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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Jody Talkington, Senior Director Strategic Projects
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date March 24, 2021

Subject Amendment No. 1 Independent Consultant Agreement for Special Services
- Asset Management and Real Property Services - Heafey Commercial, Inc.
Division of Facilities Planning & Management

Action Approval by the Board of Education of Amendment No.1, Independent Consultant Agreement between the District and Heafey Commercial, Inc., Oakland CA, for the latter to provide asset management and real property services related to the former Piedmont Child Development Center (“CDC”) site and former Webster CDC, in an additional amount Additional Services fee of **\$7,500** with Consultant’s total fee (original fee + additional services) not to exceed **\$15,000**. The District shall pay Consultant according to the following terms and conditions, authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant with the time extension schedule to last until June 20, 2021, pursuant to the Amendment.

Discussion Continuing need for Consultant’s services to complete work on the Piedmont CDC site.

LBP (Local Business Participation Percentage) 00.0%

Recommendation

Approval by the Board of Education of Amendment No.1, Independent Consultant Agreement between the District and Heafey Commercial, Inc., Oakland CA, for the latter to provide asset management and real property services related to the former Piedmont Child Development Center (“CDC”) site and former Webster CDC, in an additional amount Additional Services fee of **\$7,500** with Consultant’s total fee (original fee + additional services) not to exceed **\$15,000**. The District shall pay Consultant according to the following terms and conditions, authorizing the President and Secretary of the Board to sign the Amendment for same with said Consultant with the time extension schedule to last until June 20, 2021, pursuant to the Amendment.

Fiscal Impact

An amount not to exceed \$15,000 from Fund 40, Special Reserve for Capital Facilities.

Attachment

Amendment 1
Agreement
Insurance Certificate

AMENDMENT NO. 1 to:

**INDEPENDENT CONSULTANT AGREEMENT FOR SPECIAL SERVICES
ASSET MANAGEMENT AND REAL PROPERTY SERVICES
Between Oakland Unified School District And Heafey Commercial, Inc.**

This Amendment No. 1 ("Amendment") amends the Independent Consultant Agreement for Special Services ("Agreement"), which was entered into by and between Oakland Unified School District ("District") and Heafey Commercial, Inc. ("Consultant") (together, "Parties") as follows:

RECITALS

WHEREAS, the Parties entered into the Agreement effective as of June 24, 2020;

WHEREAS, Consultant has successfully completed the first phase of services under this Agreement for the Webster site and;

WHEREAS, there is a continuing need for Consultant's services to complete work on the Piedmont CDC site, and;

WHEREAS, the Parties wish to amend the Agreement to allow Consultant to continue to provide services as referenced in Consultant's proposal as. as shown below, and to adjust compensation accordingly;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth above and contained herein, the Parties agree as follows:

AGREEMENT TO AMEND

1. Section 2 ("Term") of the Agreement is amended to read in its entirety:
 2. **Term.** Consultant shall commence providing services under this Agreement on December 20, 2020, and will diligently perform as required and complete performance by June 30, 2021, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
2. Section 4 ("Compensation") of the Agreement is amended to read in its entirety:
 4. **Compensation.** District agrees to pay the Consultant for additional services satisfactorily rendered pursuant to this Agreement, on at the hourly rates included in the agreement, an Additional Services fee of **seven thousand five hundred dollars (\$7,500)** with Consultant's total fee (original fee + additional services) not to exceed **fifteen thousand dollars (\$15,000)**. District shall pay Consultant according to the following terms and conditions.
4. All other provisions of the Agreement shall remain in full force and effect and are reaffirmed. If there is any conflict between this Agreement and any provision of the Agreement relating to the Amendment only, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the Parties hereto have accepted and agreed to this Amendment on the dates indicated below.

Dated: December 30, 2020

Dated: December 30, 2020

AMENDMENT NO. 1 to:

**INDEPENDENT CONSULTANT AGREEMENT FOR SPECIAL SERVICES
ASSET MANAGEMENT AND REAL PROPERTY SERVICES
Between Oakland Unified School District And Heafey Commercial, Inc.**

Oakland Unified School District

By: _____

Print Name: Tadashi Nakadegawa

Print Title: Deputy Chief of Facilities
Planning and Management

Heafey Commercial, Inc.

By: _____

Print Name: Brendan Heafey

Print Title: Principal

**Approved as to form Oakland Unified School
District Office of Legal Counsel:**

By: _____

Print Name: Andrea Epps

Print Title: Deputy General Counsel

Date: January 7, _____, 2021



AMENDMENT NO. 1

INDEPENDENT CONSULTANT AGREEMENT FOR SPECIAL SERVICES ASSET MANAGEMENT AND REAL PROPERTY SERVICES

This Amendment is entered into between the Oakland Unified School District (OUSD) and Heafey Commercial, Inc. OUSD entered into an agreement with CONTRACTOR for services on **August 12, 2020** ("Agreement"), and the parties agree to amend the Agreement for the Services with **Piedmont Child Development Center ("CDC") site and former Webster CDC** as follows and in the attached Exhibit A:

- 1. Services:** ☒ The scope of work is unchanged. ☐ The scope of work has changed.
If scope of work changed: Provide brief description of revised scope of work including description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.

The CONTRACTOR agrees to provide the following amended services: No change to scope of work. Time extension only.

- 2. Terms (duration):** ☐ The term of the contract is unchanged. ☒ The term of the contract has changed.
If term is changed: The contract term is extended by an additional One hundred Eighty-Two (182) days, and the amended expiration date is June 31, 2021. December 31, 2020 is the current end date.

- 3. Compensation:** ☐ The contract price is unchanged. ☒ The contract price has changed.
If the compensation is changed: The not to exceed contract price is

☒ Increased by: Seven Thousand Five Hundred Dollars (\$7,500.00)

☐ Decreased by _____ dollars and no/100 (\$ _____).

Prior to this amendment, the not to exceed contract price was Seven Thousand Five Hundred Dollars (\$7,500.00) and after this amendment, the not to exceed contract price will be: Fifteen Thousand Dollars and no/100 (\$15,000.00).

- 4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

5. Amendment History:

☒ There are no previous amendments to this Agreement. ☐ This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)

- 6. Approval:** This Amendment is not effective, and no payment shall be made to the Contractor based on this Amendment, until it is signed by Contractor and approved by the Board of Education.

Amendment No. 1 – Heafy Commercial – Piedmont Child Development Center (“CDC”) site and former Webster CDC - \$15,000.00

OAKLAND UNIFIED SCHOOL DISTRICTShanthi Gonzalez, President,
Board of Education

3/25/2021

Date

Kyla Johnson-Trammell, Superintendent
Board of Education

3/25/2021

Date

Tadashi Nakadegawa, Deputy Chief,
Facilities Planning and Management

12/30/2020

Date

CONTRACTOR

Contractor Signature

12/30/20

Date

Print Name: Brendan Heafey
Title: Principal**Approval as to form:**

1/7/21

Date

[name]

General Counsel, Facilities, Planning and Management

Amendment No. 1 – Heafey Commercial, Inc. – Piedmont Child Development Center (“CDC”) site and former Webster CDC - \$15,000.00

EXHIBIT "A"
Scope of Work for Amendment

Contractor Name: Heafey Commercial, Inc.

