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Enactment Number	
Enactment Date	



Board Cover Memorandum

To Board of Education

From Denise G. Saddler, Interim Superintendent
Sondra Aguilera, Chief Academic Officer
Vanessa Sifuentes, Deputy Chief of Post-Secondary Readiness
Vinh Trinh, Manager, Comprehensive Student Supports and Master Scheduling

Meeting Date December 10, 2025

Subject Grant Award and Subcontractor Agreement – Oakland Children’s Initiative Grant
- East Oakland Promise Neighborhood Initiatives Program - Elmhurst United Middle School

Ask of the Board Approval by the Board of Education of a Subcontract Agreement To Discretionary Award By The Department of Education FAIN: S215N240017 by and between Oakland Promise (OP), Oakland, CA, and the District, on behalf of its Elmhurst United Middle School, accepting grants from OP for:

- Elmhurst Teacher of the Year, Benefits and Uniforms, as described in the Oakland Promise Neighborhood Initiatives Grant Award Letter of February 19, 2025, incorporated herein by reference as though fully set forth, in the amount of \$33,365.50, for the period of January 1, 2025 to December 31, 2025 (Year 1); and
- Paraprofessional Programming, as described in the Oakland Promise Children’s Initiative Grant Award Letter of October 28, 2025, incorporated herein by reference as though fully set forth, in the amount of \$10,000.00 for 2025-2026 School Year,

each, pursuant to the terms and conditions thereof, via the Chief Academic Officer.

Background This grant is intended to support vital student and family engagement efforts, addressing absenteeism, social-emotional health, and community outreach. The fund in this grant will be used to incentivize staff to do intentional outreach and connection with parents and students who have a high absenteeism rate. Staff will connect with students and parents to check on their progress, grades, attendance and social emotional health. In addition, Elmhurst’s

paraprofessionals will provide small group art instruction to and with students with moderate to extensive learning disabilities, including projects and arts based learning.

Discussion

This grant and partnership with the Oakland Promise will support Elmhurst United Middle School's move towards meeting or exceeding our middle school goals and outcomes, such as decreasing truancy, improving our school culture and climate and increasing student and family engagement in school. This grant award is used to support the ongoing work in our East Oakland Promise Neighborhood (EOPN) work in collaboration with the Oakland Promise and other community based organizations at Elmhurst United Middle School.

Fiscal Impact

Total Grant Awards to Elmhurst United Middle School:
Oakland Children's Initiative Grant Award in the amount of \$10,000.00 and East Oakland Promise Neighborhood Initiatives U.S. Department of Education Federal Grant in the amount of \$33,365.50, for a total amount not to exceed \$43,365.50.

Attachment(s)

- Grant Face Sheet – Oakland Children's Initiative
- Grant Face Sheet – East Oakland Promise Neighborhood Initiatives Program
- Oakland Promise Grant Award Notification
- Subcontractor Agreement to Discretionary Award



October 28, 2025

Viet-Ly Gonzalez

Principal

Elmhurst United Middle School

1800 98th Ave, Oakland, CA 94603

Subject: Grant Award Notification – Oakland Children’s Initiative

Dear Principal Gonzalez,

We are pleased to inform you that Elmhurst United Middle School has been awarded a grant under the Oakland Children’s Initiative for the 2025 - 2026 school year. This grant is intended to support vital student engagement efforts, addressing absenteeism, social-emotional health, and community outreach.

The approved budget for 2025-2026 award is as follows:

- **Paraprofessional programming** – Paraprofessionals provide small group art instruction to and with students with moderate to extensive learning disabilities, including projects and arts based learning.
- **Total Award:** \$10,000

Grant funds must be utilized in alignment with the approved budget and programmatic goals outlined in your proposal. Compliance with federal and local reporting requirements is mandatory, including timely submission of financial and programmatic reports. To accept this grant, please respond directly to confirm acceptance. If you have any questions, please contact Tiana Corona at tiana@oaklandpromise.org.

We appreciate your commitment to student success and look forward to working together to achieve meaningful outcomes for our students and families.

Sincerely,

A handwritten signature in black ink that reads "Sandra P. Ernst".

Sandra Ernst

CEO

Oakland Promise

sandra@oaklandpromise.org

Approved as To Form by OUSD Legal Department:

A handwritten signature in black ink that reads "Roxanne De La Rocha".


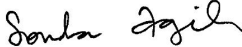
12/2/25

Roxanne De La Rocha, Staff Attorney

OUSD Grants Management Face Sheet

Title of Grant:		Funding Cycle Dates:
Oakland Children's Initiative Grant Award		8/1/2025 to 12/31/2025
Grant's Fiscal Agent: (contact's name, address, phone number, email address)		Grant Amount for Full Funding Cycle:
Oakland Promise		\$10,000.00
484 9th Street, Oakland, CA 94607		
408-693-1521		
tiana@oaklandpromise.org		
Funding Agency:		Grant Focus:
Oakland Promise		<p>Paraprofessional Programming: Paraprofessionals provide small group art instruction to and with students with moderate to extensive learning disabilities, including projects and arts based learning.</p>
List all School(s) or Department(s) to be Served:		
Elmhurst United Middle School		

