



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

## LEGISLATIVE FILE

File ID No. 14-0498  
Introduction Date 3-26-2014  
Enactment No. 14-0531  
Enactment Date 3/26/14  
By [Signature]

## MEMO

To: Board of Education

From: Dr. Gary Yee, Ed.D, Acting Superintendent and Secretary, Board of Education  
By: Vernon Hal, Deputy Superintendent, Business Operations *VEA*  
Chris Nelson, Coordinator, Oakland Regional Consortium for Adult Education *Chel MS 2-28-14*

Date: March 26, 2014

Subject: **Approval by the Board of Education of the Memorandum of Understanding between the Oakland Unified School District Under Its Adult Career Education Department and The Salvation Army (Adult Education Classes Programming)**

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### ACTION REQUESTED

Approval by the Board of Education of the Memorandum of Understanding (MOU) between the Oakland Unified School District Under Its Adult Career Education Department and The Salvation Army (Adult Education Classes Programming).

### BACKGROUND

Oakland Unified School District, Adult & Career Education ("District") provides courses to many community-based organizations throughout the City of Oakland. These courses are taught by adult education teachers on a year-round basis and provide adult learners with skills and knowledge in many subject areas. The Salvation Army is the owner/leaseholder of the real property located at 601 Webster Street, Oakland, California ("Program Site"), and provides space to the District to conduct adult education classes and program services.

### DISCUSSION

The MOU continues an established a relationship between District and the Salvation Army for the latter to provide space at the Program Site at no charge to the District so that the District can provide programming and educational services at the Program Site.

### FISCAL IMPACT

N/A

### RECOMMENDATION

Approval by the Board of Education of the MOU between the Oakland Unified School District Under Its Adult Career Education Department and The Salvation Army (Adult Education Classes Programming).



Approval by the Board of Education of the MOU between the Oakland Unified School District Under Its Adult Career Education Department and The Salvation Army (Adult Education Classes Programming).

**ATTACHMENTS**

Memorandum of Understanding between the Oakland Unified School District Under Its Adult Career Education Department and The Salvation Army.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE OAKLAND UNIFIED SCHOOL  
DISTRICT UNDER ITS ADULT CAREER EDUCATION DEPARTMENT AND  
THE SALVATION ARMY  
(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 Education department ("OUSD/ACE"), and the Salvation Army (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 601 Webster Street, Oakland, California ("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 shall be as detailed in the attached **Exhibit "A."**

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 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.

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 hour the class is scheduled. 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 the Agency to assist in the instructional process 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 Oakland Unified 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 to the Program 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 set forth in **Exhibit "A"** 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 WIA 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, 2013, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2016 ("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 398, 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 indemnity provision shall survive termination of this MOU.

#### **PROHIBITED USES**

24. The Parties 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 398

Oakland, CA 94607

Attn.: Dr. Gary Yee

Telephone: 434-7777

**Salvation Army**

601 Webster Street,

Oakland, CA 94607

Priscilla Wetmore

Telephone: 451-4514

**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 by the OUSD/ACE governing board. OUSD/ACE approval requires signature by the Superintendent, the Board of Education, and/or their designee.

MEMORANDUM OF UNDERSTANDING OUSD/ACE – Salvation Army



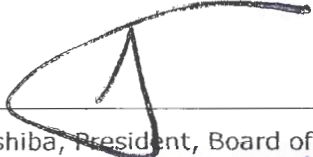
32. Signature Authority: The person(s) signing this MOU on behalf of each Party has been given the proper authority and empowered to enter into this MOU.

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.

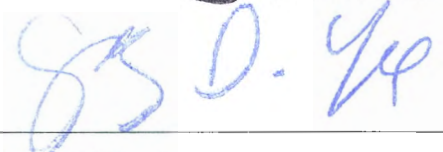
34. Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

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

**OAKLAND UNIFIED SCHOOL DISTRICT**


  
\_\_\_\_\_  
David Kakishiba, President, Board of Education

3/27/14  
Date

  
\_\_\_\_\_  
Gary Yee, Ed.D., Acting Superintendent

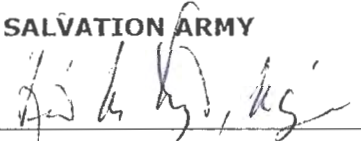
3/27/14  
Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Jacqueline Minor, General Counsel  
*Special Facilities*

3.7.14  
Date

**THE SALVATION ARMY**

  
\_\_\_\_\_

By: Leo M. Lloyd Its: Administrator

10/14/13  
Date

**EXHIBIT "A"**  
**SCHEDULE OF HOURS**

**TUES & THURS 3-5PM**

## ADDITIONAL COVERAGE SCHEDULE

COVERAGE	LIMITS
<b>POLICY TYPE:</b> Excess Workers Comp AZ, CO, OR <b>CARRIER:</b> XL Specialty Insurance Company <b>POLICY TERM:</b> 10/1/2013 – 10/1/2014 <b>POLICY NUMBER:</b> RWE500021603	Each Accident: \$1,000,000 Disease – Policy Limit: \$1,000,000 Disease – Each Employee: \$1,000,000
<b>POLICY TYPE:</b> Healthcare Professional Liability <b>CARRIER:</b> Lexington Insurance Company <b>POLICY TERM:</b> 12/1/2012-12/1/2013 <b>POLICY NUMBER:</b> 6791603	Aggregate Limit - \$10,000,000 Each Medical Limit - \$5,000,000



# CERTIFICATE OF LIABILITY INSURANCE

SALVARM-01 ESPINESENMI

DATE (MM/DD/YYYY)

9/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**

Willis Insurance Services of California, Inc.  
c/o 26 Century Blvd.  
P.O. Box 305191  
Nashville, TN 37230-5191

**CONTACT**

NAME:

PHONE (A/C, No, Ext): (877) 945-7378

FAX

(A/C, No): (888) 467-2378

E-MAIL:

ADDRESS:

**INSURER(S) AFFORDING COVERAGE**

NAIC #

INSURER A: Lexington Insurance Company

19437

INSURER B: Greenwich Insurance Company

22322

INSURER C: XL Insurance America, Inc.

24554

INSURER D: XL Specialty Insurance Company

37885

INSURER E:

INSURER F:

**INSURED**

The Salvation Army - Division 3  
180 East Ocean Blvd.  
Long Beach, CA 90802

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		027712409	10/1/2013	10/1/2014	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMPIOP AGG \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS		RAD500021903	10/1/2013	10/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB <input checked="" type="checkbox"/> OCCUR CLAIMS-MADE		US00064229LI13A	10/1/2013	10/1/2014	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
D	DED <input checked="" type="checkbox"/> RETENTIONS 10,000 WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	RWD500021703	10/1/2013	10/1/2014	WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Auto Liability - CA		RAE500021803	10/1/2013	10/1/2014	CSL 5,000,000
A	Professional Liab		6791603	12/1/2012	12/1/2013	See Attached

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Division #03-001 - Evidence of Coverage

\*\* Workers Compensation: Policy No. RWD5000217 provides coverage in the following states: AK, HI, ID, MT, NM, NV, TX, UT Policy No. RWE5000216 provides coverage in the following states: AZ, CO, OR CA - Work Comp is fully Self Insured per the attached State Certificate. CA - Auto is fully Self Insured per the attached State Certificate.

**CERTIFICATE HOLDER****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

To Whom It May Concern

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**EXHIBIT "A"**  
**SCHEDULE OF HOURS**

**TUES & THURS 3-5PM**