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Introduction Date	2/24/16
Enactment Number	16-0337
Enactment Date	2/24/16 O.A.



OAKLAND UNIFIED
SCHOOL DISTRICT

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel

Board Meeting Date February 24, 2016

Subject

Action Requested **Approval of Charitable Fund Management Agreement with the Oakland Public Education Fund**

Background/Discussion The Ed Fund currently serves as a fiscal agent for the District when restricted, charitable funds are received by the District, and the donor wishes to grant the funds to a non-governmental entity. Under the Agreement, the Ed Fund will continue to serve in this capacity as fiscal agent for the District from July 1, 2016 through June 30, 2019.

Recommendation **Approval of Charitable Fund Management Agreement with the Oakland Public Education Fund**

Fiscal Impact n/a

Attachments • Agreement

CHARITABLE FUND MANAGEMENT AGREEMENT



This Charitable Fund Management Agreement (Agreement) is made by and between The Oakland Public Education Fund (The Ed Fund), and The Oakland Unified School District ("the District". The Ed Fund is a California nonprofit public benefit corporation located in Oakland, California, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). The Oakland Unified School District is a public school system in Oakland, CA.

RECITALS

The Ed Fund Board of Directors has approved the establishment of a restricted fund to receive charitable donations of cash and other property designated for support of the District and to make disbursements in furtherance of "District Projects" (Projects) that support the educational mission of the Oakland Unified District and ensures that all students have the opportunity to achieve excellence. Currently, the principal office of the District is located at 1000 Broadway, Suite 680 Oakland, California 94607.

The Ed Fund desires to act as the fiscal sponsor of the District, by receiving assets and incurring liabilities identified for the District beginning on the effective date as defined in Paragraph 1, and using them to pursue the objectives for which the Districts are established, which the Ed Fund's Board has determined will further its charitable and educational goals.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

Term of Agreement: This Agreement is effective July 1, 2016 (the effective date) through June 30, 2019

1. Unless otherwise agreed the Superintendent (or designee) shall serve as the Ed Fund's primary contact for the matters discussed in this Agreement ("Administrator"). Unless otherwise agreed, and subject to their consent, all personnel to be compensated through administered funds for working on Projects shall become either independent contractors or employees of the Ed Fund on the effective date of hire and shall have access to benefits as required by law and be subject to appropriate the Ed Fund personnel policies depending upon classification. The Ed Fund alone shall have final authority in determining the classification of the employee; provided however, this provision does not apply to funds that are "re-granted" to the District by the Ed Fund to pay salary and benefits for certain District employees. The Ed Fund shall apply standards consistent with current IRS guidelines in determining final employee classification.
2. The parties shall abide by the Administrative Terms and Policies of the Ed Fund set forth on the attached Exhibit I which the Ed Fund may amend from time to time with advance written notice to the District and which include administrative fees, interest, and charges for extra services, to be paid to the general fund of the Ed Fund from the restricted fund described below. Such fees, interest, and charges are necessary to compensate the Ed Fund for its services administering the District, and thus become unrestricted rather than restricted assets when paid.
3. Unless otherwise agreed, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the District shall be the property of the Ed Fund while this Agreement is in effect.
4. Beginning on the effective date, the Ed Fund shall place all gifts, grants, contributions, and other revenues received by the Ed Fund for the purposes of the District into a restricted fund to be used for the sole benefit of the District's mission as that mission may be defined by the Administrator from time to time with the approval of the Ed Fund. Neither party shall spend or otherwise obligate the Ed Fund to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. the Ed Fund retains the unilateral right to spend such funds so as to accomplish the purposes of the District as nearly as possible within the Ed Fund's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund be reported as the income of the Ed Fund on the Ed Fund's financial statements and tax returns. It is the intent of the parties that this Agreement be interpreted to provide the Ed Fund with variance powers necessary to enable the Ed Fund to treat the restricted fund as the Ed Fund's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB). Because the restricted fund is held under the charitable trust doctrine for the purposes of the District as understood by and with funding sources, the parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of the Ed Fund unrelated to the District.



