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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Maria Santos, Deputy Superintendent
Board Meeting Date November 20, 2013
Subject **AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND YMCA OF EAST BAY**

Action Requested Ratification of Agreement with the YMCA of the East Bay

Background The YMCA of the East Bay is partnering with Frick Middle School to provide youth development and healthy living services, including obesity prevention and family nights to the students at Frick.

Discussion The YMCA of the East Bay is partnering with Frick Middle School to provide youth development and healthy living services, including obesity prevention and family nights to the students at Frick. The term of the Agreement is October 1, 2013 and shall continue until June 12, 2014 at no cost to the District.

Recommendation Ratification of Agreement with the YMCA of the East Bay

Fiscal Impact No cost to the District

Attachments

- Agreement

**AGREEMENT BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT
AND
YMCA OF EAST BAY**

This Agreement, entered into on by and between the OAKLAND UNIFIED SCHOOL DISTRICT, with its main office located at 1000 Broadway, Oakland, California 94607, hereinafter referred to as DISTRICT, and YMCA of the East Bay, 2330 Broadway, Oakland, hereinafter referred to as PROVIDER.

WHEREAS, the DISTRICT has a vital interest in the overall development and health and wellness of all students and in inviting needed resources into its schools; and

WHEREAS, Frick Middle School, located at 2845 64th Street, has identified youth development and healthy living services, especially obesity prevention services, as a much needed component of the educational structure of the school; and

WHEREAS, the YMCA is a nationally recognized service provider that strengthens the foundations of community through programs for youth development, healthy living and social responsibility;

NOW, therefore, the parties hereto do mutually agree as follows:

I. RESPONSIBILITIES OF THE SCHOOL SITE/DISTRICT

The District will:

Allow the Provider to offer youth development and healthy living services to students and families on the school site.

II. RESPONSIBILITIES OF THE PROVIDER

The Provider agrees to the following:

- 1) Ensure that site staff is culturally and linguistically competent to work with the school's diverse population of students.
- 2) Provide supervision, training, administration, materials and supplies to support the work of the staff placed at Frick Middle School.
- 3) Work with students and families referred by the school or the lead agency of the onsite health center to offer obesity prevention services, family nights and YMCA Model United Nations Program.
- 4) Collaborate with school administrators, and agree to communicate any concerns that may arise while providing services at sites.
- 5) Have all site staff fingerprinted and medically tested for tuberculosis prior to delivering services.

III. COMPENSATION

There is no obligation for either party to reimburse or compensate the other for any costs or expenses associated with cooperative activities related to this MOU. YMCA and OUSD agree that to the extent their relationship may now or in the future entail any financial commitments to each other such commitments will be set forth in a separate, written agreement signed by both parties.

IV. INDEPENDENT PROVIDER

PROVIDER is, for all purposes arising from this Agreement, an independent contractor. No officer, agent, or employee of PROVIDER or DISTRICT shall be deemed an officer, agent, or employee of the other party hereto. Neither PROVIDER nor DISTRICT, nor any officer, agent, or employee thereof shall be entitled to any benefits to which employees of the other party hereto are entitled, including, but not limited to overtime, retirement benefits, workers' compensation benefits, and injury leave or other leave benefits.

V. ADDITIONAL TERMS

A. Conduct of PROVIDER. PROVIDER will adhere to the following requirements and provide OUSD with evidence of staff qualifications which include:

1. Tuberculosis Screening

2. Fingerprinting of Employees and Agents. The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to PROVIDER's services under this Agreement and PROVIDER certifies its compliance with these provisions as follows: "PROVIDER certifies that PROVIDER has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all PROVIDER's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of PROVIDER, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.

B. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the PROVIDER 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, the PROVIDER agrees to require like compliance by all its subcontractor(s). Contractor 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 or sexual orientation.

C. Drug-Free and 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, PROVIDERS, or subcontractors are to use drugs on these sites.

D. Indemnification: PROVIDER and DISTRICT (the Parties) agrees to hold harmless, indemnify, and defend the others officers, Boards, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. The Parties also agrees to hold harmless, indemnify, and defend the other's board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials in connection with the performance of this Agreement. This provision survives termination of this Agreement.

E. Insurance.

1. Commercial General Liability Insurance: Unless specifically waived by OUSD, the following insurance is required:

If PROVIDER employs any person to perform work in connection with this Agreement, PROVIDER shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$ 1,000,000) per accident or disease.

Check one of the boxes below:

PROVIDER is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

PROVIDER does not employ anyone in the manner subject to the workers' compensation laws of California.

ii. PROVIDER shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached.

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 PROVIDER. The policy shall protect PROVIDER 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.

2. The Parties agree that OUSD is permissibly self-insured under the laws of the State of California. Proof of such self-insurance shall be provided upon requests.

F. 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>

G. Assignment: The obligations of PROVIDER under this Agreement shall not be assigned by PROVIDER without the express prior written consent of OUSD.

H. 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.

VI. AMENDMENT

No changes in the responsibilities of DISTRICT and/or PROVIDER to be performed herein shall become effective until mutually agreed upon by the DISTRICT and PROVIDER in writing. Such changes as are mutually agreed to by the DISTRICT and PROVIDER, which require additional services or a reduction in services to be performed by PROVIDER under the Agreement and an adjustment to the amount to be paid to PROVIDER as provided herein shall be incorporated in written amendments to this Agreement.

VII. TERM AND TERMINATION OF AGREEMENT

A. The term of this Agreement shall commence on October 1, 2013 and shall continue until June 12, 2014. Notwithstanding the foregoing, this Agreement may be terminated upon thirty (30) days' written notice by either party hereto. Said termination shall not be deemed to be a breach of this Agreement and/or tortuous conduct.

NOTICES

Any notice permitted or required under the provisions of this Agreement shall be in writing and signed by the party giving or serving the same and either in person or delivered by mail, addressed to the party as follows:

PROVIDER: YMCA of the East Bay
2330 Broadway
Oakland, CA 94612

DISTRICT: Oakland Unified School District
SCHOOL: Frick Middle School
2845 – 64th Avenue
Oakland, CA 94605

CC: Oakland Unified School District

1000 Broadway, 6th Floor
Attn: Region 2 Office
Oakland, CA 94607

IX. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement only.

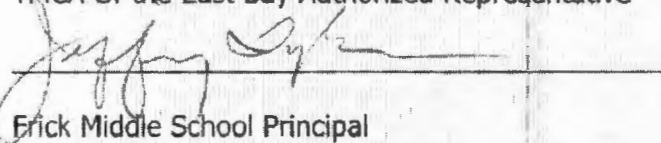
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date shown



YMCA Of the East Bay Authorized Representative

10/23/13

Date




Erick Middle School Principal

10/25/13

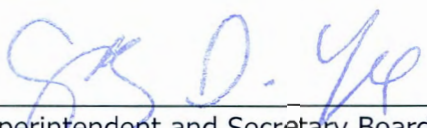
Date

Oakland Unified School District Authorized Representative

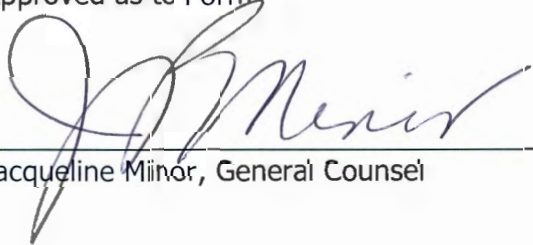
Date



11-21-13
President, Board of Education
Oakland Unified School District



11-21-13
Superintendent and Secretary Board of Education
Oakland Unified School District

Approved as to Form


Jacqueline Minor, General Counsel

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By: