



Board Office Use: <b>Legislative File Info.</b>	
File ID Number	20-1938
Introduction Date	10/28/20
Enactment Number	20-1599
Enactment Date	10/28/2020 er

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Curtiss Sarikey, Chief of Staff  
Andrea Bustamante, Executive Director, Community Schools and Student Services Dept.

**Board Meeting Date** October 28, 2020

**Subject** Professional Services Agreement  
Contractor: Friends of Peralta Hacienda Historical Park  
Services for: Learning Hub Services

**Action Requested and Recommendation** Approval by the Board of Education of the Memorandum of Understanding between the District and Friends of Peralta Hacienda Historical Park, Oakland, CA, for the latter to provide academic support and homework sessions, student supervision and a variety of enrichment services, as described in the contract to implement Distance Learning hubs, for the period of September 21, 2020 through December 31, 2020, in an amount not to exceed \$54,135.00.

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

Due to COVID some students would benefit from in person supports to be provided by community partner organizations in community facilities. Friends of Peralta Hacienda Historical Park (FOPHH). FOPH has experience providing enrichment programs at their facility and has the resources and capacity to provide supplemental academic supports for Oakland students.

**Fiscal Impact** Resource 3220/Learning Loss Mitigation, in the amount of \$54,135.00.

**Attachments**

- Professional Services Agreement

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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
*Community Schools, Thriving Students*

## **CONTRACT FOR Friends of Peralta OF OAKLAND PROVISION OF LEARNING HUB SERVICES**

This Professional Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the Friends of Peralta Hacienda Historical Park (“Friends of Peralta,” together with OUSD, “PARTIES”):

The PARTIES hereby agree as follows:

### **1. Term.**

- a. This Agreement shall start on the below date (“Start Date”):  
September 21, 2020.

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. This Agreement shall terminate on the below date (“End Date”):  
December 31, 2020. If no End Date is entered, then the End Date shall be the first June 30 after the Start Date.

### **2. Services.**

- a. Friends of Peralta shall provide the services (“Services”) as described in #1A of **Exhibit A**, attached hereto and incorporated herein by reference. In the event that services cannot be delivered in accordance with #1A due to extenuating circumstances (including but not limited to changes in operative shelter-in-place orders, poor air quality, planned loss of power, etc.), the term of the Agreement shall be extended for an amount of time equal to the number of missed days, up to June 30, 2021. If all missed days cannot be made up prior to June 30, 2021,

Friends of Peralta shall return an amount of the Compensation described in Paragraph 7 proportionate to the number of missed days.

- b. OUSD shall loan **1** Chromebook cart, consisting of **14-34** total Chromebooks and hotspots, to Friends of Peralta, to be used in connection with delivery of these Services. As explained in **Exhibit A**, Friends of Peralta shall be responsible for ensuring that students treat Chromebooks with reasonable care, and returning all loaned Chromebook carts and Chromebooks and hotspots at the conclusion of this Agreement.
- c. On a daily basis (Monday-Thursday), OUSD shall deliver 14 meals to Friends of Peralta, to be provided to students receiving the Services described in **Exhibit A**.

3. **Alignment and Evaluation.**

- a. Friends of Peralta 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.

4. **Data and Information Requests.** Friends of Peralta shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. Unless OUSD communicates to Friends of Peralta in writing otherwise, Friends of Peralta shall register with and maintain current information within OUSD's Enrichment Provider database. If and when Friends of Peralta's programs change (either midyear or in subsequent years), Friends of Peralta shall promptly update the information in the database.

5. **Confidentiality and Data Privacy.**

- a. OUSD may share information with Friends of Peralta pursuant to this Agreement in order to further the purposes thereof. Friends of Peralta and all Friends of Peralta'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. Friends of Peralta understands that student data is confidential.

If Friends of Peralta will access or receive student data in connection with this Agreement, it agrees to do so only after executing the [California Student Data Privacy Agreement](#) ("CSDPA"), which shall be incorporated by reference into this Agreement upon execution. All confidentiality requirements, including in the CSDPA, extend beyond the termination of this Agreement.