Information Needed	School or Department Response	
How will this grant contribute to sustained student achievement or academic standards?	This grant is intended to support vital student engagement efforts, addressing absenteeism, social-emotional health, and community outreach. Paraprofessionals provide small group art instruction to and with students with moderate to extensive learning disabilities, including projects and arts based learning.	
How will this grant be evaluated for impact upon student achievement? (Customized data design and technical support are provided at 1% of the grant award or at a negotiated fee for a community-based fiscal agent who is not including OUSD's indirect rate of 3.89% in the budget. The 1% or negotiated data fee will be charged according to an Agreement for Grant Administration Related Services payment schedule. This fee should be included in the grant's budget for evaluation.)	Elmhurst will track student attendance, grades, test scores (local and state), suspension rate and results of the California Healthy Kids Survey (CHKS) to measure the impact on student achievement.	
Does the grant require any resources from the school(s) or district? If so, describe.	No	
Are services being supported by an OUSD funded grant or by a contractor paid through an OUSD contract or MOU? (If yes, include the district's indirect rate of 3.89% for all OUSD site services in the grant's budget for administrative support, evaluation data, or indirect services.)	Services are supported by a Grant awarded to the District.	
Will the proposed program take students out of the classroom for any portion of the school day? (OUSD reserves the right to limit service access to students during the school day to ensure academic attendance continuity.)	No	
Who is the contact managing and assuring grant compliance? (Include contact's name, address, phone number, email address.)	Name/Title:	Viet-Ly Gonzalez, Principal
	Site:	229
	Address:	
	Phone:	510-759-2402
	Email:	viet-ly.gonzalez@ousd.org

Applicant Obtained Approval Signatures:		
Name/s	Entity	Signature/s Date
Vanessa Sifuentes	Department Deputy Chief	
Sondra Aguilera	Chief Academic Officer	
Grant Office Obtained Approval Signatures:		
Name/s	Entity	Signature/s Date
Lisa Grant-Dawson	Fiscal Officer	
Denise G. Saddler	Interim Superintendent	

Name/s

Entity

Signature/s**Date**

Vanessa Sifuentes

Department
Deputy Chief

VS

Sondra Aguilera

Chief Academic
Officer

Sonba Agil

Grant Office Obtained Approval Signatures:

Name/s

Entity

Signature/s

Date

Lisa Grant-Dawson

Fiscal Officer

Denise G. Saddler

Interim
Superintendent

Approved as To Form by OUSD Legal Department:

De

12/2/25

Roxanne De La Rocha, Staff Attorney



February 19, 2025

Viet-Ly Gonzalez

Principal

Elmhurst United Middle School

1800 98th Ave, Oakland, CA 94603

Subject: Grant Award Notification – Promise Neighborhood Department of Education Grant

Dear Principal Gonzalez,

We are pleased to inform you that Elmhurst United Middle School has been awarded a grant under the Promise Neighborhoods Department of Education initiative for the period of January 1, 2025, to December 31, 2025 (Year 1). This grant is intended to support vital student and family engagement efforts, addressing absenteeism, social-emotional health, and community outreach.

The approved budget for Year 1 is as follows:

- **Elmhurst Teacher OT (Year 1)** – Overtime for teachers conducting family outreach and student progress monitoring: \$22,435
- **Benefits @ 30%:** \$6,731
- **Uniforms:** \$4,200
- **Total Award:** \$33,365.50

Grant funds must be utilized in alignment with the approved budget and programmatic goals outlined in your proposal. Compliance with federal and local reporting requirements is mandatory, including timely submission of financial and programmatic reports. All subcontractors are expected to follow the original budget, and any re-budgeting must be approved by the program officer at the Department of Education prior to implementation of funds.

To accept this grant, please respond directly to confirm acceptance. If you have any questions, please contact Tiana Corona at tiana@oaklandpromise.org.

We appreciate your commitment to student success and look forward to working together to achieve meaningful outcomes for our students and families.

Sincerely,

A handwritten signature in black ink that reads "Sandra P. Ernst".

Sandra Ernst

CEO

Oakland Promise

sandra@oaklandpromise.org

Approved as To Form by OUSD Legal Department:

A handwritten signature in black ink that reads "Roxanne De La Rocha".



12/2/25

Roxanne De La Rocha, Staff Attorney


OUSD Grants Management Face Sheet

Title of Grant:		Funding Cycle Dates:
Promise Neighborhood Department of Education Grant		8/1/2025 to 12/31/2025
Grant's Fiscal Agent: (contact's name, address, phone number, email address)		Grant Amount for Full Funding Cycle:
<div style="text-align: center;">Oakland Promise</div>		\$33,365.50
<div style="text-align: center;">484 9th Street, Oakland, CA 94607</div>		
<div style="text-align: center;">408-693-1521</div>		
<div style="text-align: center;">tiana@oaklandpromise.org</div>		
Funding Agency:		Grant Focus:
Department of Education		This grant is intended to support vital student and family engagement efforts, addressing absenteeism, social-emotional health, and community outreach.
List all School(s) or Department(s) to be Served:		
Elmhurst United Middle School		

