



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

Recommendation

Approval by the Board of Education of an Lease Agreement for Professional Services with Roman Catholic Welfare Corporation of Oakland for Real Property, in an amount not-to exceed \$42,240.00. The term of this Agreement shall commence on March 1, 2013 and shall conclude no later than June 30, 2016.

Fiscal Impact

General Obligation Bond

Attachments

- Independent Consultant Agreement including scope of work
- Site Plan and Topography Map
- OUSD Self Insurance

File ID No.: 14-0838
Introduction Date: 5-14-14
Enactment No.: _____
Enactment Date: _____
By: _____

LEASE AGREEMENT

This lease is made and entered into as of _____, 2014 ("Lease") by and between Roman Catholic Welfare Corporation of Oakland, a corporation ("Owner") and the Oakland Unified School District, a California public school district ("District") (collectively, "Parties").

RECITALS

WHEREAS, Owner owns that real property located at the corner of East 17th Street and 62nd Avenue, Oakland, California ("Real Property") which is further described on **Exhibit "A"** attached hereto;

WHEREAS, Owner desires to lease the Real Property to the District and District desires to lease the Real Property from Owner.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

1. Description of Real Property. The Owner hereby leases the Real Property to the District described as one half (1/2) of the St. Bernard field. The St. Bernard field consists of approximately 32,400 sq/ft and is a rectangle, 135 linear feet along E.17th Street by 240 linear feet along 62nd Avenue. The Real Property leased to the District herein will be 120 linear feet by 135 linear feet and consist of approximately 16,200 sq/ft. A site plan and topography map are attached to Exhibit "A" for reference purposes only.
2. Initial Term of Lease. The Term of this initial Lease shall be for a period of (40) months, commencing on March 1, 2013 ("Commencement Date"), and, unless sooner terminated under any provision hereof, this Lease shall end on June 30, 2016 ("Initial Term"). Under the Initial Term of the Lease, District shall have the ability to place two (2) additional portable classrooms on the Real Property for the purpose of providing interim housing to students displaced by the District's new construction project on the Whittier Elementary School Site, adjacent to the Real Property. It is anticipated that construction will complete and that all five (5) portable classrooms located on the Real Property will be removed before the end of the Initial Term. Thereafter, the District will use the Real Property for recreational purposes only.
3. Option to Renew Lease. At the termination of this Lease, the District shall have the right to renew for two additional five (5) year terms ("Renewal Term(s)"), at the District's discretion. Upon expiration of the Renewal Term(s), further renewal of the Term may be effected by mutual agreement of the parties, as set forth in section 3.1 below.

3.1. Further Renewal of Lease.

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

3.1.1. It specifically authorizes further tenancy by District and specifies the terms of that tenancy, and;

3.1.2. It is approved by each Party's governing body prior to the end of the Term, as extended by the Renewal Term specified above.

4. Rent. Rent for the Real Property ("Rent") shall be \$1,000.00 (One thousand dollars and no cents) per month during the Term of this Lease. On the annual anniversary of this Lease, the Rent shall increase by the Consumer Price Index cost of living increase from the previous year for the San Francisco Bay Area or three percent (3%), whichever is greater. Payments to the Owner shall be made to the same address where notices to the Owner shall be sent. The Rent payment is due on the first day of each month.

4.1. Payment of Rent Arrears. The District has been leasing the Real Property from the Diocese for approximately twenty years under various forms of leases and agreements. The prior lease expired on or about February 28, 2013 and the District has been paying the prior lease payment of \$580 to the Owner for the period starting March 1, 2013. Upon execution of this Lease by all parties, the District shall pay Owner the arrears of \$480 per month in one lump sum payment. As of February 28, 2014 the arrears total \$6,240.00.

5. Use during the Term. District shall use the Real Property exclusively as the site for a portable school building and playground in connection with its educational program located at the adjacent Whittier Elementary School.

6. Repairs and Maintenance.

6.1. District shall use all commercially reasonable precautions to prevent waste, damage or injury to the Real Property. The District further agrees that all damage or injury to the Real Property caused by District's use or occupancy, except to the extent caused by the negligence or wrongful acts or omissions of Owner, Owner's agents, servants and employees, shall be repaired by the District at the District's expense.

