancement (hereinafter the "Program");

WHEREAS, Licensor has appointed N/A (hereinafter "Provider") as the provider of the curriculum and Program Materials (as defined herein) and "Train-the-Trainer" program; and

WHEREAS, Licensee is a Public K-12 Unified School District and desires to receive a license from Licensor to establish and offer the Program within the community served by Licensee, and Licensor has agreed to grant such a license to Licensee, on terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. Certain Definitions.

"Licensee Location(s)" means all locations within the San Francisco Bay Area in the state of California

"Program Materials" means any and all textual, visual, audio and audio-visual materials, whether written, printed, electronic, digital, computer-generated, downloaded or downloadable via the internet or any other communications networks, stored or recorded on CD-ROM, DVD or any other optical medium, or fixed in any other format or medium now known or hereafter developed, that are furnished or otherwise made available by Licensor or the Provider (if any) that are designated as Program Materials or that are otherwise related to the Program.

"Program Personnel" means employees, agents and representatives of Licensee that are directly involved with the Program, including, without limitation, Trainers, but excluding Trainees. Program Personnel shall also mean any subcontractor which has been retained by Licensee, with

Licensor's prior written approval as described in Section 2.3, to deliver any portion of the Program, including as a Trainer.

"**Trainee**" means a person that is accepted into the Program to receive job training, job placement assistance, and career advancement coaching as offered by the Program.

"**Trainer**" means a member of Program Personnel that is considered by Licensor as qualified to provide training and coaching to a Trainee.

2. Program License and Conditions.

2.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-assignable, non-sublicensable, limited right and license to use the Program Materials, as provided or made available to Licensee by Licensor or the Provider (if any) hereunder, solely in connection with establishing, offering, operating, administering and promoting the Program at Licensee Location(s) during the Term (hereinafter the "**Program License**"). Use of the foregoing shall be subject to the use restrictions set forth in Exhibit A. Licensee acknowledges that Licensor may provide the Program Materials directly to Licensee, or may provide Program Materials through the Provider.

2.2 Licensor hereby reserves all rights not expressly granted to Licensee hereunder.

2.3 The Program License includes the limited right of Licensee to subcontract the delivery of the Program to one or more subcontractors; provided, however, that any such subcontracting agreement or arrangement shall (a) be subject to Licensor's prior written approval and (b) contain terms no less protective of Licensor than those contained in this Agreement. Licensee shall ensure that its subcontractors comply with the terms of this Agreement and shall promptly inform Licensor of any known violation, infringement, or breach thereof. To the extent Licensor has any rights under this Agreement with respect to Licensee, including as provided for in Section 4.2, Licensor shall have the same rights with respect to any subcontractor of Licensee.

2.4 Except as contemplated herein with respect to the Program License and Licensee's operation of the Program, Licensee shall not directly or indirectly license, establish, offer, operate, administer or promote any career-training program designed to prepare trainees for entry-level jobs in the financial services industry, including without limitation as bank tellers, customer service representatives and personal bankers (hereinafter a "**Competing Program**"), without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion. Without limiting the foregoing, financial literacy, financial credit, and similar educational programs shall not be considered Competing Programs for purposes of this Section 2.4.

3. No License Fee. Licensor is providing Licensee with the license-fee free use of the Program Materials in exchange for Licensee's agreement to use the Program Materials in a manner consistent with this Agreement during the Term, as defined herein.

4. Program Management.

4.1 In preparation for the Program each year, Licensee must prepare and submit for Licensor's review a written proposal that describes in sufficient detail Licensee's proposed

sourcing and placement of Trainee candidates, approximate class and graduation schedule, training locations to be utilized, and Program budget. The Program budget shall include a detailed description of the fundraising efforts to be undertaken by Licensee, for which Licensee shall be solely responsible. Without limiting the foregoing sentence, Licensor may, at its sole discretion, provide assistance with Licensee's fundraising efforts. Licensee shall promptly revise its proposal to reflect Licensor's input and feedback, and shall resubmit its proposal as revised to Licensor. Once approved by Licensor, Licensee may not materially deviate from the proposal in its implementation thereof.