Information Needed	School or Department Response	
How will this grant contribute to sustained student achievement or academic standards?	This grant is intended to support vital student and family engagement efforts, addressing absenteeism, social-emotional health, and community outreach. The fund in this grant will be used to incentivize staff to do intentional outreach and connection with parents and students who have high absenteeism rate. Staff will connect with students and parents to check on their progress, grades, attendance and social emotional health.	
How will this grant be evaluated for impact upon student achievement? (Customized data design and technical support are provided at 1% of the grant award or at a negotiated fee for a community-based fiscal agent who is not including OUSD's indirect rate of 3.89% in the budget. The 1% or negotiated data fee will be charged according to an Agreement for Grant Administration Related Services payment schedule. This fee should be included in the grant's budget for evaluation.)	Elmhurst will track student attendance, grades, test scores (local and state), suspension rate and results of the California Healthy Kids Survey (CHKS) to measure the impact on student achievement.	
Does the grant require any resources from the school(s) or district? If so, describe.	No	
Are services being supported by an OUSD funded grant or by a contractor paid through an OUSD contract or MOU? (If yes, include the district's indirect rate of 3.89% for all OUSD site services in the grant's budget for administrative support, evaluation data, or indirect services.)	Services are supported by a Grant awarded to the District.	
Will the proposed program take students out of the classroom for any portion of the school day? (OUSD reserves the right to limit service access to students during the school day to ensure academic attendance continuity.)	No	
Who is the contact managing and assuring grant compliance? (Include contact's name, address, phone number, email address.)	Name/Title:	Viet-Ly Gonzalez, Principal
	Site:	229
	Address:	
	Phone:	510-759-2402
	Email:	viet-ly.gonzalez@ousd.org

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Sondra Aguilera	Chief Academic Officer	
Grant Office Obtained Approval Signatures:		
Name/s	Entity	Signature/s Date
Lisa Grant-Dawson	Fiscal Officer	
Denise G. Saddler	Interim Superintendent	

Approved as To Form by OUSD Legal Department:

 12/2/25

Roxanne De La Rocha, Staff Attorney

**SUBCONTRACTOR AGREEMENT
TO
DISCRETIONARY AWARD
BY
THE DEPARTMENT OF EDUCATION FAIN: S215N240017**

THIS SUBCONTRACTOR AGREEMENT (this “Agreement”) is entered into as of January 1, 2025 by and between Oakland Promise, a California nonprofit public benefit corporation (“OP”), and Oakland Unified School District, a school district located in Alameda County, California (“Subcontractor”). OP and Subcontractor are collectively referred to herein as the “Parties.”

TERMS AND CONDITIONS

1. Services. Subcontractor shall perform the services more fully described in Exhibit A attached to this Agreement and incorporated herein (the “Services”). Subcontractor is providing the Services in fulfillment of OP’s obligations pursuant to the Grant Award Notification (“GAN”) issued by the U.S. Department of Education (the “DOE”) with a grant period beginning January 1, 2025 (the “Primary Grant”), wherein the DOE has provided OP with a federal multi-year grant in the amount of \$1,000,000 funded by the Every Student Succeeds Act to implement OP’s East Oakland Promise Neighborhood Initiatives program (the “Primary Award”). All of the amounts paid by OP to Subcontractor under this Agreement are paid using funds from the Primary Award. Subcontractor acknowledges it has received and reviewed the GAN in connection with this Agreement. Subcontractor agrees to coordinate with OP’s designated project lead and additional OP staff in connection with providing the Services. Subcontractor agrees to be available for regular calls and in-person planning meetings with OP project lead and additional staff.

2. Payment for Services; Invoices. In consideration for the Services, OP agrees to reimburse Subcontractor according to the schedule and subject to the conditions set forth in Exhibit B attached to this Agreement and incorporated herein (the “Subcontractor Fee”).

3. Reports; Substantiation and Review.

a. Each invoice submitted by Subcontractor pursuant to this Agreement must be accompanied by a report of all funds spent by Subcontractor in performance of the Services during the preceding quarterly period for which Subcontractor seeks reimbursement under this Agreement. The report must also refer to the Federal Award Identification Number (“FAIN”) assigned by the DOE to the Primary Award, as set forth above, and include a summary of completed work and a progress report regarding delivery of the Services. The frequency and content of Subcontractor reports required under this Agreement shall be subject to change in the event such change is required by the DOE.

b. If applicable, Subcontractor shall comply with the Federal Funding Accountability and Transparency Act (“FFATA”) as set forth in Attachment 9 to the GAN, including the reporting requirements applicable to subrecipients as described therein.

c. Subcontractor shall maintain documentation substantiating all expenses and reports under this Agreement for at least three (3) years following the date of the final report

submitted by Subcontractor under this Agreement. Such documentation shall include, without limitation, receipts, purchase orders, bank statements, payroll records and/or statements of expenditures.

d. OP shall have the right to conduct on-site reviews of any Subcontractor activities related to the Services, and Subcontractor shall provide copies of Subcontractor's records and financial statements to OP upon request. Subcontractor shall take action, as directed by OP or the DOE, on any deficiencies pertaining to the Services or the Subcontractor Fee identified by OP or detected by the DOE through audits of the Primary Award. Subcontractor must provide OP with written confirmation of such corrective action within the period requested by either OP or the DOE, highlighting the status of actions planned or taken to address the identified deficiencies.

e. If applicable, Subcontractor shall comply with the restrictions on use of DOE funds by faith-based organizations as set forth in Attachment 17 to the GAN, including, when applicable, providing written notice to a beneficiary or prospective beneficiary of certain protections, as set forth in Attachment 18 to the GAN.

