Board Office Use: **Legislative File Info.**	
File ID Number	21-0921
Introduction Date	5/12/2021
Enactment Number	21-0767
Enactment Date	5/12/2021 er

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To	Board of Education
From	Kyla Johnson-Trammell, Superintendent Tadashi Nakadegawa, Acting Deputy Chief of Facilities Planning and Management
Board Meeting Date	May 12, 2021
Subject	**Ratification of the Professional Services Agreement with the Golden State Warriors Community Foundation, Rakuten Inc., and Good Tidings Foundation for the basketball court refurbishment project at McClymonds High School of 2607 Myrtle Street, Oakland, CA 94607.**
Action Requested	Ratification by the Board of Education of a Professional Services Agreement 2020-2021 between the District and the Golden State Warriors Community Foundation, Rakuten Inc., and Good Tidings Foundation for the basketball court refurbishment project at McClymonds High School located at 2607 Myrtle Street, Oakland, CA 94607.
Background and Discussion	The Golden State Warriors Community Foundation ("GSW") approached the District regarding donating a redesigned and refurbished basketball court with GSW logos to the McClymonds community. The Board is being asked to ratify a Professional Services Agreement with GSW, Rakuten Inc., and Good Tidings Foundation for a basketball court refurbishment project at McClymonds High School ("Project"). GSW, Rakuten Inc., and Good Tidings Foundation partnered with the District to transform the basketball court at McClymonds High School. GSW, Rakuten Inc., and Good Tidings Foundation will: Design a refurbished basketball court with certain Golden State Warriors logos; Paint walls in color requested by Golden State Warriors; Sand the basketball court; Paint the basketball court with design logos and play lines; Apply five coats of sealer to the basketball court surface; agree to work with the District to provide annual maintenance for the refurbished basketball court; Design a new font and design for wordmarks for the surrounding walls. Upon completion of the Project, GSW may plan and promote a public unveiling of the refurbished Court.

GSW, Rakuten Inc., and Good Tidings Foundation will act as independent contractors and agree to manage the overall execution of the Project.

Recommendation

Ratification by the Board of Education of a Professional Services Agreement 2020-2021 between the District and the Golden State Warriors Community Foundation, Rakuten Inc., and Good Tidings Foundation for the basketball court refurbishment project at McClymonds High School located at 2607 Myrtle Street, Oakland, CA 94607.

Fiscal Impact

No cost to the District.

Attachment

- Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS **PROFESSIONAL SERVICES AGREEMENT** (this "**Agreement**") is made and entered into as of March 31, 2021 by and among **GOLDEN STATE WARRIORS COMMUNITY FOUNDATION**, hereinafter referred to as "**GSW**", RAKUTEN, INC. , hereinafter referred to as "Sponsor" (solely with respect to those provisions set forth above Sponsor's signature hereto), **GOOD TIDINGS FOUNDATION**, hereinafter referred to as **"Good Tidings**" or "Consultant" and **OAKLAND UNIFIED SCHOOL DISTRICT**, hereinafter referred to as **"OUSD,"** (GSW, Sponsor, Good Tidings and OUSD are collectively referred herein to as the "**Parties**" or individually referred to herein as a "**Party**").

RECITALS

A. WHEREAS, Oakland Unified School District intends to provide a location at McClymonds High School for a basketball court refurbishment project (the "**Project**").

B. WHEREAS, Good Tidings is capable of providing, or providing certain construction services for the Project.

C. WHEREAS, GSW desires Good Tidings to, and Good Tidings desires to, complete, or cause to be completed those certain tasks for the Project described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, covenants and promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. TERM OF AGREEMENT/ENTIRE AGREEMENT

The term of this Agreement (the "**Term**") shall commence on the date hereof and shall, unless sooner terminated in accordance with the terms and conditions set forth herein, terminate on that date on which all of the Services to be provided by Good Tidings for the Project, as described in Exhibit A hereunder have been completed to the satisfaction of GSW and OUSD, and all periods of warranty hereunder, if any, have expired.