1. Detailed Description of Services to be provided: No change in scope of work.
2. Specific Outcomes:
3. Alignment with District Strategic Plan: Indicate the goals and visions supported by the services of this contract:

<input type="checkbox"/> Ensure a high quality instructional core	<input type="checkbox"/> Prepare students for success in college and careers
<input type="checkbox"/> Develop social, emotional and physical health	<input checked="" type="checkbox"/> Safe, healthy and supportive schools
<input checked="" type="checkbox"/> Create equitable opportunities for learning	<input checked="" type="checkbox"/> Accountable for quality
<input type="checkbox"/> High quality and effective instruction	<input type="checkbox"/> Full service community district

Amendment No. 1 – Heafey Commercial, Inc. – Piedmont Child Development Center ("CDC") site and former Webster CDC - \$15,000.00



OUSD RFQP #1920-01

5/13/20

1. Cover Letter

With regard to the Scope of Services listed in Oakland Unified School District's (The District) Request for Qualifications & Proposal (RFQP) for Asset Management and Real Property Services (RFQP #1920-01) and the listed Scope of Services labeled A – E, Heafey Commercial is well suited to provide the following services:

- A. Evaluate properties for reuse in accordance with Education Code requirements and Board policies
- B. Provide Property Valuation Services to assess the potential for revenue generation at each assigned site, or any other District Sites, considering various scenarios
- C. Assist the District in engaging parties potentially interested in District Properties

Heafey Commercial's working knowledge of the District's asset management plan, two decades of commercial real estate experience, and direct experience brokering deals for the District and other educational users in Oakland makes Heafey Commercial well suited for the assignment.

In March of 2011, under the leadership of Tony Smith and Tim White, I was hired as a partner in a real estate consulting partnership with James Falaschi to produce a real estate report to accompany OUSD's new District Master Plan. More specifically, the report included an analysis of the District's real estate portfolio related to current City of Oakland zoning and commercial development trends with a general discussion pertaining to the development potential of OUSD's real estate assets and their corresponding highest and best uses. The report was rolled up into a broader study by MK Think, which later formed the basis for the new District Master Plan. Throughout this seven-month assignment, I gained unique insight into the District's assets, its internal processes, and the public process required to ultimately put a plan into action. Items A and B of the RFQP Scope of Services are essentially an update of the aforementioned 2011 report with a focus / prioritization on reuse of District surplus properties to achieve the highest community benefit and revenue generation through long term leases.

In addition to analyzing the District's underutilized assets, Item C of the Scope of Services requires outreach to the Oakland business community to substantiate and ultimately consummate transaction(s) with viable users (tenants/buyers). As a licensed Real Estate Broker with over 18 years' experience in Oakland, I have worked with, and have access to, a variety of potential users / sources to establish a viable list of candidates for the District's surplus properties, including but not limited to private vocational schools, local developers, and the local real estate brokerage community (all product types). I envision the end user outreach taking place in multiple phases. The first phase of discussions with select users should be preliminary and somewhat private to generate general feedback related to user needs, budget, and timing. Data collected from this stage of the outreach can be factored into the report and ultimate recommendations for approval through the public process. Once approved, marketing materials can be created for distribution to the local community and beyond through direct outreach and online commercial real estate portals (Costar / Loopnet) nationwide. While a broad outreach is necessary to understand market demand, the end user of a leased or sold District asset will most likely be an Oakland entity. Heafey Commercial has the local expertise required to apply District criteria and processes to secure compatible and community supported uses for school properties that align with market valuations and District revenue expectations.

Brendan Heafey dba Heafey Commercial received a copy of the District's form of Independent Consultant Services Agreement attached as Appendix A to the RFQP. Heafey Commercial has

reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given a contract with the District Heafey Commercial has no objections to the use of the Agreement. Furthermore, no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District. No official or employee of the firm has ever been convicted of an ethics violation. By virtue of submission of this Statement of Qualifications, Heafey Commercial declares that all information provided is true.

2. Business Information

Heafey Commercial
33 York Dr.
Piedmont CA 94611
brendan@heafeycommercial.com
510 625 1500 office
510 207 0196 cell

Federal Tax ID: 80-0938120
California Brokers License #01342351

Sole Practitioner

Heafey Commercial was established in 2006 as the brokerage arm to a real estate consulting firm named Vista Real Estate Partners, comprised of myself and former Jack London Square Development Partner James Falaschi. Over the course of approximately 6 years, Vista Real Estate Partners consulted with local institutions such as OUSD, Holy Names University, Children's Hospital, and Samuel Merritt University to address its real estate challenges related to growth and capacity. Shortly after Heafey Commercial's inception, it became clear that there was local demand for brokerage services beyond Vista Real Estate Partners' client list. Heafey Commercial began to develop its own book of business and has been brokering, consulting, project managing, and building relationships in Oakland ever since.

3. Project Approach and Relevant Qualifications

See Cover Letter and Resume

4. Relevant Project Experience and References

See Cover Letter and Resume

5. Project Team Summary

Brendan Heafey: Principal
Subcontractors provided upon request.

6. Litigation History

There have been no suits filed by Heafey Commercial nor any litigation, arbitration and negotiated/settled history with any previous clients.

7. Fee Proposal

Heafey Commercial proposes an hourly rate of \$130 per hour for real estate consulting and outreach services. In the event a lease or sale is consummated on behalf of the District and the commission for the transaction (per the Listing Agreement) exceeds the hourly compensation paid to the date the commission is earned, the commission due to Heafey Commercial will be reduced by that hourly compensation. In the event the hourly compensation at the time the commission is earned exceeds the commission specified in the Listing Agreement, no commission will be owed to Heafey Commercial. Prior to formally listing a property for sale or lease, the District and Heafey Commercial will enter into a Listing Agreement (form attached) with specified terms and commission structures, including but not limited to commissions to cooperating brokers (owners and/or tenant representatives).

8. Form of Agreement

The form of the Independent Consultant Agreement for Special Services Asset Management and Real Property Services is acceptable as detailed in Attachment A of the RFQP.

9. Appendix

Exhibit A: Brendan Heafey's Resume

Exhibit B: Form Listing Agreement

Exhibit A

Brendan Heafey

Experience

Principal

Heafey Commercial, Oakland CA: March 2006 – January 2016, March 2018 - present

- Full Service Commercial Real Estate Brokerage and Consulting Services, partial client list includes:
 - Oakland Unified School District
 - Rogers Family Foundation
 - Children's Hospital and Research Center Oakland
 - Vincent Academy Charter School
 - Jobs and Housing Association
 - Ruegg & Ellsworth (Entitlement services)

Vice President

Transwestern, Oakland CA: January 2016 – March 2018

- Full Service Commercial Real Estate Brokerage
 - Opened Oakland office in former office of Heafey Commercial

Partner, Managing Member

Vista Real Estate Partners LLC., Oakland CA: July 2006 – June 2016

- Commercial Real Estate Consulting Partnership with Jim Falaschi. Relevant client experience:
 - Samuel Merritt College: analysis and outreach to (1) facilitate a student housing solution to replace Bechtel Hall and (2) open new school of pharmacy
 - Children's Hospital & Research Center Oakland with its growth strategy (7/1/06 – 11/3/07) including a multi-county property identification process for a 200-bed tertiary care facility, and new outpatient clinics

Director of Marketing and Property Development

Rue Ell Enterprises Inc., Berkeley CA: February 2002 to March 2006

- Managed leasing for 500,000 square foot Bay Area retail portfolio
- Secured entitlement for 44-unit mixed-use building one block from the Main Gate of the UC Berkeley Campus with plan to relocate the existing historic building

Licensing & Education

State of California Department of Real Estate Broker's License

ID #01342351, April 2005

Salesperson's License June 2002

Master of Business Administration

Santa Clara University, Leavey School of Business and Administration, 1999-2001

Bachelor of Arts, English

Boston College, 1991-1995

Historic Property Work

- Kingfish Pub: Secured land to relocate / save historic pub in Oakland's Temescal District
- Berkeley House Moves: Permitting and Project Coordination
 - August 16, 2014: 2526 Durant Ave to 2510 Regent St.,
 - July 7, 2017: 2121 Durant Ave. to 1940 Haste St.,
 - July 19, 2020 (scheduled): 2028 Bancroft Ave. to 1940 Haste St.

Exhibit B



EXCLUSIVE SALE AND LEASE LISTING AGREEMENT
Oakland Unified School District
5/13/20

THIS EXCLUSIVE LEASE LISTING AGREEMENT (the "Agreement") by and between **Oakland Unified School District** or its Assignee ("Owner") and **Heafey Commercial** ("Broker") is effective upon execution of this Agreement (the "Effective Date").