4. Subcontractor Performing Work Pursuant to Federal Award. Subcontractor acknowledges that it is a subrecipient as described in the GAN and that it shall fully comply with all requirements applicable to subrecipients under the GAN, including, without limitation: (i) Title 2 of the Code of Federal Regulations ("CFR") Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," (the "CFR Regulations"); and (ii) The Education Department General Administrative Regulations in 34 CFR ("EDGAR") 75, 77, 79, 80-86, 97, 98, and 99 for the administration of discretionary grants by the DOE (the "EDGAR Regulations"). In addition to the compliance required under this Section 4, the portions of the CFR Regulations listed in Exhibit C are hereby incorporated by reference into this Agreement and shall have the same force and effect as if they were included in the full text. Subcontractor represents and warrants that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency.

5. Payment Subject to Federal Award. Payment by OP to Subcontractor for the Services provided under this Agreement is subject to compliance by Subcontractor with the terms of this Agreement, including those incorporated by reference. Any amounts previously paid by OP to Subcontractor under this Agreement later excluded by the DOE from the Primary Award due to ineligible expenditures made by Subcontractor shall be repaid in full to OP by Subcontractor and may be subtracted from future payment of fees to Subcontractor under Section 2 of this Agreement. OP may suspend payment to Subcontractor for allowable costs if such suspension is made by the DOE or authorized under the applicable Primary Award conditions, including, without limitation, the CFR Regulations and the EDGAR Regulations.

6. Effective Date; Term. This Agreement shall be effective as of the date first above written and end on December 31, 2025 (the "Initial Term"), unless renewed as described in this Section 6 or terminated pursuant to Section 8 below. At the expiration of the Initial Term, this Agreement may be renewed by OP in its sole discretion for additional successive periods of one (1) year (each an "Optional Renewal Period"). In the event OP wishes to exercise an Optional Renewal Period, it will provide Subcontractor with written notice of its intent to renew at least thirty (30) days prior to the end of the then-current term. OP is not required to provide any notice of non-

renewal. As used in this Agreement, “Term” shall include the Initial Term and any Optional Renewal Period. The Subcontractor Fee for any Optional Renewal Period shall be subject to change as agreed upon by the Parties prior to the commencement of the applicable Optional Renewal Period and may be impacted by the annual budget review process by the DOE.

7. Nature of Engagement.

a. Subcontractor is accountable to OP for the completion of the Services. OP shall not have the right to direct or control the means, manner, or details by which Subcontractor accomplishes those results, nor will OP instruct Subcontractor as to when, where, or how Subcontractor is to work, or the order of tasks to be performed.

b. It is expected that Subcontractor will furnish to its employees’ transportation, equipment, and instrumentalities of every kind required for the prompt and efficient execution of the work described above. Beyond the fees set forth above, OP will pay Subcontractor no additional compensation or benefits in any other form.

c. Subcontractor may request that OP procure supplies necessary to accomplish its work, but shall have no power to incur any debts or other obligations on behalf of OP, and shall have no right to reimbursement for any expenses paid or incurred by Subcontractor unless otherwise agreed in writing.

d. Except as specifically authorized under this Agreement, Subcontractor is not an agent of OP and has no authority to enter into any contract nor to incur any liability on behalf of OP. This Agreement does not create a partnership between the Parties.

e. The Services as provided in this Agreement shall not include any grassroots or direct lobbying, intervention in any political campaign on behalf of or in opposition to any candidate for public office, funding of union activity, inducing or encouraging violations of law or public policy, nor causing any improper private benefit to occur.

8. Termination.

a. OP may terminate this Agreement prior to the end of the Term, if Subcontractor breaches this Agreement (including, without limitation, the CFR Regulations, the EDGAR Regulations and the representations made by Subcontractor under Section 13(c) of this Agreement), is unwilling or unable to perform the Services, or engages in gross negligence or willful misconduct. OP will provide written notice to Subcontractor of such failure or breach and its intent to terminate this Agreement. This Agreement will terminate thirty (30) days after OP provides such notice, if the failure or breach has not been fully remedied during the thirty (30)-day period following the notice to the satisfaction of OP.

b. Notwithstanding the foregoing, any termination by the DOE of the Primary Award for any reason shall constitute termination of this Agreement, which shall terminate on the effective date of termination of the Primary Grant.

c. Either Party may terminate this Agreement at any time with sixty (60) days’ written notice to the other Party, without cause.

d. Upon the effective date of termination, Subcontractor shall immediately (i) discontinue providing the Services; (ii) return to OP all materials provided by OP to Subcontractor to facilitate provision of the Services and deliver all work in progress produced prior to termination; and (iii) comply with all other instructions provided by OP or the DOE related to termination. Upon providing or receiving any notice of termination, OP shall compensate Subcontractor for Services rendered by Subcontractor prior to the effective date of termination for which Subcontractor has not previously been compensated, provided all costs are allowable under the Primary Award.

9. Insurance. During the Term, Subcontractor shall procure and maintain with a reputable insurance company a policy or policies in respect of all risks arising out of Subcontractor's performance of the Services, including death or personal injury, loss of or damage to property or any other loss. Upon request from OP, Subcontractor must submit proof of such insurance.

