

Legislative File

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**OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent**

June 12, 2013

TO: Board of Education

FROM: Dr. Anthony Smith, Superintendent
David Montes de Oca, Executive Director, Quality Community Schools
Development

SUBJECT: Lease Agreement by and between the
Oakland Unified School District and Oakland Military Institute

ACTION REQUESTED:

Approval by the Board of Education of a Long Term Lease Agreement between the Oakland Unified School District ("District") and Oakland Military Institute ("OMI") regarding the continued use of the Longfellow School site for a fifteen (15) year term, with two (2)- ten (10) year options, commencing July 1, 2013 and ending June 30, 2028, for an annual facilities fee and debt service of \$110,000, with \$10,000 incremental adjustments at the end of each five (5) year lease period.

BACKGROUND:

The District is the owner of certain real property, commonly known as the Longfellow Elementary School ("Premises"), located at 877 Lusk Street, Oakland, CA.

OMI currently provides educational and recreational activities on the Premises and continues to require space to conduct its charter school and recreational activities for students residing in the District.

In addition, OMI has made significant capital outlay improvements on the Premises for recreational purposes and plans to make additional capital outlay improvements, including construction of a gymnasium and recreational center for the benefit of all in District students and the Oakland community.

Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") support joint action by District and OMI to organize, promote, and conduct programs in order to improve the health and general welfare of the citizens of the City of Oakland and students residing in the District to cultivate the development of good citizenship by provision for adequate programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state.

Under Education Code section 17534 (b), the requirement that the term of any Joint Use Lease Agreement not exceed five (5) years, shall not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as OMI.

The District and OMI pursuant to the Community Recreation Act, intend to jointly undertake the use, development, construction, and maintenance of the Premises for the attainment of general educational and recreational objectives for students residing in the District and students attending OMI.

Rent shall be paid quarterly and shall be due as follows:

- July 1 - \$27,500
- October 1 - \$27,500
- January 1 - \$27,500
- April 1 - \$27,500

In lieu of annual CPI increases, Rent for the Premises shall increase by ten thousand dollars (\$10,000.00) on the anniversary of the Commencement Date at the beginning of year six (6) and on each subsequent five (5) year anniversary thereafter, including any option period, as follows:

- Years 1 through 5 - \$110,000.00
- Years 6 through 10 - \$120,000.00
- Years 11 through 15 - \$130,000.00
- Years 16 through 20 - \$140,000.00¹

The agreed Shared Use Facilities include: Regimental Hall, Leadership Field and Patriot Court.

RECOMMENDATION:

That the Board of Education approve the Long Term Lease Agreement between the Oakland Unified School District and Oakland Military Institute regarding the continued use of the Longfellow School site for a fifteen (15) year term, with two (2) - ten (10) year options, commencing July 1, 2013 and ending June 30, 2033, for an annual facilities fee and debt service of \$110,000, with \$10,000 incremental adjustments at the end of each five (5) year lease period.

¹ Rent Increases during the 2 option periods shall follow the same 5 year incremental increase.

**GROUND LEASE AGREEMENT – JOINT USE
BETWEEN OAKLAND UNIFIED DISTRICT AND
OAKLAND MILITARY INSTITUTE
(LONGFELLOW ELEMENTARY SCHOOL)**

THIS GROUND LEASE AGREEMENT – JOINT USE (“Agreement”) is made and entered into this 1st day of July, 2013 (“Effective Date”), by and between OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district (“District”) and OAKLAND MILITARY INSTITUTE, COLLEGE PREPARATORY ACADEMY, a California Charter School (“OMI”). The District and OMI may be referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

A. WHEREAS, District is the owner of certain real property, commonly known as the Longfellow Elementary School (“Premises”), located at 3877 Lusk Street, Oakland, CA and 880 39th Street as depicted in the attached **Exhibit “A”**; and

B. WHEREAS, OMI currently provides educational and recreational activities on the Premises and continues to require space to conduct its charter school and recreational activities for students residing in the District; and

C. WHEREAS, the provisions of Education Code sections 10900 through 10914.5, inclusive, (the “Community Recreation Act”) support joint action by District and OMI to organize, promote, and conduct programs in order to improve the health and general welfare of the citizens of the City of Oakland and students residing in the District to cultivate the development of good citizenship by provision for adequate programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state; and