RECITALS

A. Owner owns that certain real property (the "Property") identified in Exhibit A consisting of an individual facility known as _____ located at _____ in the City of Oakland California. Any reference to the Property in this Agreement shall also be construed to include a reference to a portion or portions of the Property.

B. Broker is duly licensed as a real estate broker in the State of California in which the Property is located.

C. Owner desires to retain Broker's services in connection with the leasing or Sale of the Property and Broker desires to accept such appointment subject to and in accordance with the terms and conditions of this Agreement.

TERMS

In consideration of the mutual promises herein contained, the parties agree as follows:

1. Owner hereby grants to Broker the exclusive right to lease the property to prospective tenants. The term of Broker's exclusive right to lease the Property (the "Term") shall begin on the Effective Date and shall expire one (1) year. After the one (1) year period, this agreement shall remain in place on a month-to-month basis until terminated in writing by either Owner or Broker.

2. Broker shall use its best efforts to lease the Property. Such efforts shall include marketing the Property for lease or sale to potential Lessees or Buyers (the "Prospects"), and presenting these proposals promptly to Owner and/or Owner's designee for consideration.

3. Owner agrees to cooperate with Broker in effecting a lease or sale of the Property. Owner shall inform Broker of the identities of any prospective tenants with whom Owner chooses to conduct direct negotiations.

It is understood that it is illegal for either Owner or Broker to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

4. Commission Schedule and Payment:

- a. Sale of Property: Owner shall pay to Broker a sales commission in an amount equal to ____ percent (____%) of the gross sales price if a contract for the sale, exchange, transfer or conveyance of the property or any interest therein is entered into during the Listing Period between the owner of the Property and any prospect to whom Broker has submitted the Property or with whom Broker has negotiated in the performance of Broker's responsibilities.
- b. Lease of Property: Except as otherwise provided in this Agreement, Owner hereby agrees to pay Broker for its services hereunder a commission for any lease entered into by Owner and a prospective tenant respecting the Property during the term of this Agreement for new Tenants only and not for any existing and/or future Tenant renewals or expansions. The commission shall be calculated according to the following terms and conditions as follows:

GROSS LEASE

6% of the rent for the first 12 months
 6% of the rent for the second 12 months
 6% of the rent for the third 12 months
 4% of the rent for the fourth 12 months
 4% of the rent for the fifth 12 months
 3% of the rent for the next 60 months
 2% of the rent for the balance of the term

NET LEASE

7% of the rent for the first 12 months
 7% of the rent for the second 12 months
 6% of the rent for the third 12 months
 5% of the rent for the fourth 12 months
 5% of the rent for the fifth 12 months
 4% of the rent for the next 60 months
 3% of the rent for the balance of the term

5. Broker shall implement a marketing campaign that shall include the activities set forth below. The campaign shall be implemented and its expenses paid for as follows:

- a. Broker shall pay the cost of designing and placing leasing signs on the Property, with Owner's prior written approval of design and location.
- b. Broker shall pay for the designing and placement of direct mail or email solicitation at a cost which is reasonable for a Property of this type.
- c. Broker shall contact likely users for the Property.

All advertising, publicity, promotional materials and activities, signs and brochures shall be subject to the prior written approval of Owner as to form, scope, substance and placement.

6. Broker agrees that in the event a prospective tenant is procured by another Broker, and such prospective tenant consummates a lease transaction with Owner for which commission is payable to Broker in accordance with this Agreement, then in such event, Broker shall cooperate with such other real estate Broker and Owner shall pay such other real estate Broker a commission. Such Commission with outside Broker shall be a percentage of the Commission paid to Broker according to the Commission Schedule listed in Paragraph 4 for a lease and Paragraph 24 for a sale.

7. Prior to the expiration of the Term, Owner may terminate the Term upon thirty (30) days prior written notice to Broker for reasons of Broker's noncompliance with the performance goals set forth on Exhibit B attached hereto and hereby made a part hereof; provided, however, that any such notice by Owner must state the exact nature of the noncompliance and provide Broker ten (10) days to cure any specified noncompliance to Owner's reasonable satisfaction. If Broker does cure such noncompliance within the ten (10) day period, then the Term shall continue as specified herein. If Broker

does not cure any such noncompliance within the ten (10) day period the Term shall terminate thirty (30) days from the date of such notice. After expiration of the Term either party may terminate this Agreement upon thirty (30) days prior written notice to the other.

8. Owner agrees to pay Broker a commission if within **thirty (30)** days following expiration or earlier termination of the Term, the Property is leased to a Prospective Tenant as defined within paragraph 18. In the event an outside or procuring broker is involved, Owner shall be subject to the same terms and conditions set forth in this Agreement.

9. Upon the expiration or sooner termination of this Agreement, Owner and Broker shall continue to be liable for any obligations that arose prior to the date of termination, and Broker shall promptly deliver to owner copies of all of Broker's records pertaining to transactions in progress with respect to the leasing or sale of the Property.

10. Broker and Owner contemplates that each may be involved in leasing, selling and/or dealing with prospects and wish to indemnify each other against claims or losses arising out of their respective acts or omissions. Accordingly, Owner and Broker each agree to reciprocally indemnify and hold the other harmless from and against any and all actions, causes of action, claims, damages, losses or liabilities asserted by any third party which arise solely out of any gross negligent or wrongful acts or omissions by it or its agents or employees.

The indemnifications made or given herein, together with any cause of action, rights and remedies which either party may have as a result of the other party's breach thereof, shall survive any expiration or termination of this Agreement. In the event the indemnitor acknowledges in writing that it must, in accordance with the provisions of this Paragraph 10, indemnify the indemnitee with respect to any particular claim, action, cause of action, damages, loss or liability, the indemnitor will have the right to select and retain legal counsel reasonably satisfactory to indemnitee for the purpose of maintaining a joint defense, and indemnitor will have the right to settle or defend against any such claim, and indemnitee will cooperate in such defense.

11. All information known to Broker regarding base rates, and condition of the Property or portion thereof shall be considered strictly confidential and shall not be released to other brokers, appraisers, lenders, developers, or any other persons. In addition, Owner promises not to disclose the terms of this listing agreement to other brokers, appraisers, lenders, developers or any other persons, with the exception of the cooperating broker commission schedule.

12. Broker shall give Owner or Owner's designee reasonable advance notice of all property showings and shall otherwise use its best efforts to involve Owner's representatives in all meetings and negotiations regarding this agreement and the Property. Broker shall not release any proposals, or promotional materials without the prior written approval of Owner. Owner shall be responsible to generate all leases used in leasing the Property.

13. Owner reserves the absolute right to reject any lease or sale proposal in its sole discretion. In such event no commission or other compensation shall be payable to Broker with respect to such lease or sale and Broker shall make no claim therefore.

14. In the event that any time during the term of this Agreement either Owner or Broker shall institute any action or proceeding against the other relating to the provisions of this Agreement, or

any default hereunder, then the prevailing party in such suit or action, at trial or on appeal, shall be entitled to actual attorneys' fees in addition to costs and reasonable disbursements.

15. The waiver by either party of any breach or violation of, or default under, any provisions of this Agreement shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default hereunder.

16. Time is of the essence with respect to each and every provision of this Agreement.

17. Owner shall be given access at any time to all of Broker's records, including books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Property and this Agreement (collectively, "Records"), and Broker shall preserve all the Records for a period of one (1) year, or for such longer period as may be required by law, after the termination or expiration of this Agreement. Following the expiration of such one (1) year period, Broker shall permit Owner to receive the Records, in lieu of Broker's destruction or disposition thereof, whereupon they shall be maintained at Owner's sole cost.

18. In the event of a Termination by Broker (but not in the event of a Termination for Cause except with respect to any commissions due Cooperating Brokers) Owner shall be liable for any commission, calculated in accordance with Paragraph 4, resulting from a lease executed by Owner and a prospective tenant within ninety (90) days from the termination or expiration of this Agreement. For the purposes of this Paragraph, a Prospective Tenant is any person or entity who has expressed written interest in the property to Broker and which Broker has forwarded in writing to Owner within thirty (30) days following the expiration or termination of this Agreement.

19. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted assignees, successors, and representatives. Broker shall not assign any interest of Broker under this Agreement without the prior written consent of Owner which may be given or withheld in Owner's sole discretion.

20. Nothing contained in this Agreement shall be construed as to require the commission of any act contrary to law, and in the event that there is any conflict between any provisions of this Agreement and any present or future statute, law ordinance or regulation contrary to which the parties have a legal right to contract, the latter shall prevail, but in such event the affected provisions of this Agreement shall be curtailed and limited only to the extent necessary to bring same within the requirement of the law. Broker shall comply with all requirements or law respecting the subject matter of this Agreement including, without limitation, laws which prohibit discrimination in the sale or rental of real property or which require the obtaining of licenses or permits by Broker's agents and employees. This Agreement is made under and shall be governed by and construed in accordance with the laws of the state in which the Property is located.

21. Broker shall at all times act as an independent contractor hereunder, it being understood and agreed between the parties that no agency (other than as may be expressly provided herein), joint venture, partnership or other relationship is intended and no such arrangement shall be created between Owner and Broker with respect to the Property. Broker shall have no authority to act as a principal or developer or to act on behalf of Owner with respect to this Property except as expressly herein set forth. Broker acknowledges a fiduciary relationship of trust and confidence between it and Owner, and Broker



agrees to perform its services hereunder in a diligent, efficient, and skillful manner commensurate with the highest standards of its profession.

22. All agreements made herein are made expressly for the benefit of the parties to this Agreement and no rights hereunder shall accrue to the benefit of any person not a party hereto, including, without limitation, any real estate broker who may be deemed to be a Cooperating Broker within the context of this Agreement.

23. The obligations of Owner under this Agreement are not personal obligations of the individual partners, directors, shareholders and officers of Owner and Broker shall look solely to the Property for satisfaction of any liability and shall not look to the assets of Owner or seek recourse against the assets of the individual partners, directors, officers, and shareholders of Owner.

24. Owner hereby authorizes Broker to represent and serve as agent for any purchaser or tenant, or prospective purchaser or tenant, of the Property or of any interest therein, and Owner hereby waives any conflict of interests which might arise as a result thereof.

Any notice provided for in this Agreement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid to the following address:

IF TO OWNER:

OUSD
Attn:
Address
City, State and zip

IF TO BROKER:

Heafey Commercial
Attn: Brendan Heafey
33 York Dr.
Piedmont, CA 94611

IN WITNESS HEREOF, the parties have executed this Agreement as of the date set forth below.

OWNER:

Oakland Unified School District

BY: _____

ITS: _____

DATE: _____

BROKER:

Heafey Commercial
CA License #01342351

BY: _____

Brendan Heafey

ITS: Principal

DATE: _____

EXHIBIT "A"

EXCLUSIVE LISTING AGREEMENT

PROPERTY

A. _____ in the City of Oakland, County of Alameda, State of California and further described as

EXHIBIT "B"

EXCLUSIVE LISTING AGREEMENT

PERFORMANCE GOALS

- A. Marketing Meetings. The marketing team shall meet with the Owner, and/or Owner's designee, on a weekly basis to review the status of on-going negotiations, the progress towards attainment of the marketing goals, and such other matters as may be appropriate.
- B. Reports. At each marketing meeting, Broker shall prepare a typed report listing:
1. Prospect names, addresses, phone numbers and decision maker's name.
 2. Entry date as prospect and name of marketing team member responsible for tracking.
 3. Descriptions of activity (i.e. lease out for signature, counter-proposal under review, etc.).
 4. Percentage probability of closing.
 5. Procuring broker name, company and phone number.
 6. Type of use (i.e. Title company, paper distribution, etc.)
 7. Current lease term expiration, if applicable.
 8. Square feet needed.
 9. Lease rate (including concessions and improvements).
 10. Next Action (i.e. Provide contract, sign letter of intent.).
- C. Pricing. The approved pricing for the Property is as follows:

Lease Rates:

The initial lease rate the Building will be marketed at shall be \$_____ per square foot per month. All other terms and conditions of the lease(s) shall be subject to Owner's approval

Sale Price:

The initial sale price for the Building shall be \$_____. All other terms and conditions of the Purchase and Sale Agreement shall be subject to Owner's approval



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MOC Insurance Services License No. 0589960 101 Montgomery St., Suite 800 San Francisco CA 94104	CONTACT NAME: Halidee Callejas PHONE (A/C, No, Ext): (415)957-0600 E-MAIL ADDRESS: hcallejas@mocins.com FAX (A/C, No): (415)957-0577
INSURED Brendan Heafey DBA: Heafey Commercial 33 York Drive Piedmont CA 94611	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Insurance Company INSURER B: Underwriters at Lloyd's, London INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER: 2020-2021****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		57SBABM8966	7/27/2020	7/27/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB EXCESS LIAB DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional Liability Retention: \$5,000			MPL4536981	7/27/2020	7/27/2021	Aggregate Limit \$1,000,000 Each Claim \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The District, and its Governing Board, Agents, Representatives, Employees, Trustees, Officers, Consultants, and Volunteers are named as Additional Insured as respects their interests may appear per written contract. 30 day notice of cancellation/10 day for non-payment of premium

CERTIFICATE HOLDER**CANCELLATION**

Oakland Unified School District 1000 Broadway St Suite 300 Oakland, CA 94607	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Halidee Callejas/HCA <i>Halidee Callejas</i>
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ACORD 25 (2014/01)

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INS025 (201401)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)

The District, and its Governing Boards, Agents, Representatives, Employees,
Trustees, Officers, Consultants, and Volunteers

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A.** In the performance of your ongoing operations; or
- B.** In connection with your premises owned by or rented to you.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning & Management Project	Site	918
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	Heafey Commercial	Agency's Contact		Brendan Heafey			
OUSD Vendor ID #		Title		Principal			
Street Address	33 York Dr.	City	Piedmont	State	CA	Zip	94611
Telephone	510-625-1500	Policy Expires					
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #							

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	6-24-2020	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	6-30-2021
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$ 15,000.00
Other Expenses		Requisition Number	



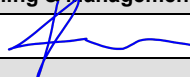
Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9000/0000	Fund 40	400-0000-0-9000-8500-6289-918-9180-9000-9999-99999	6289	\$15,000.00

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 & Management				
	Signature	 for Kenya Chatman	Date Approved	12/30/2020	
2.	General Counsel, Department of Facilities Planning and Management				
	Signature		Date Approved	1/7/21	
3.	Deputy Chief, Facilities Planning & Management				
	Signature		Date Approved	12/30/2020	
4.	Chief Financial Officer				
	Signature		Date Approved		
5.	President, Board of Education				
	Signature		Date Approved		



Board Office Use: Legislative File Info.	
File ID Number	20-1412
Introduction Date	8-12-2020
Enactment Number	20-1156
Enactment Date	8/12/2020 os



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Jody Talkington, Senior Director Strategic Projects
Tadashi Nakadegawa, Interim Deputy Chief, Facilities Planning and Management

Board Meeting Date August 12, 2020

Subject Independent Consultant Agreement with Heafey Commercial- Facilities Planning & Management

Action Requested Ratification by the Board of Education of an Independent Services Agreement between the Oakland Unified School District and Heafey Commercial (“Contractor”) for the latter to provide asset management and real property services related to the former Piedmont Child Development Center (“CDC”) site and former Webster CDC, in an amount not to exceed of \$7,500.

Discussion District staff prepared and circulated a Request for Qualifications and Proposals (“RFQP”). Five firms submitted responses and were evaluated in accordance with the criteria established by the District in the RFQP. The Board of Education approved five firms as a Qualified Pool of providers for Asset Management and Real Property Services at the regularly scheduled Board Meeting of June 24, 2020. Heafey Commercial is one of the qualified firms and specializes in commercial real estate in Oakland. The contract will initiate necessary services regarding site disposition of these two vacant properties. Based upon Consultant’s Proposal services will cost \$130 per hour in an amount not to exceed \$7,500.