4.2 Throughout the Term, Licensor shall have the right to conduct on-site visits at Licensee Location(s) to review Licensee's execution of the Program (including sitting in on actual training sessions) and to verify Licensee's compliance with the terms of this Agreement, in good faith and at such reasonable times and intervals as requested by Licensor. Licensee shall cooperate with Licensor and its designee (e.g., a Provider) during such on-site visits. Licensor shall conduct any review in a manner so as not to unreasonably disrupt Licensee's operations. Licensor shall restrict the scope, manner, and duration of any review to that reasonably necessary to achieve its purpose. Licensee shall promptly address and correct all areas of deficiency and non-compliance as discovered and notified by Licensor based on such on-site visits.

4.3 Throughout the Term, Licensee shall prepare and submit to Licensor on a monthly basis Trainee progress tracking and status reports using reporting forms and templates furnished by Licensor.

4.4 For each session of the Program offered by Licensee hereunder, Licensee shall use its best efforts to achieve the Program performance targets set forth in Exhibit B attached hereto.

4.5 During the Term, Licensee may collect and develop reports of aggregated data on its Trainees and other pertinent Program statistics pertaining to this Agreement (hereinafter the "Licensee Data") and use its trademark (hereinafter the "Licensee Trademark") in connection with distributing and reporting the Licensee Data. Licensee Data will exclude personal identifiers. Licensee will distribute and report the Licensee Data in a mutually agreed upon format during the Term to Licensor. Licensee hereby grants to Licensor a limited non-exclusive, non-transferable (except as provided in Section 10.3), royalty-free, perpetual license to use the Licensee Data together with the Licensee Trademark solely for the purposes of distributing and reporting the Licensee Data to third parties, for their inclusion in Licensor's advertising or marketing materials, and to otherwise carry out the intent of this Agreement. Licensee shall maintain and reserve all rights and title of interest in ownership of the Licensee Data and the Licensee Trademark.

4.6 Licensee hereby further grants to Licensor for the Term of this Agreement, a limited non-exclusive, non-transferable (except as provided in Section 10.3), royalty-free license to use the Licensee Trademark for inclusion in Licensor's advertising or marketing materials, and to otherwise carry out the intent of this Agreement. Licensor shall not use the Licensee Trademark in any manner that is disparaging or that otherwise portrays Licensee in a negative light. Licensor may not alter, modify or change the Licensee Trademark. Licensor will provide Licensee copies of all written advertising or marketing materials that include the Licensee Trademark or otherwise reference Licensee. Except as otherwise provided for in Section 4.5, Licensor may not use advertising or marketing materials or issue press releases that include the Licensee Trademark or

otherwise reference Licensee, or append any trade name or logo to the Licensee Trademark or use any variation therefrom without the prior written approval of Licensee, which may be withheld in Licensee's sole discretion.

4.7 Licensee may from time to time take or commission photographs of Program Personnel and Trainees during the course of operating the Program (hereinafter the "**Program Photographs**"). Licensee shall be responsible for obtaining signed releases, in such form as Licensor shall provide from time to time, from all individuals who appear in the Program Photographs and, in the case of commissioned photography, an appropriate license to use the Program Photographs in the manner contemplated herein. Licensee shall, upon the reasonable request of Licensor, provide copies of the Program Photographs to Licensor for the purposes of distributing and reporting the Licensee Data to third parties, for use in Licensor's advertising or marketing materials, and to otherwise carry out the intent of this Agreement. Licensee hereby grants to Licensor a limited non-exclusive, non-transferable (except as provided in Section 10.3), royalty-free, perpetual license to use such Program Photographs for the foregoing purposes. Such Program Photographs shall be delivered to Licensor together with the signed releases associated with the individuals depicted in each such Program Photograph and, in the case of commissioned photography, a copy of the license associated with the same. As between Licensor and Licensee, Licensee shall maintain and reserve all rights and title of interest in ownership of the Program Photographs.

4.8 Licensee agrees that it has implemented, and shall maintain, throughout the Term, appropriate policies, practices, and procedures to screen all Program Personnel. Accordingly, Licensee shall ensure that before authorizing or permitting any Program Personnel to deliver any portion of the Program, that lawful background checks shall have been performed on each such person.

5. **Ownership Rights.** Each Party's ownership rights are as set forth in Exhibit A.