10. Indemnification.

a. Subcontractor agrees to indemnify and hold harmless OP, its directors, officers, employees, agents, and affiliates from and against any and all rights, claims, demands, causes of action, losses, liabilities, obligations, damages, and expenses (including attorneys' fees and expenses), whether the same be now known or unknown, anticipated or unanticipated, which they may incur or be obligated to pay in any action, claim, or proceeding against them or any of them, for or by reason of any acts, whether of omission or commission, that may be committed or suffered by Subcontractor or any of Subcontractor's servants, agents, or employees, in connection with Subcontractor's performance of any part of this Agreement. Subcontractor shall be liable for and shall indemnify OP against any loss resulting from: (i) its violation of the CFR Regulations, the EDGAR Regulations, or provision contained in the GAN applicable to Subcontractor; (ii) failure to meet the representations made by Subcontractor hereunder, including, without limitation, Section 13(c) of this Agreement; and (iii) any costs incurred by the OP under the Primary Award resulting from Subcontractor's performance under this Agreement, including, without limitation, ineligible expenditures made by Subcontractor. The provisions of this paragraph and Subcontractor's obligations hereunder shall survive any expiration, termination, or rescission of this Agreement. If either OP or Subcontractor becomes aware of any suit or claim against OP (which term includes any director, officer, employee, agent, or affiliate of OP) covered by this paragraph, such party will promptly notify the other party in writing. In the event that a judgment, levy, attachment, or other seizure is entered against OP arising from any claim covered by this indemnification, Subcontractor shall promptly post the necessary bond to prevent execution against any property of OP.

b. All of Subcontractor's obligations under this Section are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

c. Subcontractor's indemnification obligations set forth above shall not be limited by any insurance requirements contained in this Agreement. OP's liability under this Agreement shall be limited to payment of Subcontractor in accordance with the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

11. Proprietary Rights; Ownership of Copyrights; Credit. Subcontractor agrees that any work product or deliverables created pursuant to this Agreement are being prepared for the use of OP, is confidential and proprietary, and shall belong to OP. To the extent that Subcontractor creates written materials or other fixed and tangible forms of expression in the course of performing the Services under the Agreement, Subcontractor shall assign any copyright in those works to OP. In the event that Subcontractor is unable or unwilling to execute an assignment of copyright, Subcontractor hereby authorizes a court of law to effect the assignment, without any further action by Subcontractor. Additionally, any intellectual property resulting from the Services shall be subject to the portions of the CFR Regulations applicable to intangible property and rights to inventions made by nonprofit organizations under government grants.

12. Independent Contractor Status.

a. Subcontractor states and affirms that it is acting as a free agent and independent contractor, holding itself out to the general public in that capacity, and that it maintains its office and principal place of business at its own address, and that this Agreement is not exclusive. OP possesses no right hereunder to discourage or inhibit Subcontractor's rights to enter into any other contracts as Subcontractor sees fit. Nothing in this Agreement shall be deemed to restrict or prohibit Subcontractor from providing to others services the same as or similar to the Services.

b. Subcontractor understands that, as an independent contractor, it has no right to look to OP for workers' compensation, unemployment, disability, health, or retirement benefits, or for any other benefits provided to employees under federal, state, or local laws, and that no withholding from its fees will be taken for these benefits, or for federal or state income taxes, or for social security taxes. Subcontractor is responsible for maintaining such business insurance (e.g., general liability, workers' compensation) or personal insurance (e.g., medical) as it may desire or be required by law to maintain. Subcontractor is fully responsible for the reporting and payment of its own federal and state income taxes on its fees. At the option of OP, Subcontractor may be required to execute an IRS form or other document evidencing compliance with its tax obligations related to this Agreement.

13. Representations and Warranties.

a. Subcontractor represents that it has the qualifications and ability to perform the Services provided under this Agreement in a professional manner and in compliance with the DOE requirements applicable to the Primary Award (including, without limitation, the CFR Regulations and the EDGAR Regulations), without the control or supervision of OP. Failure to perform the Services in a professional manner and with the degree of skill and judgment normally exercised by recognized professionals performing the same or substantially similar services shall constitute a material breach of this Agreement.

b. Subcontractor agrees that in the event of any breach of the foregoing warranty, the Subcontractor shall, at its own expense, in the discretion of OP either: (1) re-perform the non-conforming Services to conform to this standard; or (2) refund to OP that portion of the amounts received by the Subcontractor attributable to the non-conforming Services.

c. Subcontractor represents and warrants that it is in compliance with: (i) Attachment 8 to the GAN, Prohibition on Human Trafficking; (ii) Attachment 12 to the GAN, Prohibition of Text Messaging and Emailing While Driving During Official Federal Grant Business; and (iii) all applicable Federal regulations described in 2 CFR 200 Appendix II – Contract Provisions for Non-Federal Entity Contracts, a copy of which is attached hereto as Exhibit D. Subcontractor agrees to provide any certifications requested by OP to substantiate such compliance. Subcontractor represents and warrants that it has policies in place to ensure continued compliance with the foregoing regulations by Subcontractor, its employees, directors, officers and agents. Subcontractor shall be liable for and shall indemnify OP against any loss resulting from violation of this paragraph (c), including, without limitation, any costs incurred by the OP under the Primary Award. Such violation may result in the immediate termination of this Agreement.

d. Subcontractor represents and warrants to OP that it has complied and will continue to comply with all other federal, state, and local laws regarding business permits, regulatory filings, and licenses that may be required to carry out the work to be performed under this Agreement.

e. Subcontractor may, at Subcontractor's own expense, employ, and supervise such assistants, helpers, agents, or subcontractors as Subcontractor deems necessary to perform the Services, Subcontractor complies with the procurement standards set forth in the CFR Regulations, including, but not limited to, 2 CFR 200.318-327. Other than OP's obligation under the Primary Award to oversee services provided by subrecipients, OP may not control, direct, or supervise Subcontractor's employees or subcontractors, if any, in the performance of the Services. Subcontractor agrees to provide workers' compensation insurance to cover any such employees of Subcontractor and agrees to hold harmless and indemnify OP for any and all claims arising out of any injury, disability, or death of any of Subcontractor's employees. Subcontractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement, if any, a provision obligating each subcontractor to abide by the terms and conditions of this Agreement, including, without limitation, all applicable provisions of the GAN or CFR incorporated into this Agreement, and shall obtain a written agreement to that effect signed by each subcontractor.

f. Except as specifically agreed by OP in writing in advance, Subcontractor shall be exclusively liable for all costs incurred by Subcontractor in performing the Services. Subcontractor is entitled to retain any and all profit it earns from the Services it provides pursuant to this Agreement and shall bear at its own expense any and all losses incurred by Subcontractor in completing the Services.