D. WHEREAS, under the provisions of Education Code section 17534 (b), the requirement that the term of any Joint Use Lease Agreement not exceed five (5) years, shall not apply when capital outlay improvements are made on school property for park and recreation purposes by public entities and nonprofit corporations such as OMI; and

E. WHEREAS, OMI has made significant capital outlay improvements on the Premises for recreation purposes and plans to make additional capital outlay improvements including construction of a gymnasium and recreational center; and

F. WHEREAS, District and OMI pursuant to the Community Recreation Act, intend to jointly undertake the use, development, construction, and maintenance of the Premises for the attainment of general educational and recreational objectives for students residing in the District and students attending OMI; and

G. WHEREAS, OMI, in furtherance of its commitment to carry out the joint use objectives for students residing in the District and students attending OMI will make available for immediate use areas of the Premises commonly known as Regimental Hall, Leadership Field and Patriot Court.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this agreement, the Parties agree as follows:

AGREEMENT

1. Use of Premises. District hereby leases to OMI, and OMI hereby leases from District, the Premises for the Term (as defined in Section 4 below) and upon the covenants and conditions set forth in this Lease. District agrees to allow use of the Premises by OMI for purposes of operating a public school providing educational instruction to public school students consistent with the terms of OMI's Charter Petition, and incidental related uses ("Activities"). The Premises shall not be used for any lewd, lascivious, immoral or illegal purpose.

2. Condition of Premises.

- 2.1. The Premises are leased to OMI on an "AS IS" basis. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Premises. By entry and taking possession of the Premises pursuant to this Agreement, OMI accepts the Premises in "AS IS" condition.
- 2.2. OMI acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises for OMI's Activities. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or OMI, and District and OMI expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

3. Title to School Site(s) /Classroom Buildings. The Parties acknowledge that title to the Premises is held by District.

4. Term.

The term of this Agreement shall be for fifteen (15) years. The commencement date shall be July 1, 2013, ("Commencement Date") and unless sooner terminated under any provision hereof, this Agreement shall end on June 30, 2028 ("Term"). At the termination of this Agreement, OMI shall have the right to renew for two additional terms of ten (10) years each, at OMI's discretion. Upon expiration of these option periods, further renewal of the Term may be effected by mutual agreement of the parties, as set forth in section 4.1 below.

4.1. Renewal of Agreement.

If the Parties wish to further renew this Agreement after expiration of the Term and the two renewal terms specified above, this can only be done by a separate writing executed by the Parties that complies with all of the following provisions:

- 4.1.1. It specifically authorizes further tenancy by OMI and specifies the terms of that tenancy, and
- 4.1.2. It is approved by each Party's governing body prior to the end of the Term, as extended by the two renewal terms specified above.

4.2. **Surrender.** On the last day of the Term hereof, or on sooner termination of this Agreement, OMI shall surrender to District the Premises and any then existing improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances, subject to sections 10 and 11 below. The condition of the Premises shall be similar to that existing as of the Commencement Date excepting normal ordinary wear and tear and any structural improvements made by OMI or District subsequent to the Commencement Date. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Premises. To the extent required by sections 10 and 11 below, OMI shall remove from the Premises all of OMI's personal property, trade fixtures, and any improvements made by OMI which OMI and District agreed would be removed by OMI. All property not so removed shall be deemed abandoned by OMI. If the Premises are not so surrendered at the termination of this Agreement in accordance with sections 10 and 11 below, OMI shall indemnify District against loss or liability resulting from delay by OMI in so surrendering the Premises including, without limitation, any claims made by any succeeding tenant or losses to District due to lost opportunities to obtain succeeding tenants.

5. Rent.

5.1. For and in consideration of the use of the Premises for the Term of this Agreement, OMI agrees to pay District an annual sum of one hundred ten thousand dollars (\$110,000.00) ("Rent"). Nothing in either this provision for Rent or in any other provision of this Lease shall preclude OMI from participating in any future District policy that may be adopted regarding standard rates for District facilities, should those standard rates result in a reduction in OMI's rent obligation under this Agreement.