6. **Representations and Warranties.**

6.1 Each Party hereby represents and warrants that: (a) it is a legal entity duly organized and in good standing under the laws of the jurisdiction in which it resides; (b) it has full right, power and authority to enter into and perform this Agreement; (c) the execution and performance of this Agreement does not violate or conflict with any other agreement to which it is a party or by which it is bound; and (d) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms.

6.2 Except as expressly provided in this Section 6, all Program Materials are provided "as is," "as available" and "with all faults." Licensor hereby disclaims all other warranties, without or implied, with respect to the Program Materials, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. Licensee acknowledges that Licensee is solely responsible for the success of the Program.

7. **Indemnification.**

7.1 Indemnity. Licensee hereby agrees to defend, indemnify and hold harmless Licensor and Licensor's affiliates and its and their members, officers, directors, employees, agents and representatives, including without limitation, the Provider (hereinafter collectively the "Indemnitees") from and against any and all third-party claims, suits, proceedings and other such actions ("Third Party Claims") to the extent their allegations are based on, and from any losses, liabilities, costs, expenses (including attorneys' fees) and other such damages or liabilities incurred in connection with such Third Party Claims ("Losses") to the extent they are caused by: (a) any breach of Licensee's representations and warranties set forth in this Agreement; or (b) any claim based on Licensee's use of the Program Materials.

7.2 Procedures. The following procedures shall apply to Licensee's indemnification obligations under this Section 7: (a) the Indemnitee shall provide Licensee with prompt notice of any Third Party Claim for which it seeks indemnification, provided that any delay in doing so shall not relieve Licensee of its obligations except to the extent prejudiced by such delay; and (b) Licensee shall have the sole right to control the defense and settlement of any Third Party Claim, provided that any settlement which obligates the Indemnitee to take or not take any action, or which admits guilt, culpability or liability on the part of the Indemnitee, will be subject to the Indemnitee's prior written approval, such approval not to be unreasonably withheld.

8. Limitation of Liability; Remedies.

8.1 Except for Licensee's liability for a breach of Section 2 or 5, and except for Licensee's Indemnification obligations set forth in Section 7, each Party's liability under this Agreement shall be limited as follows:

a. In no event shall either Party be liable to the other Party for any indirect, special, consequential or incidental damages, however caused, even if such Party has been advised of the possibility of such damages; and

b. In no event shall either Party's total liability to the other Party hereunder exceed the total license fee (if any) actually paid by Licensee to Liccnors during the Term.

In no event shall the Provider have any liability to either Party arising out of or related to this Agreement or the subject matter hereof.

8.2 Remedies. Licensee hereby expressly acknowledges and agrees that the Program License granted hereunder is unique and that Licensor may not be adequately compensated in money damages if Licensee fails to comply with any of the terms, conditions and provisions of such license as set forth in this Agreement (including, without limitation, any provision of Section 2.2 or 10.3 or Exhibit A) and that, accordingly, in the event of such non-compliance by Licensee, Licensor, at its option, shall have the right to pursue any remedy available at law or in equity or otherwise, including money damages and equitable relief (whether it be injunctive relief, specific performance or otherwise).

9. Term; Termination.

9.1 The term of this Agreement (hereinafter the "Term") shall commence on the Effective Date and continue for a period of two (2) years, and shall thereafter be subject to renewal

for successive periods of one (1) year each, unless either Party gives written notice of non-renewal to the other Party at least ninety (90) days prior to the end of the then current Term.

9.2 Either Party may terminate this Agreement immediately upon written notice to the other Party, if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach. In addition, Licensor may terminate this Agreement immediately without an opportunity to cure upon written notice to Licensee, if Licensee (a) becomes insolvent, or becomes subject to a bankruptcy filing (whether voluntarily or involuntarily), or commences liquidation or winding-up of its assets or operations, or otherwise ceases its operations or existence for whatever reason, or (b) fails to meet the performance standards in a manner that materially adversely affects the ability of Licensee to carry out its Program responsibilities under this Agreement.

9.3 The expiration or termination of this Agreement will not limit any other remedies available to either Party, including injunctive relief.