6.2. Repairs necessitated by reasonable wear and tear shall be performed by Owner during the Lease Term. Owner shall maintain the paved surface of the Real Property to District's reasonable satisfaction during the Lease term.

7. Utilities and Taxes.

7.1. Utilities. All utilities, if any are required, shall be paid by District.

- 7.2. Taxes. Owner shall be responsible for all taxes and assessments.
8. Caretaker Services. The District shall provide all caretaker services made necessary by the occupancy of the District within the limits of the Real Property. This includes keeping the sidewalk and all unpaved areas between the road and the fence around the perimeter of the Real Property, clean and free of glass, weeds and debris. It also includes keeping all areas which the District occupies free of litter and weeds. Any fines imposed by the City of Oakland due to the failure of providing these caretaker services shall be the responsibility of the District.
9. Insurance. District is permissibly self-insured against public entity civil liability pursuant to California Education Code Section 35214. District covenants that the Real Property shall be covered by such self-insurance upon execution of this Lease by the Parties. The District shall be responsible for fire and extended coverage insurance on the Real Property.
10. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its officers, agents and employees from any and all liabilities, claims, or losses of any nature, including attorneys' fees, to the extent caused by, arising out of, or in connection with, the indemnifying party's negligent acts or omissions pursuant to this Lease. District shall indemnify, defend, and hold harmless the Roman Catholic Diocese of Oakland and its constituent organizations, including the Roman Catholic Bishop of Oakland, a corporation sole, the Roman Catholic Welfare Corporation of Oakland, a corporation, their officers, agents, and employees from any and all liabilities, claims, or losses of any nature, including attorneys' fees, to the extent caused by, arising out of, or in connection with, the indemnifying party's negligent acts or omissions pursuant to this Lease.
11. Hazardous Materials. The Parties agree as follows with respect to the existence or use of Hazardous Materials on the Real Property.
- 11.1. Owner warrants that there is no hazardous material of any type or nature, solid, liquid or gaseous, which exists or has existed above, on, or beneath the Real Property.
- 11.2. Owner shall indemnify and hold District harmless from any and all claims, including third party claims, resulting from the presence of hazardous materials above, on or beneath the Real Property, which was deposited prior to the Commencement Date, including but not limited to the cost of removal of hazardous materials from the Real Property, damages consequent to its existence on the Real Property and attorneys' fees and costs of litigation arising from any such claims.
- 11.3. Owner agrees to provide and disclose to District within 15 days of execution of the Lease, any and all documents in Owner's possession regarding the existence, use, application or removal of hazardous substances on or from the Real Property including any and all disclosures by current and former tenants of Owner of the use or presence of hazardous materials on or in the vicinity of the Real Property.

12. Entry and Inspection. The District shall permit Owner or Owner's agents to enter the Real Property at all reasonable times, upon reasonable written notice, for any of the following purposes: to inspect the same, to make necessary repairs, and to protect any and all rights of the Owner.
13. Assignment, Mortgage or Sublease. Neither District nor its successors or assigns, shall assign, mortgage, pledge or encumber this Lease or sublet the Real Property in whole or in part, or permit the Real Property to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior written consent of Owner in each instance, which consent shall not be unreasonably withheld.
14. Alterations. The District shall not make, or suffer to be made, any alterations to the Real Property without the written consent of the Owner, which shall not be unreasonably withheld. All moveable improvements of every kind and nature placed by the District upon the Real Property shall remain property of the District and upon the termination of this Lease shall be removed by the District. Reasonable time shall be provided in the event that portable buildings must be removed from the Real Property. Any damage to the Real Property caused by such removal shall be repaired at the sole cost and expense of the District.
15. Defaults by District. If District fails to pay Rent or additional rent or other amounts due hereunder within fifteen (15) days of the date such amounts are due, the District agrees to pay the Owner a late charge equal to ten percent (10%) per annum from the date payment was due until it is paid.
16. Defaults by Owner. Owner shall not be in default in the performance of its obligations hereunder unless and until Owner shall have failed to perform such obligations within thirty (30) days after written notice to Owner by District properly specifying wherein Owner has failed to perform any such obligations; provided, however, that if the matter which is the subject of a notice is of such nature that the same cannot be corrected within thirty (30) days, then no default shall be deemed to have occurred if Owner, before the expiration of the thirty (30) day period from the date of giving notice by District, commences to correct any such default and diligently prosecutes the same to completion. District's remedies for Owner's default shall be the right of set-off or abatement, or the right to terminate.
17. Termination. Either party hereto may terminate this Lease by giving to the other party one hundred twenty (120) days written notice or thirty (30) days written notice during the last week of the school year. Notwithstanding anything to the contrary herein, Owner shall have the right to void any of the Renewal Term(s) and void any extension options only in the event the Diocese opts to re-open the premises as a parochial school.
18. Waivers. The failure of Owner or District to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the right or remedies that District or Owner may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