5.2. The Parties acknowledge that OMI has made substantial improvements to the Premises. During the Term, OMI intends to make additional recreational or other school facilities improvements to the Premises. In the event OMI constructs or installs recreational improvements or other school facilities, the Parties may agree to negotiate a reduction in the Rent. The District shall only agree to a reduction in the Rent for sums equal to the actual costs directly attributable to purchase, installation, and construction of the additional recreational improvements or facilities. The actual costs shall not include any of the costs of permits, inspections, environmental clearance, and/or maintenance of the additional recreational improvements or facilities, and shall not include any costs for overhead, or OMI staffing, as applicable, or other indirect expenses incurred by OMI, as applicable, pursuant to this Agreement.

5.3. Rent shall be paid quarterly and shall be due as follows:

- July 1 - \$27,500
- October 1 - \$27,500
- January 1 - \$27,500
- April 1 - \$27,500
-

5.4. Rent does not include the utility charges for the Premises. OMI shall pay for all utilities charges for the Premises. For purposes of this Agreement, utilities

include water, irrigation, gas, electricity, telephone, security and fire alarm monitoring, data and communication lines and service, trash pick-up, and sewage fees.

- 5.5. Annual Rent for the Premises shall increase by ten thousand dollars (\$10,000.00) on the anniversary of the Commencement Date at the beginning of year six (6) and on each subsequent five (5) year anniversary thereafter, including any option period, as follows:
- Years 1 through 5 - \$110,000.00
 - Years 6 through 10 - \$120,000.00
 - Years 11 through 15 - \$130,000.00^a
- 5.6. OMI shall pay promptly to District, the Rent when due during the Term, without deduction, setoff, prior notice or demand.
- 5.7. OMI acknowledges that late payment by OMI to District of the Rent and other sums due hereunder will cause District to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if District does not receive any installment of Rent or any other sum due from OMI by 4:00 p.m. within ten (10) days after such amount is due, OMI shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount or the maximum amount allowed by law, whichever is less. The Parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by OMI. Acceptance of any late charge by District shall in no event constitute a waiver of OMI's default with respect to the overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 5.8. Taxes; Assessments. OMI shall pay any assessment on the Premises, including any improvements which OMI constructs or causes to be constructed on the Premises, whether real estate, general, special, ordinary or extraordinary, or rental levy or tax, improvement bond, and/or fee imposed upon or levied against the Premises or OMI's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon OMI's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Premises address and where the proceeds so generated are applied by the city, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6. Maintenance and Repairs.

OMI agrees to provide, at its own cost and expense, any and all maintenance for the Premises. Maintenance to be provided by OMI shall be consistent with the normal maintenance levels and shall insure safe and healthful use. OMI agrees that nothing in either this provision for Maintenance and Repairs or in any other provision of this

^a Rent Increases during the 2 option periods shall follow the same 5 year incremental increase.

Agreement shall preclude OMI from participating in any future District policy that may be adopted regarding the administration of District-wide custodial services for District facilities. OMI agrees to participate with the District in said policy, as long as it is shown to be financially feasible for OMI to do so.

- 6.1. District shall have no maintenance or repair obligations with respect to the Premises. OMI hereby expressly waives the provisions of Subsection 1 of section 1932 and sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in section 1942 of the Civil Code.

7. Shared Recreational Use. District shall work with OMI staff to determine the appropriate joint use protocol for using the following recreational facilities ("Shared Use Facilities"): Regimental Hall, Leadership Field and Patriot Court. The District and OMI shall meet on a semi-annual basis to develop a Master Schedule for the Shared Use Facilities, as well as designate additional recreational facilities that may be appropriate for joint use. District and OMI shall cooperate and coordinate the scheduling of events and activities that each intends to hold at the Premises to avoid scheduling conflicts or having multiple events or activities occur at the same time on the Premises.

8. Improvements.

- 8.1. OMI may at its sole cost and expense, make or perform improvements, alterations, or additions to the Premises ("Improvements"), provided that any Improvements requiring approval of the Division of the State Architect shall require prior written notice and approval of District, which approval shall not be unreasonably withheld, conditioned or delayed. If District fails to respond within thirty (30) days after OMI's written request for approval of any Improvements, District shall be deemed to have given its approval to such Improvements. Improvements shall comply with all legal requirements relating to construction of the Improvements, including, without limitation, Title 24 of the California Code of Regulations, the Education Code (including the Field Act, Education Code §17280, et seq.), the Americans with Disabilities Act, the California Environmental Quality Act and regulations promulgated thereunder.
- 8.2. All contractors and subcontractors of OMI, if any, shall be duly licensed in the State of California. Under all circumstances, OMI must seek and receive approval from the Division of the State Architect for all of OMI's Improvements to the extent such approval is required by law.
- 8.3. OMI shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any site, grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction and shall provide District with evidence of approval by all applicable governmental agencies.

