

Board Office Use: Legislative File Info.	
File ID Number	14-1780
Introduction Date	8/27/2014
Enactment Number	14-1614
Enactment Date	8-27-14 <i>lf</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, General Counsel

**Board Meeting Date** August 27, 2014

**Subject** **APPROVAL OF AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE OAKLAND SCHOOLS FOUNDATION AND THE OAKLAND UNIFIED SCHOOL DISTRICT**

**Action Requested** Approval of the Amendment to the Memorandum of Understanding Between the Oakland Schools Foundation (OSF) and the Oakland Unified School District, allowing OSF the use of District Premises located at 1000 Broadway, Oakland.

**Background**  
*A one paragraph explanation of the MOU.* In January 2014, the Board approved a MOU with OSF which authorizes OSF to use space at 1000 Broadway, Oakland for its administrative operations.

**Discussion**  
*One paragraph summary of the MOU.* The amendment extends the term of the MOU to June 30, 2016, all other terms and conditions remaining the same as the original MOU.

**Recommendation** Approval by the Board of Education of the Amendment to the Memorandum of Understanding between the Oakland Schools Foundation and the Oakland Unified School District for the term through June 30, 2016.

**Fiscal Impact** OSF will pay the District the sum of \$1,000.00 per month.

**Attachments**

- Memorandum of Understanding
- Amendment to the MOU

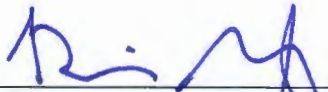
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**AMENDMENT TO THE  
AGREEMENT  
Between  
OAKLAND UNIFIED SCHOOL DISTRICT  
And  
THE OAKLAND SCHOOLS FOUNDATION**

1. By Enactment 14-0201, the Board of Education approved a MOU with the Oakland Schools Foundation ("OSF"), now known as the Oakland Education Fund which authorized OSF to use space at 1000 Broadway, Oakland for its administrative operations.
2. By this Amendment, the Board agrees to extends the term of the MOU to June 30, 2016, all other terms and conditions remaining the same as the original MOU.
3. The monthly use fee under the Amendment shall continue to be \$1,000 per month.
4. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District 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 CONTRACTOR according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, verifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>
5. This Amendment to the Agreement and the Agreement constitute the entire understanding and agreement between the Parties.
6. All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Amendment. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.
7. Except as expressly provided above, the Agreement is unchanged.

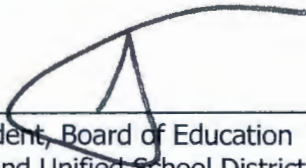
IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Amendment to the Agreement.

**THE OAKLAND SCHOOLS FOUNDATION, KNOWN AS  
OAKLAND EDUCATION FUND**



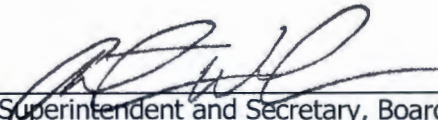
Dr. Brian Stanley, Executive Director

**Oakland Unified School District**



President, Board of Education  
Oakland Unified School District


8-28-14



Superintendent and Secretary, Board of Education  
Oakland Unified School District

8-28-14

Approved As to Form



Jacqueline P. Minor  
General Counsel

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By:

**MEMORANDUM OF UNDERSTANDING BETWEEN OAKLAND  
UNIFIED SCHOOL AND  
OAKLAND SCHOOLS FOUNDATION  
FOR USE OF REAL PROPERTY AND IMPROVEMENTS LOCATED  
AT  
1000 BROADWAY, OAKLAND, CALIFORNIA**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 1st day of September 2013, by and between the OAKLAND UNIFIED SCHOOL DISTRICT, a California public school district of California ("District") and OAKLAND SCHOOLS FOUNDATION ("OSF"). District and OSF may be referred to herein individually as a "Party" or collectively as the "Parties."

**1. Use of Premises.** District agrees to allow use of the Premises for conducting administrative operations of the OSF and any use directly related thereto.

1.1. The OSF acknowledges that it has received and will abide by the terms and conditions set forth in the Office Lease between the District and Sparknight, LLC ("Lease"). A copy of the Lease is attached hereto as Exhibit "B" and made a part hereof by this reference.

**2. Use Fee.** For and in consideration of the use of the Premises for the Term of this MOU, the OSF agrees to pay District the sum \$1,000.00 per month ("Fee").

2.1. The Fee for September thru December 2013 shall be due upon commencement of this MOU. Thereafter, the Fee shall be due on the first of each month through the end of the twelfth (12<sup>th</sup>) full calendar month following the MOU commencement date. Thereafter, commencing as of the beginning of thirteenth (13<sup>th</sup>) full calendar month following the MOU commencement date and each year thereafter, the Fee shall increase based on increases in the CPI over the prior year; however, said annual CPI increases shall not exceed 3% over the prior period.