LBP (Local Business Participation Percentage) 00.0%

Recommendation Ratification by the Board of Education of an Independent Services Agreement between the Oakland Unified School District and Heafey Commercial (“Contractor”) for the latter to provide asset management and real property services related to the former Piedmont CDC site and former Webster CDC, in an amount not to exceed of \$7,500.

Fiscal Impact An amount not to exceed \$7,500 from Fund 40, Special Reserve for Capital Facilities.

Attachments

- Independent Consultant Agreement including Exhibits
- Consultant’s Proposal



CONTRACT JUSTIFICATION FORM

This Form Shall Be Submitted to the Board Office With Every
Agenda Contract.

Legislative File ID No. 20-1412

Department: Facilities Planning & Management

Vendor Name: Heafey Commercial

Project Name: Asset Management & Real Property

Project No.: 00918

Services Contract Term: Intended Start: June 25, 2020

Intended End: 12-31-2020

Total Cost Over Contract Term: \$7,500.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or has it met the requirements of the

Local Business Policy? ☐ Yes (No if Unchecked)

How was this contractor or vendor selected?

Heafey Commercial was selected through an RFP process. The District approved Heafey Commercial as highly qualified, based on specially trained services.

Summarize the services or supplies this contractor or vendor will be providing.

Heafey Commercial will provide evaluation of property for re-use; recommendations for community engagement. Recommendations regarding options for leasing, exchange, sale or potential development opportunities.

Was this contract competitively bid? ☐ Check box for "Yes" (If "No," leave box unchecked)

If "No," please answer the following questions:

1) How did you determine the price is competitive?

Five firms submitted responses and were evaluated in accordance with the criteria established by the District in RFQP. Heafey price was fair and reasonable compared to the prices submitted by the other responding consultants. Heafey is one of the qualified firms and has a deep experience in community-based processes.

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- ☐ Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding – *contact legal counsel to discuss if applicable*
- ☐ Sole source contractor – *contact legal counsel to discuss if applicable*
- ☐ Completion contract – *contact legal counsel to discuss if applicable*
- ☐ Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- ☐ Energy service contract – *contact legal counsel to discuss if applicable*
- ☐ Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- ☐ Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- ☐ Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- ☐ Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- ☒ Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- ☐ For services other than above, the cost of services is \$95,200 or less (as of 1/1/20)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- ☐ Price is at or under bid threshold of \$95,200 (as of 1/1/20)
- ☐ Certain instructional materials (Public Contract Code §20118.3)
- ☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- ☐ Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- ☐ CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- ☐ Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- ☐ Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- ☐ Other: _____

Maintenance Contract:

- ☐ Price is at or under bid threshold of \$95,200 (as of 1/1/20)
- ☐ No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- ☐ Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- This contract falls under the RFP process. Vendor was selected based on specially trained services.

INDEPENDENT CONSULTANT AGREEMENT FOR SPECIAL SERVICES ASSET MANAGEMENT AND REAL PROPERTY SERVICES

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the 25th day of June, 2020 by and between the Oakland Unified School District, ("District") and Heafey Commercial ("Consultant"), (together, "Parties").

WHEREAS, Government Code section 53060, authorizes the District to contract with and employ any person(s) for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District duly determined that it needs some or all of the services (collectively, "Services") to be provided pursuant to this Agreement; and

WHEREAS, the Consultant is specially trained and experienced and competent to perform the **Asset Management and Real Property Services** required by the District, and those services are needed on a limited basis.

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** Consultant shall provide Asset Management and Real Property services as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
 - 1.1. Consultant shall provide services related to the former Piedmont CDC site and the former Webster CDC site to evaluate leasing potential, develop valuations and returns based on alternate leasing options including property upgrades, provide preliminary marketing and outreach to potential interested parties, and prepare background information for leasing.
2. **Term.** Consultant shall commence providing services under this Agreement on June 25, 2020 and will diligently perform as required and complete performance by December 31, 2020, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

341 NA

<input checked="" type="checkbox"/>	Signed Agreement
<input checked="" type="checkbox"/>	Workers' Compensation Certification
<input checked="" type="checkbox"/>	Fingerprinting/Criminal Background Investigation Certification
<input checked="" type="checkbox"/>	Insurance Certificates and Endorsements
<input checked="" type="checkbox"/>	W-9 Form
<input type="checkbox"/>	Other: _____

4. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement a total fee, hourly at \$130/hour not to exceed seven thousand five hundred Dollars (\$7,500). District shall pay Consultant according to the following terms and conditions:
 - 4.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after Consultant submits an invoice to the District for Services actually completed and after the District's written approval of the Services, or the

portion of the Services for which payment is to be made. The schedule of deliverable Services to be produced is as follows:

4.1.1. Consulting Services prior to initiating Leasing Agreement October 15, 2020

4.2. If Consultant works at more than one site, Consultant shall prepare invoices which clearly indicate costs for each site.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District, except identified and approved reimbursable expenses as follows:

5.1. _____.

6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

6.1. _____.

7. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.

8. **Performance of Services.**

8.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

Consultant shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Consultant or its employees may discover. Consultant shall have responsibility for discovery of errors, inconsistencies, or omissions.

8.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.

8.3. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

8.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

9. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

10. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.

11. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which the District's administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Consultant's right to bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

12. **Termination.**

12.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.

12.2. **With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.2.1. material violation of this Agreement by Consultant; or

12.2.2. any act by Consultant exposing the District to liability to others for personal injury or property damage.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

Deleted Sentence in paragraph above. "If the expense, fees, and/or costs to the District..."

Consultant Initial: *BY* District initial:

13. Indemnification.

- 13.1. To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless the District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.
- 13.2. Consultant shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Consultant's obligation pursuant to this Article includes reimbursing the District for the cost of any settlement paid by the Indemnified Parties and for any and all fees and costs, including but not limited to legal fees and costs, expert witness fees, and consultant fees, incurred by the Indemnified Parties in the defense of any Claim(s) and to enforce the indemnity herein, subject to section 14.1 above. Consultant's obligation to indemnify shall not be restricted to insurance proceeds.
- 13.3. District may withhold any and all costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant from amounts owing to Consultant.

14. Insurance.

- 14.1. Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 1,000,000
Workers' Compensation	Statutory Limits
Employers' Liability	\$ 1,000,000

14.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

- 14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

- 14.2. **Proof of Insurance.** Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

- 14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 14.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District. An endorsement shall also state that there shall be a waiver of any subrogation.
- 14.2.4. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.
15. **Assignment.** The obligations of Consultant pursuant to this Agreement shall not be assigned by Consultant.
16. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Consultant observes that any of the Services required by this Agreement are at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District.
17. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
18. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
19. **Anti-Discrimination.** Consultant herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subcontractors. In addition, Consultant agrees to require like compliance by all of its subcontractor(s).
20. **Fingerprinting.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services. Although District has determined that fingerprinting is not applicable to this

Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:

- 20.1. All site visits shall be arranged through the District;
 - 20.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
 - 20.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
 - 20.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
 - 20.5. Consultant and Consultant's employees shall not use student restroom facilities; and
 - 20.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
21. **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.
22. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 22.1. Requesting that District employee(s) evaluate Consultant and Consultant's employees and subcontractors and each of their performance.
 - 22.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
23. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
24. **Confidentiality.** Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
25. **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 either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

District:

Oakland Unified School District
1000 Broadway Suite 300
Oakland, CA
Email: tadashi.nakadegawa@ousd.org
ATTN: Tadashi Nakadegawa

Consultant:

HEAFEY COMMERCIAL
33 York Dr.
Piedmont, CA 94611
Email: brendan@heafeycommercial.com
ATTN: Brendan Heafey

Any notice personally given or sent by facsimile transmission or electronic mail 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 mail shall be effective three (3) calendar days after deposit in the United States mail.

26. **Integration/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.
27. **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 the county in which the District's administrative offices are located.
28. **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.
29. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
30. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
31. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
32. **Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
33. **Tolling of District's Claims.** Consultant agrees to toll all statutes of limitations for District's assertion of claims against Consultant that arise out of, pertain to, or relate to contractors' or subcontractors' claims against District involving Consultant's services under this Agreement, until the contractors' or subcontractors' claims are finally resolved.
34. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its

legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

35. Calculation of Time. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

36. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

37. 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.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: July 13, 2020

Oakland Unified School District

By: _____

Print Name: Tadashi Nakadegawa

Print Title: Acting Deputy Chief of Facilities
Planning and Management

Dated: June 4th, 2020

Heafey Commercial

By: _____

Print Name: Brendan Heafey

Print Title: Principal

Approved as to form:

**Oakland Unified School District Office of
Legal Counsel**

By: Andrea Epps

Print Name: Andrea Epps

Print Title: Deputy General Counsel

Date: 8/5/20

Information regarding Consultant:

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires Consultant to furnish the information requested in this section.

Jody London
Jody London, President
Board of Education 8/13/2020

Kyla Johnson-Trammell
Kyla Johnson-Trammell,
Secretary, BOE

EXHIBIT "A"
DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT

Consultant's entire Proposal is attached and included by reference, is **not** made part of this Agreement.



OUSD RFQP #1920-01

5/13/20

1. Cover Letter

With regard to the Scope of Services listed in Oakland Unified School District's (The District) Request for Qualifications & Proposal (RFQP) for Asset Management and Real Property Services (RFQP #1920-01) and the listed Scope of Services labeled A – E, Heafey Commercial is well suited to provide the following services:

- A. Evaluate properties for reuse in accordance with Education Code requirements and Board policies
- B. Provide Property Valuation Services to assess the potential for revenue generation at each assigned site, or any other District Sites, considering various scenarios
- C. Assist the District in engaging parties potentially interested in District Properties

Heafey Commercial's working knowledge of the District's asset management plan, two decades of commercial real estate experience, and direct experience brokering deals for the District and other educational users in Oakland makes Heafey Commercial well suited for the assignment.

In March of 2011, under the leadership of Tony Smith and Tim White, I was hired as a partner in a real estate consulting partnership with James Falaschi to produce a real estate report to accompany OUSD's new District Master Plan. More specifically, the report included an analysis of the District's real estate portfolio related to current City of Oakland zoning and commercial development trends with a general discussion pertaining to the development potential of OUSD's real estate assets and their corresponding highest and best uses. The report was rolled up into a broader study by MK Think, which later formed the basis for the new District Master Plan. Throughout this seven-month assignment, I gained unique insight into the District's assets, its internal processes, and the public process required to ultimately put a plan into action. Items A and B of the RFQP Scope of Services are essentially an update of the aforementioned 2011 report with a focus / prioritization on reuse of District surplus properties to achieve the highest community benefit and revenue generation through long term leases.

In addition to analyzing the District's underutilized assets, Item C of the Scope of Services requires outreach to the Oakland business community to substantiate and ultimately consummate transaction(s) with viable users (tenants/buyers). As a licensed Real Estate Broker with over 18 years' experience in Oakland, I have worked with, and have access to, a variety of potential users / sources to establish a viable list of candidates for the District's surplus properties, including but not limited to private vocational schools, local developers, and the local real estate brokerage community (all product types). I envision the end user outreach taking place in multiple phases. The first phase of discussions with select users should be preliminary and somewhat private to generate general feedback related to user needs, budget, and timing. Data collected from this stage of the outreach can be factored into the report and ultimate recommendations for approval through the public process. Once approved, marketing materials can be created for distribution to the local community and beyond through direct outreach and online commercial real estate portals (Costar / Loopnet) nationwide. While a broad outreach is necessary to understand market demand, the end user of a leased or sold District asset will most likely be an Oakland entity. Heafey Commercial has the local expertise required to apply District criteria and processes to secure compatible and community supported uses for school properties that align with market valuations and District revenue expectations.

Brendan Heafey dba Heafey Commercial received a copy of the District's form of Independent Consultant Services Agreement attached as Appendix A to the RFQP. Heafey Commercial has

reviewed the indemnity provisions and professional liability insurance provisions contained in the Agreement. If given a contract with the District Heafey Commercial has no objections to the use of the Agreement. Furthermore, no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District. No official or employee of the firm has ever been convicted of an ethics violation. By virtue of submission of this Statement of Qualifications, Heafey Commercial declares that all information provided is true.

2. Business Information

Heafey Commercial
33 York Dr.
Piedmont CA 94611
brendan@heafeycommercial.com
510 625 1500 office
510 207 0196 cell

Federal Tax ID: 80-0938120
California Brokers License #01342351

Sole Practitioner

Heafey Commercial was established in 2006 as the brokerage arm to a real estate consulting firm named Vista Real Estate Partners, comprised of myself and former Jack London Square Development Partner James Falaschi. Over the course of approximately 6 years, Vista Real Estate Partners consulted with local institutions such as OUSD, Holy Names University, Children's Hospital, and Samuel Merritt University to address its real estate challenges related to growth and capacity. Shortly after Heafey Commercial's inception, it became clear that there was local demand for brokerage services beyond Vista Real Estate Partners' client list. Heafey Commercial began to develop its own book of business and has been brokering, consulting, project managing, and building relationships in Oakland ever since.

3. Project Approach and Relevant Qualifications

See Cover Letter and Resume

4. Relevant Project Experience and References

See Cover Letter and Resume

5. Project Team Summary

Brendan Heafey: Principal
Subcontractors provided upon request.

6. Litigation History

There have been no suits filed by Heafey Commercial nor any litigation, arbitration and negotiated/settled history with any previous clients.

7. Fee Proposal

Heafey Commercial proposes an hourly rate of \$130 per hour for real estate consulting and outreach services. In the event a lease or sale is consummated on behalf of the District and the commission for the transaction (per the Listing Agreement) exceeds the hourly compensation paid to the date the commission is earned, the commission due to Heafey Commercial will be reduced by that hourly compensation. In the event the hourly compensation at the time the commission is earned exceeds the commission specified in the Listing Agreement, no commission will be owed to Heafey Commercial. Prior to formally listing a property for sale or lease, the District and Heafey Commercial will enter into a Listing Agreement (form attached) with specified terms and commission structures, including but not limited to commissions to cooperating brokers (owners and/or tenant representatives).

8. Form of Agreement

The form of the Independent Consultant Agreement for Special Services Asset Management and Real Property Services is acceptable as detailed in Attachment A of the RFQP.

9. Appendix

Exhibit A: Brendan Heafey's Resume

Exhibit B: Form Listing Agreement

Exhibit A

Brendan Heafey

Experience

Principal

Heafey Commercial, Oakland CA: March 2006 – January 2016, March 2018 - present

- Full Service Commercial Real Estate Brokerage and Consulting Services, partial client list includes:
 - Oakland Unified School District
 - Rogers Family Foundation
 - Children's Hospital and Research Center Oakland
 - Vincent Academy Charter School
 - Jobs and Housing Association
 - Ruegg & Ellsworth (Entitlement services)

Vice President

Transwestern, Oakland CA: January 2016 – March 2018

- Full Service Commercial Real Estate Brokerage
 - Opened Oakland office in former office of Heafey Commercial

Partner, Managing Member

Vista Real Estate Partners LLC., Oakland CA: July 2006 – June 2016

- Commercial Real Estate Consulting Partnership with Jim Falaschi. Relevant client experience:
 - Samuel Merritt College: analysis and outreach to (1) facilitate a student housing solution to replace Bechtel Hall and (2) open new school of pharmacy
 - Children's Hospital & Research Center Oakland with its growth strategy (7/1/06 – 11/3/07) including a multi-county property identification process for a 200-bed tertiary care facility, and new outpatient clinics

Director of Marketing and Property Development

Rue Ell Enterprises Inc., Berkeley CA: February 2002 to March 2006

- Managed leasing for 500,000 square foot Bay Area retail portfolio
- Secured entitlement for 44-unit mixed-use building one block from the Main Gate of the UC Berkeley Campus with plan to relocate the existing historic building

Licensing & Education

State of California Department of Real Estate Broker's License

ID #01342351, April 2005

Salesperson's License June 2002

Master of Business Administration

Santa Clara University, Leavey School of Business and Administration, 1999-2001

Bachelor of Arts, English

Boston College, 1991-1995

Historic Property Work

- Kingfish Pub: Secured land to relocate / save historic pub in Oakland's Temescal District
- Berkeley House Moves: Permitting and Project Coordination
 - August 16, 2014: 2526 Durant Ave to 2510 Regent St.,
 - July 7, 2017: 2121 Durant Ave. to 1940 Haste St.,
 - July 19, 2020 (scheduled): 2028 Bancroft Ave. to 1940 Haste St.