14. Confidentiality.

a. Subcontractor shall keep confidential any and all of OP's confidential, proprietary, or trade secret information to which Subcontractor has access during the Term of this Agreement. The provisions of this paragraph and the Parties' obligations hereunder shall survive any expiration, termination, or rescission of this Agreement.

b. As required by the Primary Award, Subcontractor and its staff, if any, shall maintain the confidentiality of all records and information owned or controlled by the DOE, or collected on behalf of the DOE, including personal identifying data, and shall take all reasonable

technical and organizational measures necessary to protect the information technology systems and data used in connection with performance of the Services.

15. Remedies. If the DOE or OP determines that Subcontractor materially fails to comply with any term of this Agreement, including all terms incorporated by reference, whether from a Federal statute or regulation, the GAN, or elsewhere, OP or the DOE may take one or more of the following actions, as applicable:

- a. Temporarily withhold cash payments pending correction of the deficiency by Subcontractor or more severe enforcement action taken or required by the DOE;
- b. Disallow all or part of the cost of the activity not in compliance;
- c. Wholly or partly suspend or terminate this Agreement;
- d. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180; or
- e. Take other remedies that may be legally available.

16. Waivers. The failure of either Party to exercise any of their rights under this Agreement shall not be deemed to be a waiver of such rights.

17. No Assignment. This Agreement shall not be assignable by either Party without the prior written consent of the other; provided that, subject to Section 13(e), Subcontractor may subcontract with third parties to perform its obligations under this Agreement.

18. Notice. All notices, requests, waivers, approvals, consents, demands and other communications hereunder shall be in writing and shall be deemed duly given when delivered personally, or three (3) days after being deposited with the United States Postal Service, or one (1) day after being deposited for delivery with a nationally recognized overnight delivery service, with all charges, fees, and first-class postage prepaid, properly addressed, as follows:

If to OP, at:

Oakland Promise
484 9th Street
Oakland, California 94607
Attn: Sandra Ernst
sandra@oaklandpromise.org

If to Subcontractor, at:

Oakland Unified School District
1011 Union Street
Oakland, California 94607
Attn: Vinh Trinh
vinh.trinh@ousd.org

19. Arbitration. The Parties agree that, with respect to all controversies, claims, disputes, or counterclaims arising out of or relating to this Agreement or any resulting transaction, whether it involves a disagreement about the meaning, interpretation, application, or validity of this agreement, and whether based on statute, tort, contract, common law, or otherwise (“Dispute”), if a Dispute cannot be settled through negotiation, such Dispute shall be promptly submitted to an arbitrator in accordance with the commercial rules relating thereto of the American Arbitration Association then in effect. Before commencing any such arbitration, the Parties agree to enter into negotiations to resolve the Dispute. If the Parties are unable to resolve the Dispute by good faith negotiation, either party may refer the matter to arbitration. The arbitration shall take place in the County of Alameda, State of California. The decision of the arbitrator(s) shall be final and binding on the Parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

Pending any final decision of a Dispute hereunder or a judgment by any court of competent jurisdiction, Subcontractor shall proceed diligently with the performance of this Agreement and in accordance with the written directions of OP.

Any costs or other expenses, including reasonable attorney’s fees and costs incurred by the successful party, arising out of or occurring because of the arbitration, shall be assessed against the unsuccessful Party.

Notwithstanding the requirements contained in this Section 18, the Parties agree that all Disputes will be subject to the DOE’s authority.

20. Governing Law. This Agreement and all claims arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of California.

21. Entire Agreement; Amendments. This Agreement, any exhibits or attachments to this Agreement, and those portions of the GAN, the CFR Regulations and the EDGAR Regulations applicable to subrecipients under the Primary Award shall supersede any prior oral or written understandings or communications between the Parties and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both Parties hereto.

22. Severability. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

23. Counterparts. This Agreement may be executed in any number of counterpart copies, all of which shall constitute one and the same agreement.

24. Authorization; Binding Effect. The execution, delivery and performance by Subcontractor of this Agreement have been duly authorized by all requisite corporate action. Upon execution and delivery of this Agreement by Subcontractor, this Agreement will constitute the legal, valid, and binding obligations of Subcontractor, enforceable in accordance with their terms.

[Signature page follows.]

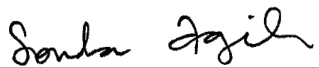
IN WITNESS WHEREOF, the Parties have executed this First Amendment to Subcontractor Agreement effective as of the date first above written.

