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

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent

Meeting Date September 25, 2024

Subject 2024-2025 Service Agreement (Cost) with:
Contractor: Bay Area Community Resources, San Rafael, CA
Services For: 922-Community Schools and Student Services Department

Ask of the Board

Ratification by the Board of Education of a Services Agreement 2024-2025 by and between the District and Bay Area Community Resources, San Rafael, CA, for the latter to provide: host Agency will be able to report measurable reductions in greenhouse gas (GHG) emissions, energy, water, or waste at the end of the Fellowship. Fellows may support the Host Agency through efforts in community outreach, capacity building climate resiliency projects, and K-12 youth education. Fellows will be able to develop a practical skill set and expertise in the realm of climate change management at the community level. Host Agency communities will be able to increase community participation towards further GHG reductions through volunteer opportunities that are created and/or increased through the participation of the Fellow for the period of September 1, 2024 through July 31, 2025 in an amount not to exceed \$112,000.00.

Background

(Why are they needed? Why was this vendor selected?)

OUSD does not have the staff capacity to run field trips at The Center for our students without the support of BACR and the Sustainability Service Corps Members. OUSD does not have the staff capacity to support the many school gardens without the support of BACR and the Sustainability Service Corps Members.

Term Start Date: 09/01/2024 End Date: 07/31/2025

Not-To-Exceed Amount & Funding Source(s) 9038 Funding Resource name(s) (detailed below) not to exceed: \$112,000.00.

EatLearnPlayFdnt-Ed Ctr Prog

Competitively Bid Yes No If the Service Agreement was not competitively bid and the not-to-exceed amount is more than \$114,500.00, list the exception(s) that applies:

Services Agreement under \$114,500.00

District In-Kind Contributions OUSD Staff Time (Beyond Basic Supervision & Support): Yes No

Supplies and Materials (Including Food) : Yes No

District Facilities Workspace: Yes No

Technology Hardware and/or Software: Yes No

Other: Yes No

Specific Outcomes Field trips at The Center for 3rd graders, 6th graders and high school students. Supported gardens at The Center and school sites.

**SPSA Alignment
(required if using
State or Federal
Funds)**

- Action Item included in Board Approved SPSA (no additional documentation required).
If so, enter Item Number: _____

- Action Item added as modification to Board Approved SPSA. If so, 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.

Attachment(s) 2024-2025 Services Agreement including Scope of Work

Services Agreement 2024-2025

This Services Agreement (“AGREEMENT”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the entity or individual (“VENDOR,” together with OUSD, “PARTIES”) named in **Exhibit A**, attached hereto and incorporated herein by reference. Unless otherwise stated herein, “VENDER INDIVIDUAL” includes (to the extent they exist): VENDOR Board members, officers, trustees, and directors; VENDOR employees, agents, consultants, contractors and subcontractors, representatives, and other similar individuals; and volunteers and others unpaid persons under VENDOR’s direction, invitation, or control.

The PARTIES hereby agree as follows:

1. **Services.** VENDOR shall provide the services (“SERVICES”) as described in **Exhibit A**.
2. **Term.** The term (“TERM”) of this AGREEMENT is established in **Exhibit A**.
3. **Compensation.**
 - a. Over the TERM, OUSD agrees to pay VENDOR the amount of money stated in **Exhibit A** for satisfactorily performing the SERVICES. 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**.
 - b. Compensation for SERVICES performed outside of the TERM (e.g., prior to execution of this AGREEMENT or after its termination) shall be at OUSD’s sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand compensation for the performance of such SERVICES.
 - c. VENDOR acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and VENDOR shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or the OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.
 - d. Payment for SERVICES shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 4 (Invoicing), for the SERVICES actually performed and after OUSD’s written approval that the SERVICES were actually performed. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the liability 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.