This Agreement represents the entire agreement among the Parties and supersedes all prior negotiations, representations and/or agreements relating to the subject matter hereof. This Agreement may be amended only by a written instrument signed by each Party, and shall not otherwise be superseded by any other documents relating to completion of the Services.

2. SCOPE OF SERVICES

Each Party is responsible for providing the applicable services described in Exhibit A attached hereto (the "**Services**"). All Services to be provided hereunder shall be performed to the highest professional standards, consistent with other professionals similarly situated who are providing services to first class projects of a similar complexity.

Parties agree that the GSW Marketing Team will design a new font for the "Warriors" and "Mack House" wordmarks for the surrounding walls of the court at McClymonds High School. The GSW Marketing Team will attempt to include "The School of Champions" wordmark in the design. Parties agree to work in good faith to agree upon the three wordmarks for the walls of the court at McClymonds High School. Any agreement between the Parties for the additional wordmarks shall be included in an addendum to this Agreement.

3. REPRESENTATIVES

Each Party shall designate a project manager who will be responsible to manage and direct such party's performance of its Services and to whom instructions and notices to such party shall be directed, which project manager shall have the authority to act on behalf of the respective party in all matters concerning the Services to be provided by such party hereunder. The Parties hereby acknowledge and agree that their respective representatives are as follows:

GSW: Evan Schwartz
Telephone No.: 415-604-1892
Email: eschwartz@warriors.com

Good Tidings: Larry Harper
Telephone No.: 415-385-3786
Email: _____

OUSD: Tadashi Nakadegawa
Telephone No.: 510-535-7038
Email:tadashi.nakadegawa@ousd.org

OUSD: Office of the General Counsel
Telephone No.: 510-879-8535
Email: ousdlegal@ousd.org

4. NOTICES

Unless otherwise specifically provided herein, all notices, consents, approvals, requests and other communications required or permitted hereunder ("Notices") shall be given in writing by (a) hand; (b) Federal Express or other nationally recognized overnight courier, fee prepaid; or (c) first-class certified or registered mail, return receipt requested, postage prepaid, in all cases addressed as follows:

If to GSW:

Golden State Warriors Community Foundation
1 Warriors Way
San Francisco, California 94158
ATTN: Evan Schwartz

With a copy to:

Golden State Warriors Community Foundation
1 Warriors Way
San Francisco, California 94158
ATTN: Chief Legal Officer

If to Good Tidings: Good Tidings Foundation
1469 Rollins Road
Burlingame, CA 94010
ATTN: Larry Harper

If to OUSD: Oakland Unified School District
1000 Broadway, Suite 300
Oakland, California 94607
ATTN: Office of the General Counsel

With a copy to:

Oakland Unified School District
955 High Street
Oakland, California 94601
ATTN: Deputy Chief of Facilities

Notices shall be deemed given upon actual receipt (or when delivery is refused). Changes of address for Notices shall be in compliance with this Section.

5. INSURANCE

Good Tidings shall carry and maintain the following insurance throughout the term of this agreement:

Workers' Compensation	Statutory Benefits
Employers' Liability	Bodily Injury by accident: $1,000,000 each accident Bodily Injury by disease: $1,000,000 policy limit Bodily Injury by disease: $1,000,000 each employee
Commercial General Liability	Each Occurrence Limit: $1,000,000 General Aggregate Limit: $2,000,000
Commercial Automobile Liability	$1,000,000 combined single limit, each accident

The foregoing policies must include an additional insured endorsement naming as additional insured: GSW, GSW Sports LLC, Golden State Warriors, LLC including their respective subsidiaries, members, managers, affiliates, employees, agents, successors and assigns; Rakuten, Inc. and each of its members, managers, equity holders, officers, directors, parents, subsidiaries, partners, agents, employees, successors and assigns; and OUSD and each of its members, managers, equity holders, officers, directors, parents, subsidiaries, partners, agents, employees, successors and assigns.