- 8.4. OMI shall be responsible for ensuring that all Improvements work is performed in strict compliance with the approved SWPPP, REAP, ATS, and the Construction Storm Water Permit issued, as required by applicable law.
- 8.5. All maintenance and construction activities performed by OMI shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program and the Clean Water Act to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.
- 8.6. OMI shall be solely responsible for maintaining the Premises and OMI's Improvements installed thereon during the Term, including any extensions, and for compliance with all applicable laws or ordinances, rules and regulations.
- 8.7. OMI shall be solely responsible to make payment for any service or work performed in connection with the design and construction of the Improvements. OMI shall administer and resolve any claims or disputes that may arise in connection with the design and construction of the Improvements.
- 8.8. OMI and any person performing work for construction of the Improvements, shall exercise reasonable precautions to avoid damage and protect persons or property while on the Premises and any adjacent staging area. District assumes no liability for loss or damage to property or injuries to or deaths of agents, contractors, or employees of OMI by reason of the exercise of privileges given in this section. OMI shall indemnify and hold District harmless from any damage caused by the OMI's activities authorized in this section, except to the extent such damage was caused by District's gross negligence or willful misconduct. OMI shall either reimburse the District for any damage or destruction to the Premises, or other property, occurring by reason of the exercise of rights granted, or to replace or restore said property to its preexisting condition.
- 8.9. The Improvements shall be made by OMI at its sole expense.
- 8.10. OMI shall coordinate the work of the Improvements with the District. OMI shall provide notice to District in writing of the status of the Improvement projects and notify the District when the Improvements are completed. District shall have the right to inspect and reject the Improvements.

9. Removal of OMI's Personal Property.

On or before the expiration of this Agreement, or within seventy-five (75) days after any earlier termination of this Agreement, OMI shall remove all personal property and removable fixtures ("Property"), at its sole expense. OMI shall repair any damage to the Premises, caused by removal of OMI's Property and restore the Premises to good condition, less ordinary wear and tear. In the event that OMI fails to timely remove its Property,

District, upon fifteen (15) days written notice, may either (1) accept ownership of OMI's Property with no cost to District, or (2) remove OMI's Property at OMI's sole cost. In the event that District chooses to accept ownership of OMI's Property, OMI shall execute any necessary documents to effectuate the change in ownership of OMI's Property. In the event that District removes OMI's Property, OMI shall pay all invoices for the removal of OMI's Property within thirty (30) days of receipt of such invoices.

10. Surrender. Title to improvements at the Premises constructed by OMI shall be owned by OMI until expiration or the earlier termination of the term of this Agreement. All improvements on the Premises at the expiration of the term of this Agreement, or any options or mutually agreed to extensions shall, with compensation to OMI in an amount equal to their fair market value, become District's property; provided, that the improvements are DSA approved or can be utilized for adaptive re-use under the standards set-forth in the Division of State Architect's "FEASIBILITY GUIDELINES FOR SELECTION OF EXISTING NON-CONFORMING FACILITIES FOR REHABILITATION TO PUBLIC SCHOOLS AND CALIFORNIA COMMUNITY COLLEGES".¹ The regulations of Title 24, C.C.R. apply to any existing non-conforming building for purchase or lease by a district for use as a public school. If the improvements are not suitable for adaptive re-use, OMI shall remove improvements and return the property to the District in its pre-Agreement condition.

11. Fingerprinting and Criminal Background Verification. OMI shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1, which may be met under the fingerprinting provisions of Title 22 of the California Code of Regulations and applicable provisions of the California Health and Safety Code relevant to community care facility licensing (Health & Saf. Code, § 1500 et seq.). OMI shall provide in writing verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District.

12. Inspection of Premises. District shall have the right to enter the Premises to conduct its own compatible operations, or to conduct inspections of the Premises during usual business hours in order to insure that proper pest management control and maintenance is being conducted on the Premises. District will endeavor during the course of any access of the Premises to not disrupt Charter School's classroom and instructional activities.

13. Termination.

Termination For Convenience.