4. **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 the SERVICES were provided, name(s) of the person(s) performing the SERVICES, date(s) the SERVICES were performed, brief description of the SERVICES provided on each date, total invoice amount, and the basis for the total invoice amount (e.g., if hourly 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 upon 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 (d)—indicate whether the SERVICES were provided in-person or not.
 - f. All invoices furnished by VENDOR under this AGREEMENT shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

5. **Suspension.** If OUSD, at its sole discretion, develops health and safety concerns related to VENDOR's provision of SERVICES, then the OUSD Superintendent or an OUSD Chief may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend this AGREEMENT, in which case VENDOR shall stop providing SERVICES under this AGREEMENT until further notice from OUSD. OUSD shall compensate VENDOR for the SERVICES satisfactorily provided through the date of suspension.

6. **Termination.** Upon termination consistent with this Paragraph (Termination), VENDOR shall provide OUSD with all data and materials produced, maintained, or collected by VENDOR pursuant to this AGREEMENT, whether or not such materials are complete or incomplete or are in final or draft form.
 - a. For Convenience by OUSD. OUSD may at any time terminate this AGREEMENT upon thirty (30) days prior written notice to VENDOR. OUSD shall compensate VENDOR for SERVICES satisfactorily provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief may issue the termination notice without prior 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. VENDOR shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent or OUSD Chief.

- 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, which 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 may issue the termination notice without prior 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 its correction are made. VENDOR shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent or OUSD Chief.
 - c. Due to Unforeseen Emergency or Acts of God. Notwithstanding any other language of this AGREEMENT, if there is an unforeseen emergency or an Act of God during the TERM 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. The OUSD Governing Board may issue this type of termination notice or the OUSD Superintendent, upon approval by OUSD legal counsel, may issue this type of the termination notice without the need for approval or ratification by the OUSD Governing Board. VENDOR shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent.
 - d. Due to Failure to Ratify by OUSD Board. If, consistent with Paragraph 41 (Signature Authority), this AGREEMENT is executed on behalf of OUSD by the signature of the Superintendent, a Chief, a Deputy Chief, or an Executive Director, and the Board thereafter declines to ratify this AGREEMENT, this AGREEMENT shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for the SERVICES satisfactorily provided through the date of termination.
7. **Data and Information Requests.**
- a. VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests related to the provision of the SERVICES.
 - b. 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.

8. **Confidentiality and Data Privacy.**

- a. OUSD may share information with VENDOR pursuant to this AGREEMENT in order to further the purposes thereof. VENDOR and VENDOR INDIVIDUALS 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. VENDOR or VENDOR INDIVIDUALS may only access or receive identifiable student data, other than directory information, in connection with this AGREEMENT only after VENDOR and OUSD execute (i) a California Student Data Privacy Agreement (“CSDPA”) or CSDPA Exhibit E, if VENDOR is a software vendor, or (ii) the OUSD Data Sharing Agreement, if VENDOR is not a software vendor. Notwithstanding Paragraph 24 (Indemnification), should VENDOR or VENDOR INDIVIDUALS access or receive identifiable student data, other than directory information, without first executing such an 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.

9. **Copyright/Trademark/Patent/Ownership.** Except for any intellectual property owned by VENDOR that existed prior to execution of this AGREEMENT, VENDOR understands and agrees that all other matters produced under 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 VENDOR in connection with the SERVICES performed under this AGREEMENT. VENDOR 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 VENDOR’s prior written consent, use VENDOR’s name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

10. **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 or VENDOR INDIVIDUALS in any reasonable 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 or VENDOR INDIVIDUALS, and (ii) announced and unannounced observance of VENDOR or VENDOR INDIVIDUALS.
11. **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. In accordance with Paragraph 3 (Compensation), the SERVICES performed by VENDOR must meet the approval of OUSD, and OUSD reserves the right to direct VENDOR to redo the SERVICES, in whole or in part, if OUSD, in its sole discretion, determines that the SERVICES were not performed in accordance with this AGREEMENT.
12. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this AGREEMENT.
13. **Legal Notices.** Based on contact information set forth in **Exhibit A**, all legal notices provided for under this AGREEMENT shall be sent via email and 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. 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.
14. **Status.**
- a. This is not an employment contract. VENDOR, in the performance of this AGREEMENT, shall be and act as an independent contractor.
- 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 understands and agrees that it and any and all VENDOR INDIVIDUALS 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 INDIVIDUALS. 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 the 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.

