

Board Office Use: Legislative File Info.	
File ID Number	22-1777
Introduction Date	9/14/22
Enactment Number	22-1445
Enactment Date	8/24/2022 os



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Board Cover Memorandum

To	Board of Education	
From	Sondra Aguilera, Acting Superintendent Jennifer Blake, Executive Director	
Meeting Date	September 14, 2022	
Subject	Services Agreement 2022-2023 – HeyTutor, Inc. – La Escuelita via Special Education Department	
Ask of the Board	<input type="checkbox"/> Approve Services Agreement <input checked="" type="checkbox"/> Ratify Services Agreement	
Services	Ratification by the Board of Education of a Services Agreement 2022-2023 between the District and HeyTutor, Inc., Woodland Hills, CA, for the latter to provide students at La Escuelita with high-dosage, in person tutoring to attempt to close the unfinished learning gaps as brought on by the pandemic via the Special Education Department, for the period of August 3, 2022 through August 3, 2023, in an amount not to exceed \$50,000.00.	
Term	Start Date: August 3, 2022	End Date: August 3, 2023
Not-To-Exceed Amount	\$50,000.00	
Competitively Bid	No If the Service Agreement was <u>not</u> competitively bid and the not-to-exceed amount is <u>more</u> than \$99,100, list the exception(s) that applies (requires Legal review/approval and may require a resolution): [Exception]	
In-Kind Contributions	None	

Funding Source(s)	Special Education Learning Recovery- RES 6537
Background	Over the course of the COVID-19 pandemic, many students faced interruptions in learning that require intensive intervention. Students with disabilities faced particular impacts. As a part of the Special Education Department's broader early literacy focus, this contract seeks to provide high-dosage tutoring using evidence-based, multisensory curricula for students placed in elementary mild-moderate self-contained settings, thereby remediating essential literacy skills and preparing these students to access the general curriculum more fully.
Attachment(s)	<ul style="list-style-type: none">• Services Agreement 2022-2023 with HeyTutor, Inc

SERVICES AGREEMENT 2022-2023

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and HeyTutor, Inc. (“VENDOR,” together with OUSD, “PARTIES”):

The PARTIES hereby agree as follows:

1. **Term.**

- a. This Agreement shall start on the below date (“Start Date”):
August 3, 2022

If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

- b. The work shall be completed no later than the below date (“End Date”):
August 3, 2023

If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3. **Alignment and Evaluation.**

- a. VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.
- b. OUSD may evaluate VENDOR in any manner which is

permissible under the law. OUSD's evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR's employees, and each of VENDOR's subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR's employee(s), and VENDOR's subcontractor(s).

4. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. Should OUSD require VENDOR's tutors to use a physical sign-in/sign-out form at the school site, then OUSD shall be responsible for providing and maintaining such a form.
5. **Data and Information Requests.** VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. VENDOR shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD's determination that the Services are not related to community school outcomes. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.
6. **Confidentiality and Data Privacy.**
 - a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.
 - b. VENDOR understands that student data is confidential. If VENDOR will access or receive identifiable student data, other than directory information, in connection with this Agreement, VENDOR agrees to do so only after VENDOR and OUSD

execute a separate data sharing agreement.

- (i) If VENDOR is a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement (“CSDPA”) or CSDPA Exhibit E (available here).
 - (ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement ([available here](#)).
 - (iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
- c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

7. **Copyright/Trademark/Patent/Ownership.**

- a. VENDOR is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all intellectual property rights therein. The term “Deliverables” means all documents, work product and other materials that are actually delivered to OUSD in the course of performing the Services contemplated by this Agreement. OUSD agrees that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables shall not constitute or be deemed "work made for hire" for OUSD under this Agreement. Subject thereto, VENDOR hereby grants OUSD a non-exclusive and non-sublicensable right and license to use such Deliverables, without additional consideration. All other rights in and to the Deliverables are expressly reserved by the VENDOR.
- b. VENDOR and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials, including all intellectual property rights therein. The term “Pre-Existing Materials” means all documents, curricula, data, know-how, methodologies,

software, source code, object code and other materials, including computer programs, reports and specifications, provided by or used by the VENDOR in connection with performing the Services, in each case developed or acquired by VENDOR at any time, including prior to the commencement of this Agreement, independently of this Agreement or in conjunction with this Agreement but not exclusively for OUSD. VENDOR hereby grants OUSD a non-exclusive and non-sublicensable right and license to use such Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables solely to the extent reasonably required in connection with OUSD's receipt or use of the Services and Deliverables. All other rights in and to the Pre-Existing Materials are expressly reserved by the VENDOR.

- c. OUSD and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the OUSD Materials, including all intellectual property rights therein. The term "OUSD Materials" means the tangible manifestations of the documents, data, know-how, methodologies, software and other materials provided to the VENDOR by OUSD, including computer programs, reports and specifications. VENDOR shall have no right or license to use any OUSD Materials except solely during the term of the Agreement to the extent necessary to provide the Services to OUSD. All other rights in and to OUSD Materials are expressly reserved by OUSD.

8. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily performing Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A**.

- a. The compensation under this Agreement shall not exceed:
\$50,000.00.

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and

- other costs.
- b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
 - c. Payment for Services shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed. OUSD shall notify the VENDOR in writing within forty-five (45) days of receiving an invoice if it disputes the performance of any Services. If OUSD fails to dispute any charges within the 30-day timeframe, the Parties agree that OUSD shall pay the invoice in full.
 - d. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the responsibility of VENDOR to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR's performance does not conform to the requirements of this Agreement, VENDOR agrees to correct its performance without delay.
 - e. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the performance of such services.
 - f. VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement. As this Agreement is for Services less than \$50,000, the Agreement shall be validly and properly executed by the OUSD Superintendent or authorized designee. Following execution of the Agreement, OUSD shall use best efforts to obtain ratification of this Agreement by the OUSD Governing Board within sixty (60) days.
9. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement. However, OUSD shall provide VENDOR and its employees with access to and the ability to use printing and copying

equipment.

10. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.
- a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were performed, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
 - b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
 - c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. OUSD reserves the right to refuse to pay untimely invoices.
 - d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory within thirty (30) days of receipt by VENDOR of such notice.
 - e. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or changed under subparagraph (c)—indicate whether the Services are provided in-person or not.
 - f. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email. The AP/Billing Department Contact responsible for processing invoices issued by VENDOR under this Agreement shall be:

NAME: Alina Chow

Email Address: Alina.Chow@ousd.org

Phone Number: 510-879-5003

Mailing Address: 915 54th Street, Oakland, CA 94608

11. Termination and Suspension.

- a. Due to Unforeseen Emergency or Acts of God. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if there is an unforeseen emergency or an Act of God during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
- b. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.
- c. Within thirty (30) days of termination, VENDOR shall provide OUSD with all OUSD materials produced, maintained, or collected by VENDOR pursuant to this Agreement.
- d. If OUSD, at its sole discretion, develops health and safety concerns related to the VENDOR's provision of Services, then the OUSD Superintendent or an OUSD Chief or Deputy may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend the Agreement, in which case VENDOR shall stop providing Services under the Agreement until further

notice from OUSD. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of suspension.

12. **Legal Notices.** All legal notices provided for under this Agreement shall be sent: (i) via email to the email address set forth below, (ii) personally delivered during normal business hours or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 440
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

VENDOR

Name: Patrick McClure, COO
Jennifer Sheffield, Chief Legal Officer
Address: 21700 Oxnard Street, Suite 1540
City, ST Zip: Woodland Hills, CA 91367
Phone: (855) 661-3688
Email: patrick@heytutor.com
Jennifer.S@heytutor.com

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

13. **Status.**
- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for

payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.

- b. If VENDOR is a natural person, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
 - (ii) VENDOR's work is outside the usual course of OUSD's business; and
 - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If VENDOR is a business entity, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing;
 - (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) VENDOR provides its own tools, vehicles, and equipment to perform the Services;
 - (x) VENDOR can negotiate its own rates;
 - (xi) VENDOR can set its own hours and location of

work; and

- (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14. Qualifications and Training.

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will perform the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

15. Certificates/Permits/Licenses/Registration. VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. Insurance.

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for corporal punishment, sexual

misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. The policy shall protect VENDOR and OUSD 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.

- b. Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR 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 (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

17. **Testing and Screening.**

- a. Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.
- b. Fingerprinting/Criminal Background Investigation. Unless

specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD.

Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.

- c. VENDOR shall use Live Scan, California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services.
- d. VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18. Incident/Accident/Mandated Reporting.

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of Services. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to

report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. Coronavirus/COVID-19.

- a. Through its execution of this Agreement, **VENDOR** declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. To the extent that **VENDOR** provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), **VENDOR** agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent **VENDOR** from providing Services in person.
- c. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), **VENDOR** agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.
- d. In addition to the requirements of subparagraph (c), **VENDOR** agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
- e. **VENDOR** shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this

Agreement.

20. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
21. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
22. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
23. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
25. **Conflict of Interest.**
 - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest.

VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

- b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
- c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.

26. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

27. **Indemnification.**

- a. To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this Agreement and caused by VENDOR's intentional, willful or negligent acts or omissions.

The indemnification obligations of this provision do not apply in the event the claim or cause of action is the result of OUSD's sole or contributory negligence. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement.

- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("VENDOR Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement and caused by OUSD's intentional, willful or negligent acts or omissions. The indemnification obligations of this provision do not apply in the event the claim or cause of action is the result of VENDOR's sole or contributory negligence.
28. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.
29. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

30. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
31. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
34. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
35. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
36. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including

portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

37. **W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
38. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
39. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
 - a. Notwithstanding Paragraph 11, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination.

40. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

VENDOR

Name: Skyler Lucci Signature: 

Position: CEO Date: 07/04/2022

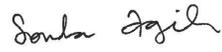
One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Jennifer Blake Signature: 
Jennifer Blake (Jul 7, 2022 13:58 PDT)

Position: Executive Director Date: Jul 7, 2022
 Board President

Superintendent
 Chief/Deputy Chief/Executive Director

Name: Sondra Aguilera Signature: 

Position: Acting Secretary, Board of Education Date: 8/25/2022

Approved as to form by OUSD Staff Attorney Joanna Powell on ____ (date).
Signature: _____

EXHIBIT A

1A. General Description of Services to be Provided: *Provide a description of the service(s) VENDOR will provide.*

VENDOR will render the services as set forth in this Exhibit A for sourcing tutors (the “**Tutoring Services**”) in accordance with this Agreement and the Terms of Use (the “**ToU**”) set forth on the HeyTutor website located at <https://heytutor.com/terms/> (the “**Platform**”). In the event of a conflict or inconsistency between this Agreement and the ToU, the Agreement and this Exhibit A shall govern, control and prevail.

Also, the Company will render the following services to District as District may from time to time request:

- In Person, small group tutoring utilizing HeyTutor curriculum.

Tutors shall work on at least 20-hour block schedules and the Company will reserve 1 tutor on the Company’s payroll to be deployed on a rolling basis beginning 4-6 weeks after executing the Agreement and receiving the purchase order. The District shall pay for the aggregate hours of reserved time for the tutors (e.g., if a District wants 10 tutors, the District shall pay for 200 hours weekly), whether their students show up to all sessions or not. The total number of tutors can be adjusted monthly, but there must be a contract minimum (75% of the District’s total initial ask).

A purchase order must be issued for the full amount of tutoring services rendered over the term of the agreement. In-person tutoring programs typically require four to six weeks to begin receiving Tutor Candidates on campus after contract execution and receipt of the following details: (i) purchase order, (ii) schedule, (iii) group size, (iv) subjects tutored, (v) grade levels tutored and (vi) background check information, including ORI #, Mail Code, Service Agency #, Live Scan form, waivers and any other required forms. In-person programs are fulfilled on a rolling basis. All costs associated with printing curricula and materials are absorbed by the district and printed on school sites. If choosing to use Company’s curriculum on site, Tutors must have access to paper and printers at each school site. 1 hour of paid training will be invoiced to the District for all Tutors hired. If any additional training is required, this can be negotiated at the contracted hourly rate. The district-wide hourly bill rate will be charged at the highest rate based on the largest group size.

1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

No, services would not be able to continue.

Yes, services would be able to continue as described in 1A.

Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

Click or tap here to enter text.

1C. **Rate of Compensation:** *Please describe the basis by which compensation will be paid to VENDOR:*

Hourly Rate: \$55.00 per hour

Daily Rate: \$Click or tap here to enter text. per day

Weekly Rate: \$Click or tap here to enter text. per week

Monthly Rate: \$Click or tap here to enter text. per month

Per Student Served Rate: \$Click or tap here to enter text. per student served

Performance/Deliverable Payments: Describe the performance and/or deliverable(s) as well as the associated rate(s) below:

Click or tap here to enter text.

2. **Specific Outcomes:** *(A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to..." C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will..."*

Students will be provided high-dosage in person tutoring to attempt to close the unfinished learning gaps as brought on by the pandemic.

3. **Alignment with School Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the*

appropriate option below:

- Action Item included in Board Approved SPSA (no additional documentation required) – Item Number:
Click or tap here to enter text.
- Action Item added as modification to Board Approved SPSA – School site must submit the following documents to the Strategic Resource Planning for approval through the Escape workflow process:
 - Meeting announcement for meeting in which the SPSA modification was approved.
 - Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
 - Sign-in sheet for meeting in which the SPSA modification was approved.

4. **Waivers:** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

Commercial General Liability Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)

Corporal Punishment Insurance Coverage. (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person or virtual) with OUSD students.)

Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)

Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)

Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person **or virtual**) with OUSD students.)

Services Agreement 2022-2023 - HeyTutor, Inc. - La Escuelita via Special Education Department

Final Audit Report

2022-07-07

Created:	2022-07-05
By:	Angelica Lopez (angelica.lopez@ousd.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhQ4CCOs2QKG0TaoWehRjPB_BRBgXEgY4

"Services Agreement 2022-2023 - HeyTutor, Inc. - La Escuelita via Special Education Department" History

-  Document created by Angelica Lopez (angelica.lopez@ousd.org)
2022-07-05 - 9:43:28 PM GMT- IP address: 104.192.9.109
-  Document emailed to Jennifer Blake (jennifer.blake@ousd.org) for signature
2022-07-05 - 9:43:48 PM GMT
-  Email viewed by Jennifer Blake (jennifer.blake@ousd.org)
2022-07-07 - 1:30:28 AM GMT- IP address: 66.249.84.191
-  Document e-signed by Jennifer Blake (jennifer.blake@ousd.org)
Signature Date: 2022-07-07 - 8:58:32 PM GMT - Time Source: server- IP address: 104.192.9.104
-  Agreement completed.
2022-07-07 - 8:58:32 PM GMT