OAKLAND PROMISE:

Sandra Ernst Chief Executive Officer

Date

OAKLAND UNIFIED SCHOOL DISTRICT:

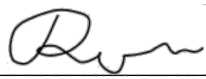


By: Sondra Aguilera
Title: Chief Academic Officer

12/3/2025

Date

Approved As To Form by OUSD Legal Department:

 12/2/25

Roxanne De La Rocha, Staff Attorney

EXHIBIT A

DESCRIPTION OF THE SERVICES

[Attached on Next Page.]

Exhibit A

Organization Name	Elmhurst United Middle School, Oakland Unified School District)
Contact Name, Title	Viet-Ly Gonzalez, Principal
Description of Organization	Oakland Unified School District (OUSD) is a Full Service Community District focused on high academic achievement while serving the whole child, eliminating inequities, and providing each child with excellent teachers, every day. Oakland Unified School District provides every student with a safe, joyful education that prepares them to be lifelong readers and bilingual and bi-literate leaders. Students thrive in music, sports, languages and STEAM. Our college & career pathways equip students to succeed in any industry through hands-on learning and internships.
Programmatic Commitment	<p>Elmhurst United Middle School (OUSD)'s' role in this grant will be: Grant Award Notification February 19, 2025</p> <ul style="list-style-type: none"> • Case Manager (CSM) Extra Hours – Overtime for case manager to conduct home visits, provide case management, and support social-emotional health, violence prevention, and chronic absenteeism: \$22,435 • Benefits: \$6,730.50 • Disseminate Uniforms: \$4,200 • Total Award: \$33,365.50 <p>Elmhurst United Middle School (OUSD)'s' role in this grant will be: Grant Award Notification October 28, 2025</p> <ul style="list-style-type: none"> • Paraprofessional Programming: Paraprofessionals provide small group art instruction to and with students with moderate to extensive learning disabilities, including projects and arts based learning. • Total Award: 10,000

EXHIBIT B

SUBCONTRACTOR FEE, PAYMENT REQUIREMENTS, AND FEDERAL RESTRICTIONS ON USE OF FUNDS

In consideration for the Services OP agrees to pay Subcontractor for all the costs actually incurred on a cost reimbursement basis of up to \$70,393.00 (the "Subcontractor Fee") during the Term. Payments shall be paid quarterly throughout the Term after Subcontractor submits an invoice to OP for services rendered during the previous calendar quarter, itemizing dates, hours, expenses and a brief description of the Services rendered. Amounts due for the Services described on an invoice shall be due and payable within thirty (30) days after receipt by OP of the applicable invoice, provided the Services rendered were acceptable to OP and the applicable invoice was received by OP within three (3) business days following the end of the calendar quarter during which the Services were performed (the "Invoice Period"). Subcontractor acknowledges and agrees that payments of the Subcontractor Fee will be made only for that portion of the Services rendered prior to the submission of each invoice, and no payment will be made on a prospective basis. Notwithstanding any other provision of this Agreement, OP shall not be liable for amounts invoiced in excess of the Subcontractor Fee within the Term. All invoices submitted by Subcontractor shall be accompanied by the statement set forth below signed by an authorized officer of Subcontractor:

By submitting this payment request, I certify to the best of my knowledge and belief that the request is based on true, complete, and accurate information. I further certify that the expenditures and disbursements made with these funds are for the purposes and objectives set forth in FAIN: S215N240017, and that the organization on behalf of which this submission is being made is and will remain in compliance with the terms and conditions of that award and Subcontractor Agreement with Oakland Promise, the primary award recipient. I am aware that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me, and the organization on behalf of which this submission is being made, to criminal, civil, or administrative penalties for fraud, false statements, false claims, or other violations. (U.S. Code Title 18, Section 1001; Title 20, Section 1097; and Title 31, Sections 3729-3730 and 3801-3812)

Primary Award Drawdown Limits

By law, Federal funds under the Primary Award are available for OP to draw down for only a limited period of time, after which the funds revert to the U.S. Treasury. If Subcontractor submits an invoice for Services substantially after the Invoice Period or in a calendar year following the year in which the Services were performed, OP cannot guarantee all or any portion of the invoiced expenses will be reimbursed.

Subcontractor Registration

Subcontractor acknowledges that no payment may be made under this Agreement, unless Subcontractor first obtains a "Unique Entity Identity" number in the U.S. Department of Education G5 Grant Management System (see the instructions provided under the GAN).

Allowable Expenses and Cost Principles

Subcontractor shall only be reimbursed for costs incurred by Subcontractor in performing the Services and submitted for payment by OP under this Agreement that comply with all applicable statutory and regulatory requirements in determining whether costs are reasonable and necessary, including, without limitation, the Cost Principles for Federal grants set out at 2 CFR Part 200 Subpart E of the, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” Subcontractor’s documented procurement procedures must conform to the Federal procurement standards identified in 2 CFR §§ 200.317 through 200.327.

Subcontractor agrees to notify OP if Subcontractor has a pre-existing indirect cost rate previously approved by the DOE or any other federal agency for receipt of Federal funds. Otherwise, the portion of the Subcontractor Fee that may be allocated to “indirect costs” shall not exceed ten percent (10%) of the “modified total direct costs,” each as defined under 2 CFR 200.1.

Subcontractor should refer to 2 CFR 200, Subpart E (including all associated Appendices) in determining its direct costs, permissible indirect costs and appropriate cost allocation principles. Costs charged against the Subcontractor Fee are only permissible to the extent they are attributable to providing Services hereunder.

Subcontractor shall permit OP and its auditors to have access to Subcontractor’s records and financial statements as necessary for OP to determine whether invoiced expenses meet these requirements or to otherwise meet the requirements imposed on it under 2 CFR 200.332, Requirements for pass-through entities.