15. Qualifications, Training, and Removal.

- a. VENDOR represents and warrants that VENDOR and all VENDOR INDIVIDUALS have the necessary and sufficient experience, 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.
- b. VENDOR represents and warrants that all VENDOR INDIVIDUALS 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.
- c. VENDOR agrees to immediately remove or cause the removal of any VENDOR INDIVIDUAL 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.

16. **Certificates/Permits/Licenses/Registration.** VENDOR shall ensure that all VENDOR INDIVIDUALS secure and maintain in force such certificates, permits, licenses, and registration as are required by law in connection with the furnishing of the SERVICES pursuant to this AGREEMENT.
17. **Insurance.**
 - a. **Commercial General Liability Insurance.** 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, sexual misconduct, harassment, bodily injury and property damage. Coverage for 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). 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 VENDOR. 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. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.
 - b. **Workers' Compensation Insurance.** VENDOR shall procure and maintain, at all times during the TERM of this AGREEMENT, 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. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.
18. **Testing and Screening.**
 - a. **Tuberculosis Screening.** VENDOR shall ensure that all VENDOR INDIVIDUALS who will be working at OUSD sites for more than six hours in total during the TERM or who work with students (regardless of the length of time) have submitted to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors were identified for a VENDOR INDIVIDUAL, that VENDOR INDIVIDUAL must submit to an intradermal or other approved tuberculosis examination to determine if that VENDOR INDIVIDUAL 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 a VENDOR INDIVIDUAL to the examination instead of the risk

assessment. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

- b. Fingerprinting/Criminal Background Investigation. For all VENDOR INDIVIDUALS 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 VENDOR INDIVIDUAL 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. For purposes of this subparagraph, VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

19. **Incident/Accident/Mandated Reporting.**

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 13 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of the SERVICES. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, or 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 a VENDOR INDIVIDUAL is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform that VENDOR 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.

20. **Health and Safety Orders and Requirements; Site Closures.**

- a. VENDOR shall adhere to any health or safety orders or requirements issued at the time of the execution of this AGREEMENT or in the future by OUSD or other public entities (“Orders”).
- b. Except as possibly stated otherwise in **Exhibit A**, VENDOR is able to meet its obligations and perform the SERVICES required pursuant to this AGREEMENT in accordance with any Order; to the extent that VENDOR becomes unable to do so, VENDOR shall immediately inform OUSD in writing.
- c. Except as possibly stated otherwise in **Exhibit A**, to the extent that there may be a site closure (e.g., due to poor air quality, planned loss of power, strike) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR is able to meet its obligations and perform the SERVICES required pursuant to this AGREEMENT; to the extent that VENDOR becomes unable to do so, VENDOR shall immediately inform OUSD in writing.

- d. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited lost compensation for failure to provide SERVICES.
21. **Conflict of Interest.**
- a. VENDOR and all VENDOR INDIVIDUALS shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire, contract with, or employ any officer or employee of OUSD during the TERM without the prior approval of OUSD Legal Counsel.
 - b. VENDOR affirms, to the best of his/her/its knowledge, that 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 any change in either private interest or the SERVICES under this AGREEMENT, any question regarding a possible conflict of interest which may arise as a result of such change will be immediately 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 immediately notify OUSD in writing.
22. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** 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 AGREEMENT, certifies that neither it nor its principals appear on the Excluded Parties List (<https://www.sam.gov/>).
23. **Limitation of OUSD Liability.** Other than as provided in this AGREEMENT, OUSD's financial obligations under this AGREEMENT shall be limited to the compensation described in Paragraph 3 (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.
24. **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. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this AGREEMENT. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.

- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR and VENDOR INDIVIDUALS 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. OUSD shall, to the fullest extent permitted by California law, defend VENDOR and VENDOR INDIVIDUALS at OUSD's own expense, including attorneys' fees and costs.
25. **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 and for three (3) years after the earlier of (i) the TERM or (ii) the date of termination. 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 the 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.
 26. **Non-Discrimination.** It is the policy of OUSD that, in connection with all work performed under legally binding agreements, 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.
 27. **Compliance with California and Federal Laws.** VENDOR shall comply with all applicable California and Federal laws, regulations, and ordinances. This includes, but is not limited to, compliance with the California Labor Code 6401.9 (Workplace Violence Prevention Plans), as well as any other laws related to labor, employment, safety, health, and

environmental regulations. The VENDOR shall ensure that all activities and services conducted under this AGREEMENT are in strict compliance with such laws and regulations. Any violation of these laws, regulations, or ordinances by the VENDOR or any of its employees, subcontractors, volunteers, or agents shall constitute a material breach of this AGREEMENT.

28. **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.
29. **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.
30. **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.
31. **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.
32. **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.
33. **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.
34. **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.
35. **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.
36. **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.

37. **Captions and Interpretations.** 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.
38. **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.
39. **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.
40. **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.
41. **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.
42. **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), VENDOR acknowledges, agrees, and understands (i) that only the Superintendent, and the Chiefs, Deputy Chiefs, and Executive Directors who have been delegated such authority, may validly sign contracts for OUSD and only under limited circumstances, and (ii) that all such contract still require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other individual as having the proper authority to enter into this AGREEMENT on behalf of OUSD.

43. **Contract Contingent on Governing Board Approval.** The PARTIES acknowledge, agree, and understand that 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, a Chief, or a Deputy Chief authorized by the Education Code or Board Policy, and no compensation shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE INTENTIONALLY LEFT BLANK

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

VENDOR

Name: Bay Area Community Resources Signature: Don Blasky
Position: Officer (Executive) Date: 08/28/2024

One of the terms and conditions to which VENDOR specifically agrees by its signature is subparagraph (c) of Paragraph 3 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.

OUSD

Name: SONDRA AGUILERA Signature: Sandra Aguilera
Position: CHIEF ACADEMIC OFFICER Date: 08/26/2024

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)

Name: Kyla Johnson-Trammell Signature: Kyla Johnson-Trammell
Position: Superintendent and Secretary, Board of Education Date: 09/28/2024

Approved as to form by OUSD Legal Department 7/8/24.

SERVICES AGREEMENT

EXHIBIT A

(Paragraph numbers in Exhibit A corresponds to the applicable Paragraph number in this Agreement.)

Bay Area Community Resources

VENDOR: _____

1. **Services.** Describe the SERVICES VENDOR will provide:

See Attached Scope of Work

2. **Term.**

- a. This AGREEMENT shall start on the below Start Date. If no date is entered, then this AGREEMENT shall start on the latest of the dates on which each of the PARTIES signed this AGREEMENT.

Start Date: September 1, 2024

- b. Unless terminated earlier, this AGREEMENT shall end on the below End Date. If no date is entered, then this AGREEMENT shall end on the first June 30 after start date listed in subparagraph (a). If the dates set forth in this subparagraph and subparagraph (a) would cause this AGREEMENT to exceed the limits set forth in state law (e.g., Education Code section 17596), this AGREEMENT shall instead automatically end upon reaching said limit.

End date: July 31, 2025

3. **Compensation.**

- a. The basis for payment to VENDOR shall be:

Hourly Rate: _____ per hour

Daily Rate: _____ per day

Weekly Rate: _____ per week

Monthly Rate: \$28,000.00 per month

Per Student Served Rate: _____ per student served

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

- b. Over the TERM, the total compensation under this AGREEMENT shall not exceed the below amount. This sum includes (but is not limited to) compensation for the full performance of this AGREEMENT and 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.