13.1.1. OMI may terminate this Agreement by written notification one hundred and eighty (180) days prior to the effective date of the termination. OMI acknowledges that this one hundred and eighty (180) day notice period is acceptable so that District can attempt to find another tenant.

13.2. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause upon the occurrence of an event of default that is not cured within any applicable cure period. Cause shall include, without limitation:

¹ http://www.documents.dgs.ca.gov/dsa/pubs/feasibility_guidelines_pub_dsa_reh_01.pdf

- 13.2.1. Material violation of this Agreement by OMI or District that is not cured within ten (10) days after notice to the defaulting party of such violation if such violation constitutes a monetary breach of this Agreement or within thirty (30) days after notice to the defaulting party of such violation if such violation constitutes a non-monetary breach of this Agreement; provided, however, that if the nature of such default is such that more than thirty (30) days are reasonably required for its cure, then OMI or District, as applicable, shall not be deemed to be in default if such party shall commence such cure within said 30-day period and thereafter diligently prosecute such cure to completion; or
- 13.2.2. OMI is adjudged a bankrupt, OMI makes a general assignment for the benefit of creditors or a receiver is appointed on account of OMI's insolvency.
- 13.2.3. The cessation of OMI's program after a revocation, nonrenewal or surrender of the charter to the granting agency. However, OMI shall not be in default of this Agreement until after it has exhausted all appeals subsequent to the revocation or nonrenewal of its charter;
- 13.2.4. If District terminates this Agreement for cause, OMI's rights in the Premises shall terminate upon OMI's receipt of notice of termination from District. Upon receipt of District's notice of termination, OMI shall surrender and vacate the Premises in the condition required under this Agreement, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject OMI or any of OMI's subtenants, assignees or other person or persons claiming any right under or through OMI or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release OMI from the payment of any sum then due District or from any claim for damages or Rent previously accrued or then accruing against OMI.
- 13.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or OMI.
- 13.4. Upon termination of this Agreement, OMI shall be responsible to restore the Premises to the extent required under Sections 4.2 and 11.
- 13.5. **Option to Terminate for Destruction.** OMI shall have the right to terminate this Agreement if, during the term, the improvements are damaged or destroyed by a casualty for which OMI is not required to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds fifty percent (50%) of the fair market value of the improvements immediately before the damage or destruction.

- 13.6. **Application of Insurance Proceeds.** Any and all fire and other insurance proceeds that become payable at any time during the term of this Agreement because of damage to or destruction of any Improvements on the Premises shall be paid to OMI and applied by OMI toward the costs of repairing and restoring the damaged or destroyed Improvements in the manner required herein, or if this Agreement is terminated under Section 14.5, applied by OMI towards the payment of any leasehold encumbrance.

14. Indemnification. To the fullest extent permitted by California law, OMI shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, the operation, condition, use or occupancy of the Premises, all improvements thereon, and all areas appurtenant thereto, except to the extent that such losses, liabilities, claims, suits, and/or actions result from the gross negligence or willful misconduct of District or any of the indemnified parties; and in case any action or proceeding be brought against District that would be covered by the foregoing indemnity, OMI shall defend the same at OMI's sole expense. This Agreement is made on the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause in any way connected with the condition, use or occupancy of the Premises specifically including, without limitation, any liability for injury to the person or property of the OMI, its agents, officers, employees, licensees and invitees. OMI shall keep the Premises clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises.

15. Insurance.

- 15.1. Insurance is to be placed with insurers with a current A.M. Best Insurance rating of no less than A-minus: VII and subject to the approval of District. OMI shall furnish District with the original certificates and amendatory endorsements effecting coverage required.
- 15.2. OMI acknowledges that the insurance to be maintained by District on the Premises will not insure any of OMI's property or improvements made by OMI.
- 15.3. OMI shall, at OMI's expense, obtain and keep in force during the term of this Agreement a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and OMI against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. OMI's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. OMI's commercial general insurance shall be at least as broad as the Insurance Service Office (ISO) CG 00-01 form and in an amount of not less than Three Million dollars (\$3,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Three Million dollar (\$3,000,000) general aggregate policy limit. In addition, OMI shall obtain a products/completed operations aggregate policy in the amount of One Million dollars (\$1,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld. Prior to the Commencement Date, OMI shall

deliver to District a certificate of insurance evidencing the existence of the policies required hereunder and copies of endorsements stating that such policies shall:

- 15.3.1. Not be canceled or altered without thirty (30) days prior written notice to District;
- 15.3.2. State the coverage is primary and any coverage by District is in excess thereto;
- 15.3.3. Contain a cross liability endorsement; and
- 15.3.4. Include a separate endorsement naming District as an additional insured.