6. INDEMNITY

To the fullest extent permitted by law, Good Tidings shall indemnify, defend, protect, and hold harmless, OUSD, GSW, GSW Sports LLC, Golden State Warriors, LLC, Rakuten, Inc. and their respective affiliates, owners, lenders, subsidiaries, members, managers, employees, agents, partners, successors and assigns (the "**Indemnified Parties**"), from and against any and all claims, demands,

damages, losses, lawsuits and other proceedings, judgments, causes of action, liabilities, claims of lien, liens, civil or criminal penalties and charges, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of defense) (collectively, "**Liabilities**") incurred by any Indemnified Party, arising out of or in any way caused by (or alleged to be caused by), in whole or in part; (i) actual or alleged negligent, reckless, intentional or wrongful actions or omissions by Good Tidings, or its employees, representatives, affiliates, subcontractors, or agents; (ii) actual or alleged breaches by Good Tidings, or its employees, representatives, affiliates, subcontractors or agents of any warranty, representation, covenant or agreement made under this Agreement; provided that Good Tidings shall not be obligated to indemnify any party for Liabilities to the extent they arise from the gross negligence or willful misconduct of the Indemnified Parties.

With respect to any obligation to defend contained herein, in any proceeding, including any action, arbitration, litigation or claim (including any governmental investigation), brought against an Indemnified Party in respect of which indemnity may be sought as set forth in this Section 6, an Indemnified Party shall notify Good Tidings in writing and Good Tidings, upon request of an Indemnified Party, shall immediately assume the defense thereof on behalf of such Indemnified Party, including the employment of counsel reasonably acceptable to the Indemnified Party and payment of all legal fees and expenses; provided that an Indemnified Party's failure to give prompt notice shall not relieve Good Tidings of its indemnification obligations except to the extent that it is actually prejudiced as a result of such failure.

Good Tidings' indemnity obligations shall not exceed its limits of liability under Section 5 of this Agreement.

7. WARRANTIES/REPRESENTATIONS

Each Party warrants and represents that the Services shall be completed to the best of its ability, and shall be performed and completed in compliance with all applicable laws, rules, ordinances and regulations. Each Party represents and warrants to the other parties that it is authorized to do business in the state, county and municipality where Services are to be rendered and is properly licensed, including, but not limited to, licenses by all necessary governmental and public and quasi-public authorities having jurisdiction over the Services. The person signing this Agreement on behalf of each Party affirms that he or she is authorized to execute on such party's behalf.

8. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGBILITY AND VOLUNTARY EXCLUSION

Through its execution of this Agreement, each Party certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (https://www.sam.gov/).

9. OWNERSHIP OF INTELLECTUAL PROPERTY

9.1. GSW Materials

Any materials, information or other content (including, without limitation, corporate or trade names, trademarks, service marks, designs, logos or other identification marks of the GSW or its affiliate) furnished to Consultant by GSW shall remain at all times the exclusive property of GSW ("**GSW Materials**"). GSW hereby grants to Consultant a non-exclusive, royalty-free, non-transferable, limited right to use such GSW Materials solely during the Term to perform the contracted Services pursuant to

this Agreement. Consultant shall have no rights whatsoever to utilize the corporate or trade names, trademarks, service marks, designs, logos or other identification marks of the GSW or its affiliates.

9.2. Sponsor Materials

Any materials, information or other content (including, without limitation, corporate or trade names, trademarks, service marks, designs, logos or other identification marks of Sponsor) furnished to Consultant by GSW or Sponsor shall remain at all times the exclusive property of Sponsor ("**Sponsor Materials**"). Sponsor hereby grants to Consultant a non-exclusive, royalty-free, non-transferable, limited right to use such Sponsor Materials solely during the Term to perform the contracted Services pursuant to this Agreement. Consultant shall have no rights whatsoever to utilize the corporate or trade names, trademarks, service marks, designs, logos or other identification marks of the Sponsor or its affiliates.

9.3 OUSD's Rights to Use Mark

Good Tidings, GSW and Sponsor each hereby grant to OUSD a non-exclusive, revocable, royalty-free, non-transferable, limited right to use their corporate or trade names, trademarks, service marks, designs, logo or other identification marks on the Court (as defined on Exhibit A attached hereto) solely as depicted on Schedule 1 to Exhibit A of this Agreement; provided that OUSD does not alter or modify the identifying marks of Good Tiding, GSW or Sponsor without such Party's written consent.