6. **Copyright/Trademark/Patent/Ownership.** Friends of Peralta understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by Friends of Peralta, its employees, or its subcontractors in connection with the Services performed under this Agreement. Friends of Peralta cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with Friends of Peralta's prior written consent, use Friends of Peralta's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
7. **Compensation.** OUSD agrees to pay Friends of Peralta for satisfactorily rendering Services in accordance with this Paragraph, Paragraph 9 (Invoicing), and #1B in **Exhibit A**.
  - a. The compensation under this Agreement shall not exceed:  
**\$54,135.00.**

This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Friends of Peralta 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 Friends of Peralta for any costs or expenses paid or incurred by Friends of Peralta not described in **Exhibit A**.
  - c. Payment for Services shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after Friends of Peralta submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed. The granting of any payment by OUSD, or the receipt thereof by Friends of Peralta, shall in no way lessen the liability of Friends of Peralta 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 Friends of Peralta's performance does not conform to the requirements of this Agreement, Friends of Peralta agrees to correct its performance without delay.
8. **Equipment and Materials.** Friends of Peralta shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
9. **Invoicing.** Invoices furnished by Friends of Peralta 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: 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 rendered, 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 Friends of Peralta of the missing items; Friends of Peralta shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
  - c. OUSD reserves the right to add or change invoicing

requirements. If OUSD does add or change invoicing requirements, it shall notify Friends of Peralta in writing and the new or modified requirements shall be mandatory under receipt by Friends of Peralta of such notice.

- d. All invoices furnished by Friends of Peralta under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

10. **Termination.**

- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to Friends of Peralta. OUSD shall compensate Friends of Peralta for services satisfactorily provided through the date of termination. 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 thirty (30) days after the notice was provided, whichever is later.
- b. Due to COVID-19. Notwithstanding any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of Friends of Peralta to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to Friends of Peralta. 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.
- c. 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.

- d. Upon termination, Friends of Peralta shall provide OUSD with all materials produced, maintained, or collected by Friends of Peralta pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- 11. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) 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 300  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: [ousdlegal@ousd.org](mailto:ousdlegal@ousd.org)

### **Friends of Peralta**

Name: Holly Alonso  
Title: Executive Director  
Address: PO Box 7172  
City, ST Zip: Oakland, CA, 94601  
Phone: 510-833-1171 (cell)  
Email: [hollyalonso@earthlink.net](mailto:hollyalonso@earthlink.net)



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.

12. **Status.**

- a. This is not an employment contract. Friends of Peralta, in the performance of this Agreement, shall be and act as an independent contractor. Friends of Peralta 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. Friends of Peralta 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 Friends of Peralta's employees.
- b. If Friends of Peralta is a natural person, Friends of Peralta verifies all of the following:
  - (i) Friends of Peralta is free from the control and direction of OUSD in connection with Friends of Peralta's work;
  - (ii) Friends of Peralta's work is outside the usual course of OUSD's business; and
  - (iii) Friends of Peralta 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 Friends of Peralta is a business entity, Friends of Peralta verifies all of the following:
  - (i) Friends of Peralta is free from the control and direction of OUSD in connection with the performance of the work;
  - (ii) Friends of Peralta is providing services directly to OUSD rather than to customers of OUSD;
  - (iii) the contract between OUSD and Friends of Peralta is in writing;
  - (iv) Friends of Peralta has the required business license or business tax registration, if the work is performed in a jurisdiction that requires Friends of Peralta to have a business license or business tax registration;
  - (v) Friends of Peralta maintains a business location that is



- separate from the business or work location of OUSD;
- (vi) Friends of Peralta is customarily engaged in an independently established business of the same nature as that involved in the work performed;
- (vii) Friends of Peralta actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
- (viii) Friends of Peralta advertises and holds itself out to the public as available to provide the same or similar services;
- (ix) Friends of Peralta provides its own tools, vehicles, and equipment to perform the services;
- (x) Friends of Peralta can negotiate its own rates;
- (xi) Friends of Peralta can set its own hours and location of work; and
- (xii) Friends of Peralta 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.

**13. Qualifications and Training.**

- a. Friends of Peralta represents and warrants that Friends of Peralta has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. Friends of Peralta 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 law, code, rule, regulation, and/or ordinance. All Friends of Peralta employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. Friends of Peralta 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 Friends of Peralta was selected, at least in part, on such representations and warrants.