9.4 All provisions of this Agreement that by their nature are intended to survive the expiration or termination of this Agreement will so survive. Without limitation to the foregoing, the provisions of Sections 5-10 shall specifically survive the expiration or any early termination of this Agreement.

9.5 Upon expiration or early termination of this Agreement, the Program License shall automatically terminate with immediate effect, and Licensee shall, and shall require and cause all Program Personnel (including all Trainers) and all Trainees to, do and comply with all of the following:

- a. immediately cease and refrain from any and all further uses of Program Materials;
- b. promptly and permanently remove all displays of Program copyrights, trademarks or other intellectual property rights, and Program Materials, whether at Licensee Location(s) or otherwise; and
- c. (i) promptly destroy all Program Materials (including all copies, reproductions and duplicates thereof) and all other physical and tangible materials (including storage media) containing Program Materials that are in Licensee's possession or control, including, without limitation, permanently deleting and erasing all electronic files and records containing Program Materials that reside on computers, servers, networks and systems owned or controlled by Licensee, and certify such destruction and deletion in writing to Licensor, or (ii) if so requested by Licensor, promptly return and turn over all such materials to Licensor;

Provided, however, that notwithstanding the foregoing, Trainees may keep Trainee Materials, provided they will remain subject to the use restrictions set forth in Section 2.3 and 2.4 of Exhibit A to this Agreement.

10. Miscellaneous.

10.1 The relationship of the Parties hereunder is that of independent contractors. Nothing in this Agreement shall be deemed to constitute or form any agency, partnership, joint venture or franchise relationship between the Parties.

10.2 All notices to be given under this Agreement must be in writing and addressed to the respective addresses given below (or such other addresses as are given in writing in accordance with this provision):

If to Licensor:

BWork\$ LLC
601 Union Street, Suite 3030
Seattle, WA 98101
Attention: Les Biller

If to Licensee:

Fremont Adult and Continuing Education
4700 Calaveras Ave.
Fremont, CA 94538
Attention: Heidi McFadden

With a copy to:

Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067
Attention: Doug Mancino

10.3 This Agreement, including Exhibits A and B (Exhibit B to be agreed upon after execution of this Agreement and thereafter amended from time to time as appropriate), sets forth all of the terms under which Licensor shall provide a Program License to Licensee. This Agreement: (a) may not be amended except by a writing duly signed by both Parties; (b) represents the full and entire agreement and understanding of the Parties and supersedes any prior or contemporaneous understandings, written or oral, between them relating to the subject matter hereof; (c) may not be assigned by Licensee without Licensor's express prior written consent; (d) may be assigned by Licensor without Licensee's consent; (e) shall be binding upon the respective successors and permitted assigns of the Parties; and (f) shall be governed and construed in accordance with the laws of the State of Washington, without giving effect to the choice of law principles thereof.

10.4 No consent or waiver hereunder shall be effective unless it is explicit, in writing and executed by the waiving Party. Furthermore, no consent or waiver shall extend to or affect any obligations hereunder not expressly waived, or impair any right consequent thereto.

10.5 If any provision or any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, such shall be deemed stricken and deleted from this Agreement to the same extent and effect as if never incorporated herein, but all other provisions and portions thereof shall continue in full force and effect.

10.6 This Agreement may be executed in two or more counterparts, each of which shall be considered an original and all of which shall constitute one and the same instrument.

(Signature page follows)

IN WITNESS WHEREOF, this BankWork\$[®] Program License Agreement has been duly executed and delivered by both Parties as of the Effective Date first written above.

LICENSOR:

BWork\$ LLC



Name: Sherry Cromett
Title: President

LICENSEE:

Fremont Unified School District



Name: Raul Parungao
Title: Associate Superintendent

LICENSEE:

Fremont Adult School and Continuing Education





Name: Heidi McFadden
Title: Principal



ADDENDUM TO CONTRACT

This is an Addendum to the Program Contract/Confirmation between Fremont Unified School District, and BankWork\$ LLC for services to be conducted from 3/01/2019 through 3/01/2021. The Contract is attached and made a part of this document.

The parties, for good consideration, hereby agree as follows:

INSURANCE: LICENSOR understands Fremont Unified School District does not provide liability, malpractice, or workers compensation insurance for the LICENSOR. The LICENSOR is responsible for the maintenance of personal and professional insurance to provide protection for any claims arising out of service under this agreement. The LICENSOR assumes all liability for services provided under this contract.