**3. Term.**

3.1. The commencement date shall be September 1, 2013, ("Commencement Date") and unless sooner terminated under any provision hereof, this MOU shall end on June 30, 2014 ("Term").

3.2. The Term may be automatically renewed for up to two (2) additional one (1) year terms, each term ending on June 30<sup>th</sup> of that year. After the second (2<sup>nd</sup>) automatic renewal, the Term may be renewed only by a separate writing executed by both Parties.

3.3. On the last day of the Term hereof, or on earlier termination of this MOU, OSF shall surrender the Premises to District and any existing improvements in good order, condition and repair, reasonable wear and tear excepted. OSF shall remove from the Premises all of OSF's personal property, trade fixtures, and any improvements made by OSF which OSF and District agreed would be removed by OSF. All property not so removed shall be deemed abandoned by OSF. If the Premises are not so surrendered at the termination of this MOU, OSF shall indemnify District against loss or liability resulting

from delay by OSF in so surrendering the Premises including, without limitation, any losses to District due to lost opportunities.

**4. Condition of Premises.**

4.1. The Premises are offered to OSF 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 MOU, OSF accepts the Premises in "AS IS" condition.

4.2. OSF acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Premises to the conduct of OSF's operations. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or OSF, and District and OSF expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this MOU.

**5. Maintenance and Repairs.**

5.1. OSF shall maintain the Premises in a good order, condition and repair. OSF shall keep the Premises in compliance with applicable local, state and federal requirements during the Term of this MOU.

5.2. District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this MOU, and the Lease. OSF 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 said Civil Code.

**6. Use of the Premises.**

6.1. OSF shall use the Premises solely for the purpose of performing its administrative operations. OSF shall not use the Premises for any use other purpose without the prior written consent of District. OSF agrees to maintain the Premises and to conduct the Program in a manner that meets all federal, state and local regulations relating to the Premises and the Lease MOU, and to comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted. OSF shall not use or permit the Premises to be used in whole or in part during the term of this MOU for any purpose or use in violation of the Lease, the laws or ordinances applicable thereto.

6.2. OSF shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of OSF to comply with any applicable law, regulation, rule or ordinance. OSF shall not commit or suffer to be committed, any waste upon the Premises, or allow any sale by auction upon the Premises, or allow the Premises to be used for any unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Premises. No

waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises except in trash containers designated for that purpose. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Premises. OSF shall not use or permit the use of the Premises or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for a public educational facility. OSF agrees to immediately respond to concerns expressed by neighbors or the District relating to OSF's use of the Premises.

7. **Inspection of Premises.** OSF shall permit District and/or District's agents to enter the Premises at any reasonable time for the purpose of inspecting the Premises.

8. **Termination.**

8.1. **Termination For Convenience**

8.1.1. District may terminate this MOU by written notification to OSF 90 days prior to the effective date of the termination.

8.1.2. OSF may terminate this MOU by written notification to 90 days prior to the effective date of the termination.

8.1.3. Neither Party shall be required to provide just cause for termination in the written notification.

8.2. **Termination for Cause.** Either Party may terminate this MOU immediately for cause. Cause shall include, without limitation:

8.2.1. Material violation of this MOU by OSF or District; or

8.2.2. Any act by OSF exposing District to liability to others for personal injury or property damage; or

8.2.3. OSF is adjudged bankrupt, OSF makes a general assignment for the benefit of creditors or a receiver is appointed on account of OSF's insolvency.

8.3. If District terminates for cause, OSF's rights in the Premises shall terminate upon OSF's receipt of notice of termination from District. Upon receipt of District's notice of termination, OSF shall surrender and vacate the Premises in the condition required under this MOU, and District may re-enter and take possession of the Premises and all the remaining improvements or property and eject OSF or any of OSF's assignees or other person or persons claiming any right under or through OSF or eject some and not others or eject none. This MOU may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release OSF from the payment of any sum then due District or from any claim for damages.

8.4. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or OSF.

8.5. Upon termination of this MOU, OSF shall be responsible to restore the Premises to its condition prior to the commencement of this MOU with no damage thereto, reasonable wear and tear excepted.

9. **Indemnification.** To the fullest extent permitted by California law, OSF 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; and in case any action or proceeding be brought against District, OSF shall defend the same at OSF's sole expense. This MOU 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 OSF, its agents, officers, employees, licensees and invitees. OSF shall keep the Premises clear of all liens, encumbrances and/or clouds on District's title to any portion of the Premises.

10. **Insurance.**

10.1. 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. OSF shall furnish District with the original certificates and amendatory endorsements effecting coverage required.

10.2. OSF acknowledges that the insurance to be maintained by District on the Premises will not insure any of OSF's property or improvements made by OSF.