14. **Certificates/Permits/Licenses/Registration.** Friends of Peralta'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.
15. **Insurance.**
  - a. **Commercial General Liability Insurance.** Unless specifically waived by OUSD as noted in **Exhibit A**, Friends of Peralta shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. 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. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against Friends of Peralta. The policy shall protect Friends of Peralta 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**, Friends of Peralta 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.
16. **Testing and Screening.**
  - a. **Tuberculosis Screening.** Friends of Peralta agents who work with OUSD 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, Friends of Peralta 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, Friends of Peralta shall obtain an x-ray of the lungs. Friends of Peralta, 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**, Friends of Peralta is required to fingerprint and conduct a criminal background investigation in accordance with Education Code section 45125.1 and, through its execution of this Agreement, Friends of Peralta certifies its compliance with these provisions as follows:

*Friends of Peralta has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Friends of Peralta's employees, subcontractors, agents, and subcontractors' employees or agents ("Workers") regardless of whether those Workers are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of Friends of Peralta, who may have contact with OUSD pupils in the course of providing Services pursuant to this Agreement, and the California Department of Justice has determined that none of those Workers has been convicted of a felony, as that term is defined in Education Code section 45122.1. Friends of Peralta has also received and reviewed fingerprint results for each Worker and Friends of Peralta has requested and reviewed subsequent arrest records for all Workers who may come into contact with OUSD pupils in providing services to OUSD under this Agreement.*

Notwithstanding this certification, Friends of Peralta agrees to immediately remove or cause the removal of any employee, representative, agent, or person under Friends of Peralta's control from work with OUSD students upon receiving notice from OUSD of such desire. OUSD is not required to provide Friends of Peralta with a basis or explanation for the removal request.

17. **Incident/Accident/Mandated Reporting.**

- a. Friends of Peralta shall notify OUSD, via email pursuant to Paragraph 11 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. 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. Friends of Peralta shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. Friends of Peralta shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of Friends of Peralta is included on the list of mandated reporters found in Penal Code section 11165.7, Friends of Peralta 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.

18. **Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, Friends of Peralta 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. Friends of Peralta shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

19. **Assignment.** The obligations of Friends of Peralta under this Agreement shall not be assigned by Friends of Peralta without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

20. **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, Friends of Peralta 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, Friends of Peralta agrees to require like compliance by all its subcontractor (s). Friends of Peralta 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.

21. **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 similar subsequent act from constituting a violation of this Agreement.
22. **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.
23. **Conflict of Interest.**
  - a. Friends of Peralta shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. Friends of Peralta 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. Friends of Peralta affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between Friends of Peralta'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, Friends of Peralta 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 Friends of Peralta receives any information subsequent to execution of this

Agreement which might constitute a violation of said provisions, Friends of Peralta agrees it shall notify OUSD in writing.

24. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, Friends of Peralta 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/>).
25. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 7 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
26. **Indemnification.** Pursuant to Exhibit A below, OUSD shall play no role in, and have no obligations related to, the City's provision of services under this Agreement. Such services shall not be delivered on OUSD properties, nor by OUSD employees, and other than the obligations set forth elsewhere in this Agreement, the District shall have no involvement whatsoever therein. To the furthest extent permitted by California law, Friends of Peralta 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 Friends of Peralta's performance of this Agreement, including but not limited to claims related to (1) the Friends of Peralta's alleged violation of any COVID-related law or policy, and (2) any individual's suspected or actual contracting of COVID-19, and any impacts therefrom. Friends of Peralta also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or



losses incurred by any supplier, Friends of Peralta, or subcontractor furnishing work, services, or materials to Friends of Peralta arising out of the performance of this Agreement. Friends of Peralta shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at Friends of Peralta's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that Friends of Peralta proposes to defend OUSD Indemnified Parties.

27. **Audit.** Friends of Peralta shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Friends of Peralta transacted under this Agreement. Friends of Peralta shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. Friends of Peralta 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 Friends of Peralta and shall conduct audit(s) during Friends of Peralta's normal business hours, unless Friends of Peralta otherwise consents.
28. **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.
29. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. Friends of Peralta agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
30. **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.