19. Notices and Demands. All notices including change of address to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein as such party's principal office or that at such other address as either party from time to time designate in writing.

To Owner: Chancellor - Diocese of Oakland
2121 Harrison Street
Oakland, CA 94612

To District: Attention: Tadashi Nakadegawa, Facilities Director
Oakland Unified School District
Facilities Planning and Management
955 High Street
Oakland, CA 94601

20. Miscellaneous Provisions:

- 20.1. Owner covenants and agrees to and with District that all times when District is not in default under this Lease and during the Term or any extended term, District's quiet and peaceful enjoyment of the Real Property shall not be disturbed or interfered with by Owner or any person claiming by, through or under Owner.
- 20.2. Time is of the essence for this Lease.
- 20.3. Whenever Owner's approval or consent is required herein, such approval or consent shall not be unreasonably withheld.
- 20.4. The terms, provisions and stipulations of this Lease by and between the Parties shall inure to the benefit of and be binding upon their respective heirs, administrators, executors, successors and assigns.
- 20.5. The District, at its own cost and expense, shall comply with all laws, rules and orders of all federal, state and municipal governments or departments, which may be applicable to the Real Property.
- 20.6. If either party files an action to enforce any provision contained in this Lease, or for breach of any covenant or condition, the prevailing party in any action, trial or appeal, shall be entitled to reasonable attorneys' fees and costs to be paid by the losing party as fixed by the court.
- 20.7. This Lease shall be governed by and construed in accordance with the laws of the State of California.
- 20.8. This Lease may be executed in several counterparts, and all so executed shall constitute one Lease binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.


20.9. Owner acknowledges that this Lease is subject to approval by the District's Board of Education. Absent Board of Education approval, this Lease shall be void.

21. Entire Lease. This Lease, together with any attachments hereto, contains the entire Lease of the parties regarding the letting of the Real Property. Any representations, inducements or Leases, oral or otherwise, not contained in this Lease (including any exhibits or attachments) shall be of no force or effect. This Lease may not be modified or changed in whole or in part in any manner other than by an amendment to the Lease in writing duly signed by both Parties hereto.

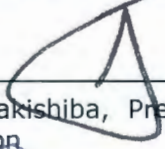
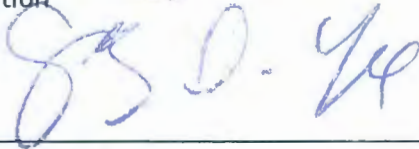
22. Severability. The provisions of this Lease are declared to be severable, and if any provision herein is invalidated by any court, the remaining provisions shall not be affected thereby and shall be fully enforceable, unless such enforcement would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Lease.

IN WITNESS WHEREOF, the Owner and the District have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

ROMAN CATHOLIC WELFARE CORPORATION OF OAKLAND

By:  Dated 4/9/14
Title: Sec / TREAS

OAKLAND UNIFIED SCHOOL DISTRICT

By:  Dated 5/15/14
David Kakishiba, President, Board of Education
By:  Dated 5/15/14
Gary Yee, Ed.D., Board Secretary