At least thirty (30) days prior to the expiration of each certificate, and every subsequent certificate, OMI shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described above.

- 15.4. In the event of loss or damage to the Premises, the buildings, Improvements or any contents, each Party, and all persons claiming under each Party, shall look first to any insurance in its favor before making any claim against the other Party, and to the extent possible without adding additional costs, each Party shall obtain for each policy of insurance provisions permitting waiver of any claim against the other Party for loss or damage within the scope of the insurance and each Party, to the extent permitted, for itself and its insurers, waives all such insurance claims against the other Party.
- 15.5. Oakland Unified School District is permissibly self-insured for all losses pursuant to California Education Code Section 17566. The District's election in this regard is sufficient to satisfy any and all legal obligations that require it to provide evidence of Liability or property damage.
- 15.6. During the term of this Agreement, OMI shall comply with all provisions of law applicable to OMI with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and OMI's occupancy of the Premises, OMI shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the Commencement Date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.
- 15.7. **Subrogation.** Except as provided in the Certificate of Insurance obtained per Section 13.3 above, neither OMI nor District shall be liable to the other or to any insurance company (by way of subrogation) insuring the other party for any loss or damage to the Premises, if any such loss or damage is covered by insurance benefiting the party suffering the loss or damage.

16. Eminent Domain. If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by

condemnation; this Agreement shall terminate on the date of taking. If any portion of Premises is taken by condemnation, OMI shall have the right to either terminate this Agreement or to continue in possession of the remainder of Premises under the terms of this Agreement, provided that the Rent shall be reduced on an equitable basis, taking into account the relative value of the portion of the Premises taken as compared to the portion of the Premises remaining. Such right to terminate must be exercised by notifying District within ninety (90) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and is the property of District; provided, however, that OMI, not District, shall be entitled to any portion of the award made for loss of installations or improvements made by OMI in accordance with this Lease and for any award for any taking of OMI's personal property and fixtures belonging to OMI and removable by OMI upon expiration of the Term pursuant to the terms of this Lease, and for relocation expenses.

17. Surrender of Agreement Not Merger. The voluntary or other surrender of this Agreement by OMI, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or subtenancies, or operate as an assignment to District of any or all subleases or subtenancies.

18. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service or facsimile transmission, addressed as follows:

District:

Silke M. Bradford Ed.D.
[Director, Quality Diverse Providers](#)
Oakland Unified School District
Office of Charter Schools
4551 Steele Street, Room 10
Oakland, CA 94619
Phone (510) 336-7500

With copy to:

Tadashi Nakadegawa, Facilities Director
Department of Facilities Planning and Management
Oakland Unified School District
955 High Street
Oakland, CA 94604

OMI:

Dr. Mark Ryan, Superintendent
Oakland Military Institute
3877 Lusk Street
Oakland, CA 94608

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

19. No Assignment or Subletting. OMI shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Premises without District's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.

20. Joint and Several Liability. If OMI is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of OMI hereunder.

21. Independent Contractor Status. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

22. 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.

23. California Law. This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in county in which the District's administrative offices are located.

24. Compliance with All Laws.

24.1. OMI shall at OMI's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in OMI's use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Premises), and all District policies, rules and regulations, including those indicated herein in **Exhibit "B,"** attached hereto and made a part of this Agreement. Specifically, OMI shall comply with the restriction on chemical usage indicated in **Exhibit "B."**

24.2. The judgment of a court of competent jurisdiction, or OMI's admission in an action or a proceeding against OMI, whether District be a party to it or not, that OMI has violated any law or regulation or ordinance in OMI's use of the Premises shall be considered conclusive evidence of that fact as between District and OMI. If OMI fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at OMI's expense, for which OMI agrees to reimburse District on demand.

25. Hazardous Substances.

25.1. OMI shall comply with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Premises,

including but not limited to, air, soil and ground water conditions. OMI shall not use Hazardous Substances on, under or about the Premises; provided, however, that OMI may use normal and customary cleaning solutions and office supplies so long as the use of those solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws; and further provided that OMI may use normal and customary chemicals for classroom use so long as the use of those chemicals are in quantities and in a manner wholly consistent with all applicable school standards. OMI shall not, nor shall OMI allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of the Agreement. OMI shall not be responsible for the remediation of any Hazardous Substances that were present at the Premises prior to OMI's occupancy thereof.