31. **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.
32. **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.
33. **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.
34. **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.
35. **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.


36. **W-9 Form.** If Friends of Peralta is doing business with OUSD for the first time, Friends of Peralta acknowledges that it must complete and return a signed W-9 form to OUSD.
37. **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.
38. **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 has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. Friends of Peralta 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.
39. **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 Friends of Peralta absent such formal approval or valid and proper execution.

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

**Friends of Peralta**

Name: Holly Alonso

Signature: \_\_\_\_\_

Position: Executive Director

Date: Sept 11, 2020

*One of the terms and conditions to which Friends of Peralta agrees by its signature is subparagraph (e) of Paragraph 7 (Compensation), which states that Friends of Peralta 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. Friends of Peralta specifically acknowledges and agrees to this term/condition on the above date.*

**OUSD**

Name: Dr. Kyla Johnson-Trammell

Signature: \_\_\_\_\_

Position: Superintendent

Date: Sept. 17, 2020

- ☐ Board President
- ☒ Superintendent
- ☐ Chief/Deputy Chief

Name: Jody London

Signature: 

Position: President, Board of Education

Date: \_\_\_\_\_

Name: Dr. Kyla Johnson-Trammell

Signature: 

Position: Secretary, Board of Education

Date: \_\_\_\_\_

Approved as to form by OUSD Staff Attorney Joanna Powell on 9/15/2020.



## EXHIBIT A

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

Friends of Peralta will provide academic support and enrichment activities as part of the learning hub program at the Peralta Hacienda Historical Park for 3rd-5th grade students of Fruitvale Elementary School and other identified schools in need of additional support during COVID-19 distance learning.

Specifically, Friends of Peralta will provide educational supervision and nurturing for 14 students four days per week for five hours from 9 am to 2 pm from September 21 through December 17, 2020 (or until the December date specified by OUSD). Three educators and one assistant in charge of facilities and COVID precautions will be present at all times, with staff also present for one hour of prep each day before the students come and one hour of clean-up and debriefing after they leave. (Three educators are necessary to ensure enough spatial separation.)

Each day will include:

1. 30 minutes for registration, temperature-taking, greetings and ice-breaker
2. an hour of online OUSD lesson supervision,
2. an hour of homework help and reading
3. 30 minutes for lunch
4. two hours of enrichment activities, including art, outdoor play, nature observation and journaling, and curriculum-based hands-on history activities such as making adobe bricks or playing Ohlone games adapted from our school field trips program.

All activities will be delivered with COVID-safe practices and precautions including disinfecting of all supplies, furniture and bathrooms, providing and cleaning masks daily, taking temperatures daily before starting, and enforcing the rules of social distancing. The staff that will be teaching the learning hubs implemented these practices for 4 pods of 12 youth in June, July and early August in our summer camp.

All outcomes will be accomplished within the budget of this contract, of \$54,135, plus Friends of Peralta's own match of \$8,500 for indirect costs

of the program, and for additional program and operational support provided by Peralta Hacienda staff.

**1B. Rate of Compensation:** *Please describe the basis by which compensation will be paid to Friends of Peralta:*

X Up-Front/One-Time Payment: **\$54,135**

**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

a) have access to computers and internet service at Peralta Hacienda's museum, in its Center for History and Community, and in its pavilion.

b) be able to do their online school lessons in a safe environment with 3 caring instructional staff, maintaining social distancing.

c) complete homework assignments with the help of qualified instructors, all of whom will be present at all times.

d) enjoy outstanding enrichment activities in the arts, history and science in the Peralta Creek Nature area, Native Plant Garden and pavilion.

e) play supervised games and sports outdoors in a large open space.

Friends of Peralta will deliver the social studies curriculum outcomes mandated by the state through our outdoor, hands-on 3rd and 4th grade history programs Peralta Rancho Life and Ohlone Daily Life, and the student-centered, nature centered science education outcomes from our 7 years of providing Camp A.C.E. at Peralta Hacienda from

February through August every year.

3. **Waivers:** *OUSD has waived the following:*

- ☐ Commercial General Liability Insurance
- ☐ Workers' Compensation Insurance
- ☐ Tuberculosis Screening
- ☐ Fingerprinting/Criminal Background Investigation