Exhibit B



EXCLUSIVE SALE AND LEASE LISTING AGREEMENT
Oakland Unified School District
5/13/20

THIS EXCLUSIVE LEASE LISTING AGREEMENT (the "Agreement") by and between **Oakland Unified School District** or its Assignee ("Owner") and **Heafey Commercial** ("Broker") is effective upon execution of this Agreement (the "Effective Date").

RECITALS

A. Owner owns that certain real property (the "Property") identified in Exhibit A consisting of an individual facility known as _____ located at _____ in the City of Oakland California. Any reference to the Property in this Agreement shall also be construed to include a reference to a portion or portions of the Property.

B. Broker is duly licensed as a real estate broker in the State of California in which the Property is located.

C. Owner desires to retain Broker's services in connection with the leasing or Sale of the Property and Broker desires to accept such appointment subject to and in accordance with the terms and conditions of this Agreement.

TERMS

In consideration of the mutual promises herein contained, the parties agree as follows:

1. Owner hereby grants to Broker the exclusive right to lease the property to prospective tenants. The term of Broker's exclusive right to lease the Property (the "Term") shall begin on the Effective Date and shall expire one (1) year. After the one (1) year period, this agreement shall remain in place on a month-to-month basis until terminated in writing by either Owner or Broker.

2. Broker shall use its best efforts to lease the Property. Such efforts shall include marketing the Property for lease or sale to potential Lessees or Buyers (the "Prospects"), and presenting these proposals promptly to Owner and/or Owner's designee for consideration.

3. Owner agrees to cooperate with Broker in effecting a lease or sale of the Property. Owner shall inform Broker of the identities of any prospective tenants with whom Owner chooses to conduct direct negotiations.

It is understood that it is illegal for either Owner or Broker to refuse to present, sell or lease real property to any person because of race, color, religion, national origin, sex, marital status, age or physical disability.

4. Commission Schedule and Payment:

- a. Sale of Property: Owner shall pay to Broker a sales commission in an amount equal to ____ percent (____%) of the gross sales price if a contract for the sale, exchange, transfer or conveyance of the property or any interest therein is entered into during the Listing Period between the owner of the Property and any prospect to whom Broker has submitted the Property or with whom Broker has negotiated in the performance of Broker's responsibilities.
- b. Lease of Property: Except as otherwise provided in this Agreement, Owner hereby agrees to pay Broker for its services hereunder a commission for any lease entered into by Owner and a prospective tenant respecting the Property during the term of this Agreement for new Tenants only and not for any existing and/or future Tenant renewals or expansions. The commission shall be calculated according to the following terms and conditions as follows:

GROSS LEASE

6% of the rent for the first 12 months
6% of the rent for the second 12 months
6% of the rent for the third 12 months
4% of the rent for the fourth 12 months
4% of the rent for the fifth 12 months
3% of the rent for the next 60 months
2% of the rent for the balance of the term

NET LEASE

7% of the rent for the first 12 months
7% of the rent for the second 12 months
6% of the rent for the third 12 months
5% of the rent for the fourth 12 months
5% of the rent for the fifth 12 months
4% of the rent for the next 60 months
3% of the rent for the balance of the term

5. Broker shall implement a marketing campaign that shall include the activities set forth below. The campaign shall be implemented and its expenses paid for as follows:

- a. Broker shall pay the cost of designing and placing leasing signs on the Property, with Owner's prior written approval of design and location.
- b. Broker shall pay for the designing and placement of direct mail or email solicitation at a cost which is reasonable for a Property of this type.
- c. Broker shall contact likely users for the Property.

All advertising, publicity, promotional materials and activities, signs and brochures shall be subject to the prior written approval of Owner as to form, scope, substance and placement.

6. Broker agrees that in the event a prospective tenant is procured by another Broker, and such prospective tenant consummates a lease transaction with Owner for which commission is payable to Broker in accordance with this Agreement, then in such event, Broker shall cooperate with such other real estate Broker and Owner shall pay such other real estate Broker a commission. Such Commission with outside Broker shall be a percentage of the Commission paid to Broker according to the Commission Schedule listed in Paragraph 4 for a lease and Paragraph 24 for a sale.

7. Prior to the expiration of the Term, Owner may terminate the Term upon thirty (30) days prior written notice to Broker for reasons of Broker's noncompliance with the performance goals set forth on Exhibit B attached hereto and hereby made a part hereof; provided, however, that any such notice by Owner must state the exact nature of the noncompliance and provide Broker ten (10) days to cure any specified noncompliance to Owner's reasonable satisfaction. If Broker does cure such noncompliance within the ten (10) day period, then the Term shall continue as specified herein. If Broker

does not cure any such noncompliance within the ten (10) day period the Term shall terminate thirty (30) days from the date of such notice. After expiration of the Term either party may terminate this Agreement upon thirty (30) days prior written notice to the other.

8. Owner agrees to pay Broker a commission if within **thirty (30)** days following expiration or earlier termination of the Term, the Property is leased to a Prospective Tenant as defined within paragraph 18. In the event an outside or procuring broker is involved, Owner shall be subject to the same terms and conditions set forth in this Agreement.

9. Upon the expiration or sooner termination of this Agreement, Owner and Broker shall continue to be liable for any obligations that arose prior to the date of termination, and Broker shall promptly deliver to owner copies of all of Broker's records pertaining to transactions in progress with respect to the leasing or sale of the Property.

10. Broker and Owner contemplates that each may be involved in leasing, selling and/or dealing with prospects and wish to indemnify each other against claims or losses arising out of their respective acts or omissions. Accordingly, Owner and Broker each agree to reciprocally indemnify and hold the other harmless from and against any and all actions, causes of action, claims, damages, losses or liabilities asserted by any third party which arise solely out of any gross negligent or wrongful acts or omissions by it or its agents or employees.

The indemnifications made or given herein, together with any cause of action, rights and remedies which either party may have as a result of the other party's breach thereof, shall survive any expiration or termination of this Agreement. In the event the indemnitor acknowledges in writing that it must, in accordance with the provisions of this Paragraph 10, indemnify the indemnitee with respect to any particular claim, action, cause of action, damages, loss or liability, the indemnitor will have the right to select and retain legal counsel reasonably satisfactory to indemnitee for the purpose of maintaining a joint defense, and indemnitor will have the right to settle or defend against any such claim, and indemnitee will cooperate in such defense.

11. All information known to Broker regarding base rates, and condition of the Property or portion thereof shall be considered strictly confidential and shall not be released to other brokers, appraisers, lenders, developers, or any other persons. In addition, Owner promises not to disclose the terms of this listing agreement to other brokers, appraisers, lenders, developers or any other persons, with the exception of the cooperating broker commission schedule.

12. Broker shall give Owner or Owner's designee reasonable advance notice of all property showings and shall otherwise use its best efforts to involve Owner's representatives in all meetings and negotiations regarding this agreement and the Property. Broker shall not release any proposals, or promotional materials without the prior written approval of Owner. Owner shall be responsible to generate all leases used in leasing the Property.

13. Owner reserves the absolute right to reject any lease or sale proposal in its sole discretion. In such event no commission or other compensation shall be payable to Broker with respect to such lease or sale and Broker shall make no claim therefore.

14. In the event that any time during the term of this Agreement either Owner or Broker shall institute any action or proceeding against the other relating to the provisions of this Agreement, or

any default hereunder, then the prevailing party in such suit or action, at trial or on appeal, shall be entitled to actual attorneys' fees in addition to costs and reasonable disbursements.