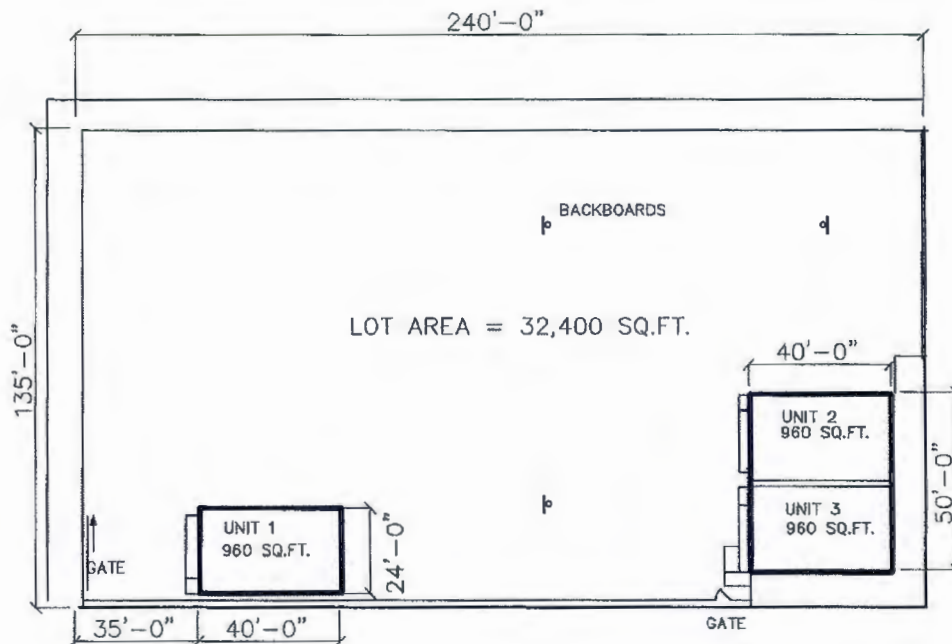
Approved as to form:

By:  Dated 4.29.14
Cate Boskoff, Special Facilities Counsel

EXHIBIT A

Description of the Real Property

That certain real property located in the City of Oakland, County of Alameda, State of California described as follows:



TRUMBO
ASSOCIATES

ARCHITECTS

2027 NEWBURY, SUITE C
BERKELEY, CA 94703
510 845-1122 FAX 845-1032
E-MAIL TRUMBOASSOC@ADL.COM

PROJECT

ST. BERNARD

JOB NUMBER

DATE

12/20/13

CONTENTS

SITE PLAN

SHEET

SD-1

EXHIBIT A

Description of the Real Property

That certain real property located in the City of Oakland, County of Alameda, State of California described as follows:

Beginning at an approximate point on the southeastern line of 62nd Avenue, formerly Baker Avenue, distant thereon northeasterly approximately one hundred twenty (120) feet from the northeastern line of East 17th Street, formerly Nobel Street; running thence southeasterly and parallel with said line of East 17th Street approximately one hundred thirty-five (135) feet; thence northeasterly and parallel with said line of 62nd Avenue approximately one hundred and twenty (120) feet; thence northwesterly and parallel with said line of East 17th Street approximately one hundred thirty-five (135) feet; thence southwesterly along the southeastern line of 62nd Avenue approximately one hundred twenty (120) feet to the point of beginning.

LEASE AGREEMENT ROUTING FORM

Project Information			
Project Name	St. Bernard Catholic Church @ Whittier	Site	918
Basic Directions			
Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.			
Attachment Checklist	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information							
Contractor Name	Roman Catholic Welfare Corp.	Agency's Contact	Jim McCann				
OUSD Vendor ID #	NA	Title	Associate Director Facilities and Services				
Street Address	2121 Harrison Street	City	Oakland	State	CA	Zip	94612
Telephone	510-267-8308	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input type="checkbox"/> No				
OUSD Project #	NA						

Term			
Date Work Will Begin	5-14-2014	Date Work Will End By <small>(not more than 5 years from start date)</small>	6-30-2016

Compensation			
Total Contract Amount	\$	Total Contract Not To Exceed	\$42,240.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Changed Amount	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
9599	GO Bond Measure B	9189901832	5825	\$42,240.00

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
1.	Division Head	Phone	510-535-7038	Fax 510-535-7082
	Director, Facilities Planning and Management			
2.	Signature	Date Approved	4/22/14	
	General Counsel, Department of Facilities Planning and Management			
3.	Signature	Date Approved	4-29-14	
	Associate Superintendent, Facilities Planning and Management			
4.	Signature	Date Approved		
	Deputy Superintendent, Board of Education			
5.	Signature	Date Approved		
	President, Board of Education			