- 25.2. **Notice.** OMI will promptly notify District in writing if OMI has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. OMI shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. OMI shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by OMI to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. OMI shall promptly notify District of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 25.3. **Inspection.** District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to OMI (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether OMI is complying with OMI's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and OMI may agree.
- 25.4. **Indemnification.** OMI shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District from and against any and all Claims arising from any breach of OMI's covenants under this Section, except to the extent caused by the gross negligence or willful misconduct of District.

26. Attorneys' Fees. If either Party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the Party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a Party is entitled to its costs or attorneys' fees.

27. Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

29. Counterparts. This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

30. Captions. The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

31. Severability. Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

32. Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.


33. Authorization to Sign Agreement. If OMI is a corporation, each individual executing this Agreement on behalf of OMI represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of OMI in accordance with a duly adopted resolution of OMI's Board of Directors, and that this Agreement is binding upon OMI in accordance with its terms, and OMI shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Board of Directors authorizing the execution of this Agreement. If OMI is a partnership or trust, each individual executing this Agreement on behalf of OMI represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of OMI in accordance with the terms of such entity's partnership agreement or trust agreement, respectively, and that this Agreement is binding upon OMI in accordance with its terms, and OMI shall, concurrently with its execution of the Agreement, deliver to District upon its request such certificates or written assurances from the partnership or trust as District may request authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

ACCEPTED AND AGREED on the date indicated below:

OAKLAND UNIFIED SCHOOL DISTRICT

David Kakashiba, President, Board of Education



Edgar Rakestraw, Jr., Secretary, Board of Education

File ID Number: 13-110
Introduction Date: 6/12/13
Enactment Number: 13-1133
Enactment Date: 6/12/13
By: O.S.

Date: 6/14/13

Date: 6/14/13

**OAKLAND MILITARY INSTITUTE,
COLLEGE PREPARATORY ACADEMY**

BY:
ITS:

Date: _____

APPROVED AS TO FORM

Jacqueline Minor, OUSD General Counsel

Date: _____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: 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/portal/public/SAM>

Jacqueline Minor, OUSD General Counsel

EXHIBIT "A"
PREMISES

EXHIBIT "B"

Integrated Pest Management Program (Administrative Regulation 3514.2)

OAKLAND UNIFIED SCHOOL DISTRICT Administrative Regulation

AR 3514.2

Business and Noninstructional Operations

Integrated Pest Management

The Superintendent or Deputy Superintendent of Business Services shall develop and implement an integrated pest management program that incorporates effective least toxic pest management practices.

Integrated pest management is a strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using nonchemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. (Food and Agricultural Code 13181)

Procedures

In the control and/or management of pests at district facilities, the Superintendent or Deputy Superintendent of Business Services shall:

1. Carefully monitor and identify the pest and the site of infestation. Strategies for managing the pest shall be influenced by the pest species and whether that species poses a threat to people, property or the environment.
2. Consider a full range of possible alternatives. Such alternatives include not taking any action or controlling the pest by physical, mechanical, chemical, cultural or biological means.
3. Select nonchemical pest management methods over chemical methods, whenever they are effective to provide the desired control. Cost or staffing considerations alone will not be adequate justification for use of chemical control agents.
4. Use the least toxic material when it is determined that a chemical method of pest management must be used. The least toxic material shall be chosen and applied in accordance with law.
5. Limit pesticide purchases to amounts needed for the year. Pesticides shall be stored at a secure location that is not accessible to students and unauthorized staff, and they shall be stored and disposed of in accordance with state regulations and label directions registered with the Environmental Protection Agency.

(cf. 3514.1 - Hazardous Substances)

6. Ensure that persons applying pesticides follow label precautions and are trained in the principles and practices of integrated pest management.