15. The waiver by either party of any breach or violation of, or default under, any provisions of this Agreement shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default hereunder.

16. Time is of the essence with respect to each and every provision of this Agreement.

17. Owner shall be given access at any time to all of Broker's records, including books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Property and this Agreement (collectively, "Records"), and Broker shall preserve all the Records for a period of one (1) year, or for such longer period as may be required by law, after the termination or expiration of this Agreement. Following the expiration of such one (1) year period, Broker shall permit Owner to receive the Records, in lieu of Broker's destruction or disposition thereof, whereupon they shall be maintained at Owner's sole cost.

18. In the event of a Termination by Broker (but not in the event of a Termination for Cause except with respect to any commissions due Cooperating Brokers) Owner shall be liable for any commission, calculated in accordance with Paragraph 4, resulting from a lease executed by Owner and a prospective tenant within ninety (90) days from the termination or expiration of this Agreement. For the purposes of this Paragraph, a Prospective Tenant is any person or entity who has expressed written interest in the property to Broker and which Broker has forwarded in writing to Owner within thirty (30) days following the expiration or termination of this Agreement.

19. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted assignees, successors, and representatives. Broker shall not assign any interest of Broker under this Agreement without the prior written consent of Owner which may be given or withheld in Owner's sole discretion.

20. Nothing contained in this Agreement shall be construed as to require the commission of any act contrary to law, and in the event that there is any conflict between any provisions of this Agreement and any present or future statute, law ordinance or regulation contrary to which the parties have a legal right to contract, the latter shall prevail, but in such event the affected provisions of this Agreement shall be curtailed and limited only to the extent necessary to bring same within the requirement of the law. Broker shall comply with all requirements or law respecting the subject matter of this Agreement including, without limitation, laws which prohibit discrimination in the sale or rental of real property or which require the obtaining of licenses or permits by Broker's agents and employees. This Agreement is made under and shall be governed by and construed in accordance with the laws of the state in which the Property is located.

21. Broker shall at all times act as an independent contractor hereunder, it being understood and agreed between the parties that no agency (other than as may be expressly provided herein), joint venture, partnership or other relationship is intended and no such arrangement shall be created between Owner and Broker with respect to the Property. Broker shall have no authority to act as a principal or developer or to act on behalf of Owner with respect to this Property except as expressly herein set forth. Broker acknowledges a fiduciary relationship of trust and confidence between it and Owner, and Broker



agrees to perform its services hereunder in a diligent, efficient, and skillful manner commensurate with the highest standards of its profession.

22. All agreements made herein are made expressly for the benefit of the parties to this Agreement and no rights hereunder shall accrue to the benefit of any person not a party hereto, including, without limitation, any real estate broker who may be deemed to be a Cooperating Broker within the context of this Agreement.

23. The obligations of Owner under this Agreement are not personal obligations of the individual partners, directors, shareholders and officers of Owner and Broker shall look solely to the Property for satisfaction of any liability and shall not look to the assets of Owner or seek recourse against the assets of the individual partners, directors, officers, and shareholders of Owner.

24. Owner hereby authorizes Broker to represent and serve as agent for any purchaser or tenant, or prospective purchaser or tenant, of the Property or of any interest therein, and Owner hereby waives any conflict of interests which might arise as a result thereof.

Any notice provided for in this Agreement shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid to the following address:

IF TO OWNER:

OUSD
Attn:
Address
City, State and zip

IF TO BROKER:

Heafey Commercial
Attn: Brendan Heafey
33 York Dr.
Piedmont, CA 94611

IN WITNESS HEREOF, the parties have executed this Agreement as of the date set forth below.

OWNER:

Oakland Unified School District

BY: _____

ITS: _____

DATE: _____

BROKER:

Heafey Commercial
CA License #01342351

BY: _____

Brendan Heafey

ITS: Principal

DATE: _____

EXHIBIT "A"

EXCLUSIVE LISTING AGREEMENT

PROPERTY

A. _____ in the City of Oakland, County of Alameda, State of California and further described as

EXHIBIT "B"

EXCLUSIVE LISTING AGREEMENT

PERFORMANCE GOALS

- A. Marketing Meetings. The marketing team shall meet with the Owner, and/or Owner's designee, on a weekly basis to review the status of on-going negotiations, the progress towards attainment of the marketing goals, and such other matters as may be appropriate.
- B. Reports. At each marketing meeting, Broker shall prepare a typed report listing:
1. Prospect names, addresses, phone numbers and decision maker's name.
 2. Entry date as prospect and name of marketing team member responsible for tracking.
 3. Descriptions of activity (i.e. lease out for signature, counter-proposal under review, etc.).
 4. Percentage probability of closing.
 5. Procuring broker name, company and phone number.
 6. Type of use (i.e. Title company, paper distribution, etc.)
 7. Current lease term expiration, if applicable.
 8. Square feet needed.
 9. Lease rate (including concessions and improvements).
 10. Next Action (i.e. Provide contract, sign letter of intent.).
- C. Pricing. The approved pricing for the Property is as follows:

Lease Rates:

The initial lease rate the Building will be marketed at shall be \$_____ per square foot per month. All other terms and conditions of the lease(s) shall be subject to Owner's approval

Sale Price:

The initial sale price for the Building shall be \$_____. All other terms and conditions of the Purchase and Sale Agreement shall be subject to Owner's approval



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/28/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MOC Insurance Services License No. 0589960 101 Montgomery St., Suite 800 San Francisco CA 94104	CONTACT NAME: Halidee Callejas PHONE (A/C, No, Ext): (415)957-0600 E-MAIL ADDRESS: hcallejas@mocins.com FAX (A/C, No): (415)957-0577
INSURED Brendan Heafey DBA: Heafey Commercial 33 York Drive Piedmont CA 94611	INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Insurance Company INSURER B: Underwriters at Lloyd's, London INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER: 2020-2021****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X		57SBABM8966	7/27/2020	7/27/2021	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Professional Liability Retention: \$5,000			MPL4536981	7/27/2020	7/27/2021	Aggregate Limit \$1,000,000 Each Claim \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The District, and its Governing Board, Agents, Representatives, Employees, Trustees, Officers, Consultants, and Volunteers are named as Additional Insured as respects their interests may appear per written contract. 30 day notice of cancellation/10 day for non-payment of premium

CERTIFICATE HOLDER**CANCELLATION**

Oakland Unified School District 1000 Broadway St Suite 300 Oakland, CA 94607	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Halidee Callejas/HCA <i>Halidee Callejas</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)

The District, and its Governing Boards, Agents, Representatives, Employees, Trustees, Officers, Consultants, and Volunteers

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A.** In the performance of your ongoing operations; or
- B.** In connection with your premises owned by or rented to you.



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning & Management Project	Site	918
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Basic Directions

Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.

Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	Heafey Commercial	Agency's Contact		Brendan Heafey				
OUSD Vendor ID #		Title		Principal				
Street Address	33 York Dr.	City	Piedmont	State	CA	Zip	94611	
Telephone	510-625-1500	Policy Expires						
Contractor History	Previously been an OUSD contractor? X Yes <input type="checkbox"/> No			Worked as an OUSD employee? <input type="checkbox"/> Yes X No				
OUSD Project #	00918							

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	6-25-2020	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	12-31-2020
		New Date of Contract End (If Any)	

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$7,500.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information

If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Funding Source	Org Key	Object Code	Amount
9000/0000	Fund 40	400-0000-0-9000-8500-6289-918-9180-9000-9999-99999	6289	\$7,500.00

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.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Acting Director, Facilities Planning & Management				
	Signature	for Kenya Chatman		Date Approved	7/15/20
2.	General Counsel, Department of Facilities Planning and Management				
	Signature	Andrea Epps		Date Approved	July 14, 2020
	Interim Deputy Chief, Facilities Planning & Management				
3.	Signature			Date Approved	7/15/20
	Chief Financial Officer				
4.	Signature			Date Approved	
	President, Board of Education				
5.	Signature			Date Approved	