5. All of the assets received by the Ed Fund under the terms of this Agreement shall be devoted to the purposes of the District, within the tax-exempt purposes of the Ed Fund. Expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by the Ed Fund. the Ed Fund shall not use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3). The Ed Fund has determined, based on the advice of tax-exempt legal counsel, that the restricted fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.
6. This Agreement shall terminate when the objectives of the District can no longer reasonably be accomplished or by the date indicated above. If the objectives of the District can still be accomplished but either the District or the Ed Fund desires to terminate the Ed Fund's management of these funds, the following understandings shall apply: Either the Ed Fund or the District may terminate this Agreement on sixty (60) days written notice to the other party, so long as another nonprofit corporation which is tax-exempt under IRC Section 501(c)(3), and is not classified as a private foundation under Section 509(a) (a Successor), is willing and able to take over management of these funds and is approved in writing by both parties by the end of the 60-day period. (As used in this Paragraph 6, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the District and has the financial and administrative capacity to competently manage the funds. If the parties cannot agree on a Successor to sponsor the District, The District shall have an additional sixty (60) days to find a Successor willing and able to manage the funds. If a Successor is found, the balance of assets in the Ed Fund's restricted fund for the District, together with any other assets held or liabilities incurred by the Ed Fund in connection with the District, shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required. If The District has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as such organization has received a determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof. If no Successor is found, the Ed Fund may dispose of the District's assets and liabilities in any manner consistent with applicable tax and charitable trust laws. Either party to this Agreement may terminate this Agreement, based upon a material breach of this Agreement by the other party, by giving thirty (30) days written notice to the other party.
7. Any disbursement may be discontinued, modified, or withheld at any time when, in the judgment of the Oakland Public Education Fund such action is necessary to comply with the requirements of law, this agreement, and/or the intent of the funder.
8. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, shall be determined by arbitration in Alameda County, CA, before one arbitrator. The arbitration shall be administered by Judicial Arbitration and Mediation Services (JAMS) pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs of sustaining its position. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts to be performed entirely within such State. Time is of the essence of this Agreement and of each and every provision hereof. The failure of the Ed Fund to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all parties to this Agreement.



PO BOX 27148
Oakland, CA
94602

ACCEPTED AND AGREED TO

Oakland Unified School District

Oakland Public Education Fund Signature

Signature:

Signature:

Name:

Name: Brian Stanley

Title:

Title: Executive Director

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
Marion H. Williams, Attorney at Law

EXHIBIT I: OSF ADMINISTRATIVE TERMS AND POLICIES

FEES

The Ed Fund will retain a percentage of the District revenue as administrative fees on the schedule described below.

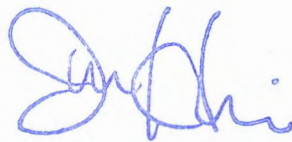
- 7% on all non-OUSD funds placed on account

The administrative fees will be paid to the general fund of the Ed Fund from the restricted fund described in Agreement paragraphs four and five.

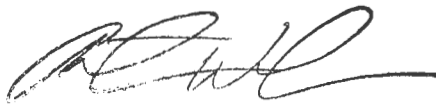
The Ed Fund's will claim all administrative fees when the funds are deposited into the account.

The fees above cover normal and reasonable transactions. The Ed Fund reserves the right to charge additional fees to provide additional fiscal management services.

The District and Ed Fund reserve the right to negotiate alternative administrative fees on a case-by-case basis.



2/25/16
James Harris
President, Board of Education



2/25/16
Antwan Wilson
Secretary, Board of Education

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By: 01



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.

Legislative File ID No. 16-0357

Department: Legal

Vendor Name: Oakland Education Fund

Contract Term: Start Date: 07/01/2016 End Date: 06/30/2019

Annual Cost: \$ N/A

Approved by: General Counsel

Is Vendor a local Oakland business? Yes ☒ No ☐

Why was this Vendor selected?

Continuation of Ed Fund's role as fiscal agent for the District.

Summarize the services this Vendor will be providing.

Fiscal agent to receive charitable, restricted funds on behalf of the District.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

N/A

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☒ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process")
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts [requires Board resolution declaring an emergency]
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - ☐ Western States Contracting Alliance Contracts (WSCA)
 - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**