HOLD HARMLESS: Each party does hereby agree to indemnify and hold harmless the other, its employees, agents, officials, and related entities from and against any and all losses, liabilities, damages, and expenses (including reasonable attorneys' fees and expenses as incurred) which it or any of them may incur or be obligated to pay in any action, claim or proceeding against any of them by a third party, for or by reason of their negligent acts, whether of omissions or commission, arising out of related to, or in connection with this Agreement or any other circumstances arising out of, related to, or in connection with this Agreement.

Signature:



Raul A. Parungao, Associate Superintendent
Fremont Unified School District

Signature:


Authorized:

Sherry Cromett

Print Name of Authorized Signer

EXHIBIT A: PROGRAM MATERIALS USAGE RESTRICTIONS

1. Permitted Use. Licensee will use Program Materials which are designated as provided for in the first column of the table below only as permitted in the second column of the table below. Licensor may provide additional designations, uses and restrictions by providing written notice thereof to Licensee. To the extent any Program Material does not have one of the designations listed below, it shall be deemed to be a Licensee Only Material (Confidential Information).

Program Material Designation **	Permitted Use / Restrictions
Licensee Only Materials (Confidential Information)	May only be used by Licensee and its employees for Licensee's own internal purposes in connection with the implementation and operation of the Program. May not be shared with non-employee Program Personnel (including subcontractors), Trainers or Trainees, or the public.
Trainer Materials	May be used by Licensee and its Program Personnel in connection with the implementation and operation of the Program, and may also be shared with Trainers, but not Trainees or the public.
Trainee Materials	May be used by Licensee and its Program Personnel in connection with the implementation and operation of the Program, and may also be shared with Trainers and Trainees, but not the public.
Public Materials	May be displayed and distributed publicly for the purpose of promoting the Program.

** For the avoidance of doubt, all Program Materials shall be deemed Licensee Only Materials unless they are expressly marked as Trainer Materials, Trainee Materials or Public Materials. To the extent Licensee believes any Program Materials are improperly classified, Licensee may request that Licensor re-classify such materials, provided that Licensor may or may not agree to such re-classification, in Licensor's sole discretion.

2. Use Restrictions. It is understood and agreed that Licensee's use of the Program Materials is expressly subject to and conditioned upon Licensee's compliance with ALL of the following provisions, and that any non-compliance by Licensee will be deemed a material breach of this Agreement. For the avoidance of doubt, non-compliance by any Trainer or any other Program Personnel or any Trainee will be deemed non-compliance by Licensee.

2.1 Licensee may only use the Program Materials at Licensee Location(s) agreed upon by Licensor in writing from time to time.

2.2 Licensee shall hold all Licensee Only Materials that come into its possession (whether through disclosure by Licensor or the Provider (if any) or otherwise) in strict confidence, use such information only as expressly authorized by this Agreement or otherwise in writing by Licensor, and not furnish, distribute, disclose, divulge or otherwise make such information

available to any person or entity unless authorized in writing by Licensor, and solely share such information with Licensee employees with a need to know such information. Licensee shall require and cause all permitted recipients to keep Licensee Only Materials solely for their own use in connection with the Program and not to furnish, distribute, disclose, divulge or otherwise make available the same to any other person or entity for any reason or purpose. To that end, Licensee shall clearly and conspicuously mark or stamp all Licensee Only Materials (including all copies, reproductions and duplicates thereof) as "Confidential and Proprietary" and shall ensure that all permitted recipients are subject to confidentiality restrictions consistent with this paragraph.

2.3 Licensee may make such number of copies of Program Materials as reasonably necessary to meet the internal needs of Program Personnel (including Trainers) and Trainees for Program-related uses, PROVIDED that: (a) all copyright, trademark and other proprietary rights notices and legends, as well as all confidential notices, markings, stamps and legends, contained in the originals must be kept intact in all such copies, and may not be altered, modified, removed, defaced, covered or otherwise interfered or tampered with; and (b) Program Personnel and Trainees shall be prohibited from making additional copies of any Training Materials, except where such copying is expressly permitted in writing by Licensor. Licensee shall require and cause all Program Personnel (including all Trainers) and all Trainees to comply with the restrictions set forth in subsection 2.3(b).