Not-To-Exceed Amount: \$112,000.00

13. **Legal Notices.**

OUSD

Site/Dept: Legal Department

Address: 1011 Union Street, Site 946

City, ST Zip: Oakland, CA 94607

Phone: 510-879-5060

With a copy via email: ousdlegal@ousd.org

VENDOR

Name/Dept: Bay Area Community Resources

Address: 171 Carlos Drive

City, ST Zip: San Rafael, CA 94903

Phone: 510-559-3025

Email: dblasky@bacr.org

17. **Insurance.** OUSD has waived the following insurance requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to attach such written confirmation voids any such waiver even if otherwise properly given.

- Commercial General Liability Insurance.* Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual) and the not-to-exceed amount is \$25,000 or less.
- Workers' Compensation Insurance.* Waiver typically available by OUSD if VENDOR has no employees.

18. **Testing and Screening.** OUSD has waived the following testing and screening requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to include such written confirmation voids any such waiver even if otherwise properly given.

Tuberculosis Screening. Waiver typically available by OUSD if VENDOR INDIVIDUALS will have no in-person contact with OUSD students.

Fingerprinting/Criminal Background Investigation. Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual).

20. **Health and Safety Orders and Requirements; Site Closures.** If there is an Order or event in which school sites and/or District offices may be closed or otherwise inaccessible, would the SERVICES be able to continue?

No, the SERVICES would not be able to continue.

Yes, the SERVICES would be able to continue as described herein.

Yes, but the SERVICES would be different than described herein, they would be as follows:

Remote learning would take place. Gardens would continue to be supported.

SOW for BACR/SSC Contract

BACR and Host Agency agree to partner to implement projects with the support of Fellows.

Fellows can only serve on contracted and allowable service activities outlined in the job description which is co-created by BACR and Host Agency.

The nature of the program necessitates Host Agency participation in timely outcome reporting, supervision, and support for the Fellow(s).

Host Agency desires to host Fellow(s), and BACR desires to provide Fellow service to Partner. This document is to establish the basic guidelines and expectations between the Host Agency and BACR.

The Host Agency and BACR enter into this MOU in order to memorialize the terms of BACR's performance of the services and the Partner's obligations with respect thereto.

The objectives of the program are as follows:

Host Agency will be able to report measurable reductions in greenhouse gas (GHG) emissions, energy, water, or waste at the end of the Fellowship.

Fellows may support the Host Agency through efforts in community outreach, capacity building climate resiliency projects, and K-12 youth education.

Fellows will be able to develop a practical skill set and expertise in the realm of climate change management at the community level.

Host Agency communities will be able to increase community participation towards further GHG reductions through volunteer opportunities that are created and/or increased through the participation of the Fellow.

The Fellows' term of service with the Host Agency is for a period of 11 months. The term of service starts as soon as September 1, 2024 but no later than October 2, 2024, and ends no later than August 31, 2025. While working for the Host Agency, the Fellow(s) will complete a minimum of 1,700 hours total. The Fellow(s) are expected to finish their term of service through their scheduled end date even if they reach their minimum hours target sooner.

It is expected that the Fellow(s) will devote 80-90% of their time (1,360-1,530 hours) to "Service" (projects agreed upon with the Host Agency and detailed in the Scope of Work, see Article III) and 10-20% of their time (170-340 hours) to "Training" (structured and independent professional development opportunities including mandatory Sustainability Service Corps trainings and events). No more than 20% of time will be spent on "Training".

If a Fellow is unable to complete the expected number of hours by the end date in the Fellow's contract (i.e. Member Service Agreement) due to any unforeseen circumstances during their term they may, at the discretion of BACR and the agency, be allowed time to complete their hours at the agency, or at another approved agency where there are service opportunities available. The last day Fellows are eligible to earn hours for the 2024-25 program year will be August 31, 2025.

BACR agrees to perform the following services:

Be the official employer-of-record for the Fellow(s) which includes providing a living stipend of \$2,838.917/month, as well as coverage options for healthcare, childcare, and student loan deferment.