Special Rules Regarding Personnel Costs

Allowable personnel costs under this Agreement are governed by EDGAR Part 75 and 2 CFR Part 200, Subparts D and E. Part 75 covers issues such as paying consultants with grant funds, prohibiting dual compensation of staff, and waiving the requirement for a full-time project director. General rules governing reimbursement of salaries and compensation for staff performing the Services are addressed in the cost principles in 2 CFR Part 200 Subpart D and E.

Services provided by Subcontractor’s personnel shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid. Request for payment to personnel using the Subcontractor Fee must be supported by complete and accurate records of employee time and effort. Subcontractor must also maintain time distribution records to support the allocation of employee salaries among separate functions, with time spent in performing the Services tracked separately.

Acquisitions Using the Subcontractor Fee

Subcontractor may not use any part of the Subcontractor Fee to acquire property or equipment that would be subject to the requirements of 2 CFR 200.311, Real property, 2 CFR 200.312, Federally owned and exempt property, or 2 CFR 200.313, Equipment.

Any supplies purchased using funds from the Subcontractor Fee shall be subject to 2 CFR 200.313, Supplies and 2 CFR 200.453.

As appropriate and to the extent consistent with law, Subcontractor agrees, to the greatest extent practicable under this Agreement, that it shall provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Costs Incurred During Suspension or Termination of the Services

Costs to Subcontractor resulting from financial obligations incurred during a suspension or termination of the Services or this Agreement are not allowable unless the DOE or OP, as applicable, expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- (a) The costs result from financial obligations which were properly incurred by Subcontractor before the effective date of suspension or termination, are not in anticipation of it; and
- (b) The costs would be allowable if this Agreement or the Primary Grant, as applicable, was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Post-Closeout Recovery of Funds

Neither the expiration or termination of this Agreement, nor the closeout of the Primary Award by the DOE will impact the following rights:

- (1) The right of the DOE or OP to disallow costs and recover funds on the basis of a later audit or other review of the Services and related substantiating documents. The DOE or OP must make any cost disallowance determination and notify Subcontractor within the applicable record retention period (including the records retention periods incorporated by reference).
- (2) The requirement for Subcontractor to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

- (3) The ability of the DOE to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.

Any funds paid to Subcontractor in excess of the amount to which Subcontractor is finally determined by either OP or the DOE to be entitled under the terms of this Agreement will constitute a debt to the Federal Government. If not paid within ninety (90) calendar days after demand, the DOE may reduce the debt by:

- (1) Making an administrative offset against other requests for reimbursements;
- (2) Withholding advance payments otherwise due OP; or
- (3) Other action permitted by Federal statute.

The DOE will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Any action taken by the DOE to recover such debt, including any applicable interest, from OP as a result of overpayment to Subcontractor will be applied to amounts paid, due or owing to Subcontractor under this Agreement. OP shall have the right to recover any amount of overpayment made to Subcontractor

EXHIBIT C

INCORPORATED CFR SECTIONS

The Parties agree that the CFR clauses listed in this Exhibit C (the “CFR Clauses”) are necessary and appropriate to govern the relationship between OP and Subcontractor and are therefore incorporated into this Agreement. For purposes of applying the CFR Clauses to this Agreement, the term “pass through entity” shall mean OP, the term “non-Federal entity,” “recipient” or “sub-recipient” shall mean "Subcontractor," the term "Award" shall mean this “Agreement,” the term "Federal Awarding Agency" or like terms shall mean “the DOE” and such other changes shall be deemed to have been made to such clauses as are necessary for OP to have the same rights with respect to Subcontractor as the Federal Awarding Agency and the United States Government would have with respect to Subcontractor under each clause if Subcontractor was a recipient directly receiving an award from the DOE. Note that OP has determined Subcontractor to be a “subrecipient” as described in 2 CFR 200.331 for purposes of applying the incorporated provisions. **Clauses incorporated by reference shall have the same force and effect as if they were given in full text.**

2 CFR CHAPTER 200 CLAUSES

2 CFR 200.112	Conflicts of Interest
2 CFR 200.113	Mandatory Disclosures
2 CFR 200.201	Use of Grant Agreements (Including Fixed Amount Awards), Cooperative Agreements and Contracts
2 CFR 200.208	Specific Conditions
2 CFR 200.209	Certifications and Representations
2 CFR 200.214	Suspension and Debarment
2 CFR 200.215	Never Contract with the Enemy
2 CFR 200.216	Prohibitions on Certain Telecommunication and Video Surveillance Services or Equipment
2 CFR 200 Subpart D (Section 200.300-347)	Procurement Standards
2 CFR 200 Subpart E (Section 200.400-476)	Cost Principles
2 CFR 200 Subpart F (Section 200.500-521)	Audit Requirements
2 CFR 200 Appendix II	Contract Provisions for Non-Federal Entity Contracts

EXHIBIT D
2 CFR 200 APPENDIX II –
CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS

[Attached on Next Page.]

Pt. 200, App. II

2 CFR Ch. II (1–17 Edition)

agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called "general") terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. *Reporting—Required.* This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award may include more than \$500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

G. FEDERAL AWARDING AGENCY CONTACT(S)—REQUIRED

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal

awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. OTHER INFORMATION—OPTIONAL

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.
- v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015]

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR

Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid

for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHES (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's

accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other