2.4 Licensee may not, and shall require and cause all Program Personnel (including all Trainers) and all Trainees not to: (a) publish, sell, distribute, lease, rent, or otherwise transfer possession or use of any Program Materials; (b) modify, alter, adapt, repurpose, repackage, or create derivative works from or based upon any Program Materials; (c) reverse engineer, decompile, or otherwise derive source material from any Program Materials; or (d) remove any copyright logos or source identification labels (e.g., Property of BWork\$ LLC) from any Program Materials. Licensee shall require and cause all Trainees to sign a written acknowledgment of the Program Material use restrictions provided for in subsections 2.3(b) and 2.4(a)-(d).

2.5 Licensee shall, and shall require and cause all Trainers and all other Program Personnel to, strictly adhere to and abide by all Program rules, policies, codes of conduct, protocols, standards, procedures, calendars and schedules specified in the Program Materials or otherwise communicated by Licensor in connection with the implementation and operation of the Program. Deviations from such Program policies and procedures must be approved by Licensor prior to implementation.

3. Ownership.

3.1 Licensee hereby expressly acknowledges that: (a) as between Licensee and Licensor, Licensor shall retain all right, title and interest in and to the Program Materials and all intellectual property rights therein, and nothing in this Agreement is intended nor shall be construed to convey, assign or transfer to Licensee any ownership right or interest in any of the foregoing; and (b) without limiting Section 2.5, any and all uses of any trademarks incorporated into the Program Materials by Licensee will inure to the sole and exclusive benefit of Licensor.

3.2 Without limitation to the generality of Section 3.1, Licensor shall have the sole and exclusive right to file and register for any copyrights, trademarks or other intellectual property

rights in the Program Materials throughout the world. Licensee is strictly prohibited from registering or attempting to register any intellectual property rights in the Program Materials, or, in the case of trademarks, any marks confusingly similar thereto.

3.3 Licensor shall be free to incorporate into the Program Materials any suggestions or ideas or recommendations provided by Licensee, Program Personnel or Trainees, without any duty to or payment to Licensee, Program Personnel or Trainees.

4. Program. Licensee shall conduct the Program at all times in accordance with the terms of this Agreement and the terms of the Program as reflected in the Program Materials. Licensee agrees that Licensor shall have the right to audit and review Licensee's books, records and facilities related to the Program and the license granted hereunder, including all Licensee Location(s), to verify that Licensee is complying with this Agreement and with all requirements of the Program.

PLA EXHIBIT B: PROGRAM PERFORMANCE TARGETS

Reference Exhibit B Document

EXHIBIT B: Performance Targets

	<u>Year 1</u>		<u>Year 2</u>		
	Partial Year (2 Sessions)	# of Day 1 Students (1 Class per Session)	Full Year (8 Sessions)	# of Day 1 Students (2 Classes per Session)	n of Graduates / # of Placements
Preparation Time	-	-	Session 3	25	19 / 12
Session 1	25	19 / 11	Session 4	25	19 / 13
Session 2	25	19 / 12	Session 5&6	50	37 / 24
Total Year	50	38 / 23	Session 7&8	50	37 / 24
			Total Year	150	112 / 73

Year 1 Considerations

- Year 1 is considered the first 12 months after PLA is signed. First class to open approximately 6 months after PLA is signed
- Pull through rate (*) target for Year 1 is 46%.
- Targets: 75% Graduation Rate and 60% Placement Rate
- Market to start with one class per session with a year to ramp up to two classes per session after 4 sessions
- Required staff to open classes: Full Time Instructor with banking & training background who participated in Train the Trainer, Career Navigator (Full to Part Time)

Year 2 Considerations

- Pull through rate target for Year 2 is 49%.
- 75% Graduation Rate and 65% Placement Rate
- Assumes an expansion to a 2nd location that allows for 2 classes per session after the 4th session
- For steady state, staff size will need to increase and include a Program Manager, Career Navigator, second Instructor, and Administrative position (Approximately 4 FTE)

(*) Pull through rate is the percent of Day 1 participants that are placed in a position in the financial services industry