Recruit, screen, and select the Fellow(s). BACR will lead, and Host Agency will assist, in the recruitment and selection of the Fellow(s), including, without limitation, developing a position description, conducting interviews, and participating in the final selection of the Fellow(s). The Fellow(s) must be a permanent resident of California by the time mandatory background checks are conducted before the start of the Fellowship.

Train Fellow(s) with a comprehensive training program. Fellows are expected to attend mandatory events and complete assignments in a timely manner. BACR will ensure that the training program does not exceed the agreed upon total number of “Training” hours as defined in Article II. The training program includes:

Resources

A training manual of AmeriCorps and Sustainability Service Corps program policies, best practices, and conduct expectations;
Access to professional networks and coaching.

In-Person Events

A four-day orientation before “Service” begins with the Host Agency;
A mid-year retreat;
An end-of-year graduation celebration.

Online Trainings

Monthly, virtual, three-hour workshops facilitated by BACR with a focus on professional development and transferable skill-building. Host Agency will be provided with a full schedule prior to the start of the program;
Enrollment in the University of California’s Climate Stewards Certification program, a six-month course featuring six monthly classes (3-4 hours each), coursework, assigned readings, and field trips.

Independent Professional Development

Customizable, self-directed opportunities designed by the Fellow(s) and the Parties to support the Fellow(s) professional development and career pursuits;
Access to a professional development budget from BACR.

Support Fellow(s) and Host Agency via required meetings and assignments, including:

A Regional Supervisor (a representative from BACR) assigned to the Host Agency whose main function is to support both the Host Agency and the Fellow during the term of service through monthly verbal check-in meetings, email support, professional development resources, and conflict resolution, if necessary;

Monthly, virtual supervision meetings attended by the Fellow(s), the Site Supervisor (a person assigned by the Host Agency to direct the Fellow(s) in their projects), and the Regional Supervisor;

Two Fellowship Performance Reviews including surveys completed by the Host Agency and Fellow and debrief conversations facilitated by the Regional Supervisor;

A specific Scope of Work plan developed by the Fellow with the Host Agency that aligns with the GHG reduction initiatives provided by the Host Agency within the first month of service;

Defined metrics for the Fellow to measure and track the progress of resource waste reduction, K-12 education, capacity building, or community outreach throughout the placement, developed collaboratively by the Parties.

Define and implement any corrections to Fellow's plan determined to be necessary based on feedback collected from Fellow and Host Agency.

BACR reserves the right to remove Fellow(s) from Host Agency should the placement become unsuitable or unsafe for Fellow(s), or Partners violate the terms of this MOU. BACR will make reasonable attempts to address and mitigate concerns with Partners as appropriate.

OUSD REQUIREMENTS, RESPONSIBILITIES, AND EXPECTATIONS

In order to provide a clear and well-defined service experience for participating Fellow(s), Host Agency agrees to:

Provide at least one specific GHG reduction initiative that the Fellow(s) can work on during their term of service. Initiatives must be well-defined, approved for implementation and include specific emissions, water, waste, or energy reduction, and/or education, community outreach, or capacity-building targets, or have the capacity to define specific project targets. Host Agency will work with BACR to finalize a mutually agreed-upon Scope of Work no later than one month after the Fellow(s) begins work.

Assign a Site Supervisor who will be available:

To devote at least one hour per week of direct one-on-one time with Fellow(s). This time is different from time spent working together on projects; the one-on-one time should be structured with an agenda that helps the Fellow(s) organize their priorities, discuss any challenges, and explore professional development opportunities);

Direct the Fellow(s)' projects on a daily basis and provide specific guidance and tasks as they complete their projects;

Complete monthly verbal reporting to BACR in Regional Supervisor check-in meetings, indicating whether progress is being made on the initiatives;

Provide feedback on the Fellow(s)' performance: two times a year, fill out and submit an evaluation form to provide feedback on Fellow activities, performance, and offer data on specific resource or GHG reduction metrics;

Attend the Partner Orientation (August) and Mid-Year Call (via webinar).