(cf. 4231 - Staff Development)

Notification

The Superintendent or Deputy Superintendent of Business Services shall annually notify staff and parents/guardians of students enrolled at a school site, in writing, regarding pesticide products expected to be applied at the school facility in the upcoming year. The notification shall include at least the following: (Education Code 17612)

1. The Internet address used to access information on pesticides and pesticide use reduction developed by the Department of Pesticide Regulation pursuant to Food and Agricultural Code 13184.
2. The name of each pesticide product expected to be applied in the upcoming year and the active ingredient(s) in it.
3. An opportunity for interested persons to register to receive notification of individual pesticide application at the school site. The Superintendent or Deputy Superintendent of Business Services shall notify such registered persons of individual pesticide applications at least 72 hours prior to the application.
4. Other information deemed necessary by the Superintendent or Deputy Superintendent of Business Services.

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)
(cf. 5145.6 - Parental Notifications)

If a pesticide product not included in the annual notification is subsequently intended for use at the school site, the Superintendent or Deputy Superintendent of Business Services shall provide written notification of its intended use to staff and parents/guardians of students enrolled at the school, at least 72 hours prior to the application. (Education Code 17612)

Posting of Warning Signs

The Superintendent or Deputy Superintendent of Business Services shall post a warning sign at each area of the school site where pesticides will be applied, at least 24 hours prior to the application and until 72 hours after the application. The warning sign shall display the following: (Education Code 17612)

1. The term "Warning/Pesticide Treated Area"
2. The product name, manufacturer's name, and the Environmental Protection Agency's product registration number
3. Intended areas and dates of application
4. Reason for the pesticide application

Notification During Emergency Conditions

Whenever the Superintendent or Deputy Superintendent of Business Services deems that the immediate use of a pesticide is necessary to protect the health and safety of students, staff, or other persons, or the school site, he/she shall make every effort to provide the required notifications prior to the application of a pesticide. In such a case, the warning sign shall be posted immediately upon application and shall remain posted until 72 hours after the application. (Education Code 17609, 17612)

(cf. 3514 -Environmental Safety)

Records

EXHIBIT "B"
Integrated Pest Management Program
(Administrative Regulation 3514.2)

Each school site shall maintain records of all pesticide use at the school for four years, and shall make the information available to the public, upon request, in accordance with the California Public Records Act. Such records may be maintained by retaining a copy of the warning sign posted for each pesticide application with a recording of the amount of the pesticide used. (Education Code 17611)

(cf. 3580 - District Records)

Legal Reference:

EDUCATION CODE

17608-17613 Healthy Schools Act of 2000

17366 Legislative intent (fitness of buildings for occupancy)

48980.3 Notification of pesticides

FOOD AND AGRICULTURAL CODE

11401-12408 Pest control operations and agricultural chemicals

13180-13188 Healthy Schools Act of 2000

GOVERNMENT CODE

3543.2 Scope of representation; right to negotiate safety conditions

6250-6277 California Public Records Act

CODE OF REGULATIONS, TITLE 8

340-340.3 Employer's obligation to provide safety information

5142 Heating, ventilating and air conditioning systems; minimum ventilation

5143 Mechanical ventilating systems; inspection and maintenance

UNITED STATES CODE, TITLE 7

136-136y Insecticide, Fungicide and Rodenticide Act

CODE OF FEDERAL REGULATIONS, TITLE 40

763.93 Management plans

763.94 Record keeping

Management Resources:

CDE PUBLICATIONS

Indoor Air Quality, A Guide for Educators, 1995

U.S. ENVIRONMENTAL PROTECTION AGENCY

Pest Control in the School Environment: Adopting Integrated Pest Management, 1993

WEB SITES

CDE: <http://www.cde.ca.gov>

California Department of Pesticide Regulation: <http://www.cdpr.ca.gov>

U.S. EPA: <http://www.epa.gov>

8/25/04

EXHIBIT "C"

Shared Recreational Use

The OUSD facilities division shall include OMI's Regimental Hall, Leaders' Field, and Patriot Court (as well as any additional recreational facilities agreed upon by OUSD and OMI as appropriate for joint use) on its listing of available facilities under the "Civic Center Permit" program, as well as in its listing of available facilities during non-school hours for use by internal OUSD entities.

Requests to use any of these OMI facilities during non-school hours will be sent through the OUSD facilities office to the Superintendent of OMI who will work with requesting groups to accommodate such requests in conjunction with the OMI master calendar.

OMI's superintendent will respond to such requests within five business days and will collaborate with requesting entities to find alternative dates in the event that a requestor's first choice is not available. Actual costs for any custodial or security services will be borne by the requesting entity.