10.3. OSF shall, at OSF's expense, obtain and keep in force during the term of this MOU a policy of commercial general liability insurance and a comprehensive auto liability policy insuring District and OSF against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. OSF's comprehensive auto liability policy shall insure all vehicle(s), whether hired, owned or non-owned. OSF'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 Two Million dollars (\$2,000,000) for bodily injury or death and property damage as a result of any one occurrence and a Two Million dollar (\$2,000,000) general aggregate policy limit. In addition, OSF shall obtain a products/completed operations aggregate policy in the amount of Two Million dollars (\$2,000,000). The insurance carrier, deductibles and/or self insured retentions shall be approved by District, which approval shall not be unreasonably withheld.

10.4. Prior to the Commencement Date, OSF 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:

- 10.4.1. Not be canceled or altered without thirty (30) days prior written notice to District;
- 10.4.2. State the coverage is primary and any coverage by District is in excess thereto;
- 10.4.3. Contain a cross liability endorsement; and
- 10.4.4. 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, OSF 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.

10.5. During the term of this MOU, District shall maintain at its cost a policy of standard fire and casualty insurance limited to the value of the buildings and improvements located on the Premises as of the Commencement Date. In the event of loss or damage to the Premises or any contents, each of the Parties hereto, and all persons claiming under each of the Parties, 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.

10.6. During the term of this MOU, OSF shall comply with all provisions of law applicable to OSF with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this MOU and OSF's occupancy of the Premises, OSF shall provide District, as evidence of this required coverage, a certificate in a form satisfactory to District on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to District.

11. **Notice.** Any notice required or permitted to be given under this MOU 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**

Oakland Unified School District  
1000 Broadway, Suite 398  
Oakland, CA 94609  
ATTN: Risk Manager  
Telephone:  
Jerry.johnson@ousd.k12.ca.us

**OSF**

Attn: Brian Stanley  
Oakland Schools OSF  
Post Office Box 20238  
Oakland, CA 94620  
Telephone:



Any notice personally given or sent by electronic 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.

**12. Subcontract, Assignment and Sublease.** OSF shall assign its rights, duties or privileges under this MOU, nor attempt to confer any of its rights, duties or privileges under this MOU on any third party, without the written consent of the District. OSF shall not lease any portion of the Premises without the prior written consent of the District.

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

**14. Entire MOU of Parties.** This MOU constitutes the entire MOU between the Parties and supersedes all prior discussions, negotiations and MOUs, whether oral or written. This MOU may be amended or modified only by a written instrument executed by both Parties.

**15. California Law.** This MOU 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 MOU shall be maintained in Alameda County, the county in which the District's administrative offices are located.

**16. Compliance with All Laws.**

16.1. OSF shall at OSF'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 OSF'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.

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

16.3. OSF shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by OSF or its agents, employees, contractors, tenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). OSF shall comply with all

Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

17. **Attorneys' Fees.** If either Party files any action or brings any proceedings against the other arising out of this MOU, 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.

18. **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.

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

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

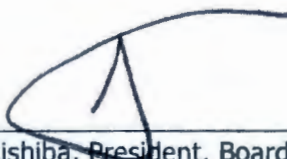
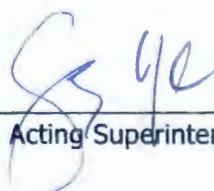
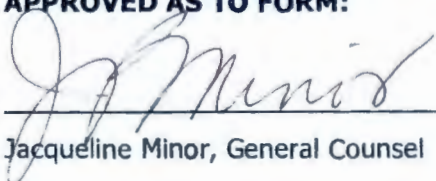
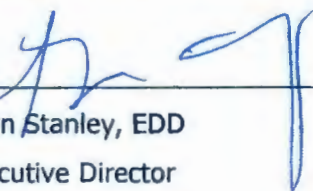
21. **Captions.** The captions contained in this MOU are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.

22. **Severability.** Should any provision of this MOU 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.

23. **Excluded Parties. 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 OSF does not appear on the Excluded Parties List.  
<https://www.sam.gov/portal/public/SAM>

ACCEPTED AND AGREED

<p><b>OAKLAND UNIFIED SCHOOL DISTRICT</b></p> <p> _____ David Kakishiba, President, Board of Education</p> <p> _____ Gary Yee, Ed.D., Acting Superintendent</p> <p><b>APPROVED AS TO FORM:</b></p> <p> _____ Jacqueline Minor, General Counsel</p>	<p><b>Oakland Schools Foundation</b></p> <p>By:  _____ Brian Stanley, EDD Executive Director</p>
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File ID Number: 14-0079  
Introduction Date: 1-29-14  
Enactment Number: 14-0201  
Enactment Date: 1-29-14  
By:

**EXHIBIT A**

**PREMISES**