Additional, optional host partner networking events will be made available;

Review and acknowledge BACR's program policies and best practices for supervision.

Allow the Fellow(s) to attend mandatory trainings and participate in program events as described above, even if they conflict with "Service" activities. Written permission must be requested by the Site Supervisor to the Regional Supervisor in advance of the event if the Fellow(s) must be absent.

Allow BACR to share results from this program through grant reporting, social media, and other means as BACR deems appropriate.

Create an inviting and safe workplace culture for the Fellow(s) that values their personal safety, mental health, and personal and professional development goals, regardless of their own beliefs, identities, and backgrounds.

Follow BACR's disciplinary procedure for the Fellow(s), if necessary, which includes verbal warnings (up to two issued by the Site Supervisor to the Fellow(s) and reported to the Regional Supervisor), a written Performance Improvement Plan signed by all Parties (includes clear expectations and consequences for improvement within a minimum of two weeks), and a final review by BACR before terminating the Fellow(s).

Ensure that Fellow(s) do not do the following while charging time to the AmeriCorps Program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps Program:

- Engage in any activity that is illegal under local, state or federal law;

- Engage in activities that pose a significant safety risk to others;

- Engage in any of the Prohibited Activities outlined in the Policies & Procedures handbook, including, but not limited to:

 - Attempting to influence legislation;

 - Organizing or engaging in protests, petitions, boycotts, or strikes;

 - Assisting, promoting, or deterring union organizing;

 - Impairing existing contracts for services or collective bargaining agreements;

 - Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

Providing a direct benefit to a business organized for profit; a labor union; a partisan political organization; or a nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging advocacy activities undertaken at their own initiative; and

An organization engaged in the religious activities described in paragraph (g) of this section, unless AmeriCorps assistance is not used to support those religious activities;

Conducting a voter registration drive or using AmeriCorps-funded time to conduct a voter registration drive;

Providing abortion services or referrals for receipt of such services; and

Such other activities as the AmeriCorps may prohibit.

AmeriCorps members may support fundraising and resource-gathering for direct support of your program's service activities, but with restrictions:

Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;

Support research and writing of a grant proposal to a foundation to secure resources to support the training of volunteers;

Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individuals;

Securing financial resources from the community to assist in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of a community-based organization;

Seeking donations from alumni of the program for specific service projects being performed by current members.

AmeriCorps members may not:

Raise funds for living allowances or for an organization's general (as opposed to project) operating expenses or endowment;
Write a grant application to the Corporation or to any other Federal agency.

Spend more than 10% of their term of service performing fundraising activities.

Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-AmeriCorps funds. However, the AmeriCorps logo must not be worn while doing so.

Support and encourage the promotion of National Service through the following:

Posting AmeriCorps and National Service information at all service sites

Posting a list of the above Prohibited Activities at all service sites

Ensuring Fellows wear appropriate uniforms or AmeriCorps pin as required by BACR

Allowing Fellows to leave the program site to participate in pre-arranged National Service identity activities and monthly training days.

Allowing Fellows to spend up to a maximum of 20% of their total hours on thematic professional development activities (including regular monthly programmatic training days).

[Desired, but not required] to provide program-wide support by either

Facilitating at least one all-day training event for all Fellows or,

Speaking during a session at one all-day training event for all Fellows

ARTICLE VII – PAYMENT

Host Agency will provide BACR with \$28,000 per Fellow, and requests four (4) Fellows for the coming program year for a total payment amount of \$112,000 to support the implementation of the program. Host Agency will receive invoices one month prior to the scheduled payment date. This payment will be made according to the following schedule:

Payment 1:

- Due: November 30, 2024
- Amount: \$56,000

Payment 2:

- Due: January 31, 2025
- Amount: \$28,000

Payment 3:

- Due: March 31, 2025
- Amount: \$28,000