10. MAINTENANCE

Parties agree to work collaboratively to ensure proper annual maintenance of the Project. Parties agree that in the event of substantial damage to the Project, designs, logo, or other identification marks on the Court (as defined on Exhibit A attached hereto) that OUSD shall notify GSW, Sponsor, and Good Tidings of the damage and provide GSW, Sponsor, and Good Tidings with an opportunity to repair or restore the Project.

11. MISCELLANEOUS TERMS

11.1. Relationship of Parties

In performing Services pursuant to this Agreement, each Party shall act in the capacity of an independent contractor with respect to each other party and not as an employee thereof. As an independent contractor, each Party agrees that (a) it shall not be entitled to participate in any benefit plans of any other party, even if it is later determined that it has or had the status of an employee of any other party during the Term; (b) it shall not be entitled to unemployment compensation benefits in the event that this Agreement terminates for any reason and shall not be entitled to workers' compensation benefits in the event it is injured in any manner while performing the services or obligations hereunder, even if it is later determined that it has or had the status of an employee of any other party during the Term; and (c) it shall not have any right or authority to assume or create any obligations on behalf of any other party or to make any representations on its behalf. As an independent contractor, it acknowledges that any other party will determine the goals to be attained and the results to be achieved by any other party.

11.2. Assignment/Heirs and Assigns

No Party shall have the right to assign or transfer this Agreement without the prior written consent of the other Parties. This Agreement shall be binding upon the Parties hereto, their heirs, successors, permitted assigns and personal representatives, and references to a party shall include its heirs, successors, assigns and personal representatives.

11.3. Attorneys' Fees

In the event that any party to this Agreement commences litigation to enforce the terms of this Agreement, the prevailing Party in such litigation will be entitled to recover its costs and fees incurred in such action, including reasonable attorneys' fees.

11.4. Severability; Governing Law

If any provision of this Agreement is held to be invalid or unenforceable, such holding shall not affect or impair the validity or enforceability of the other provisions hereof which can be given effect without the invalid or unenforceable provision, and the Parties shall promptly in good faith amend this Agreement to include a valid and enforceable provision which accomplishes the legal and economic purposes of the provision so held to be invalid or unenforceable. The validity of this Agreement and of any of its terms, as well as the rights and duties of the parties under this agreement, shall be governed by the laws of the State of California.

[Signature page follows]

The Parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, as of the day and year first written above.

GSW:

Golden State Warriors Community Foundation

By: _____

Name: Nicole Lacob

Title: President of the Board

Good Tidings:

Good Tidings Foundation

By: _____

Name: _____

Title: _____

OUSD:

Oakland Unified School District

By: _____

Name: Tadashi Nakadegawa

Title: Deputy Chief of Facilities Planning & Management

By: _____

Name: Dr. Kyla Johnson-Trammell

Title: Superintendent

By: _____

Name: Shanthi Gonzales

Title: President of the Board of Education

Approved as to form for OUSD

By: Andrea Epps 3/29/21

Name: Andrea Epps

Title: Deputy General Counsel

Sponsor:

Rakuten, Inc. (solely in connection with Section 9.2 and 9.3)

By: Amit Patel
Amit Patel (Apr 5, 2021 11:48 PDT)

Name: Amit Patel

Title: CEO, Rakuten Americas

The Parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, as of the day and year first written above.

GSW:

Golden State Warriors Community Foundation

By: _____

Name: _____

Title: _____

Good Tidings:

Good Tidings Foundation

By: _____

Name: LARRY HARPER

Title: 3/29/21

OUSD:

Oakland Unified School District

By: _____

Name: Tadashi Nakadegawa

Title: Deputy Chief of Facilities Planning & Management

By: _____

Name: Dr. Kyla Johnson-Trammell

Title: Superintendent

By: _____

Name: Shanthi Gonzales

Title: President of the Board of Education

Approved as to form for OUSD

By: _____

Name: Andrea Epps

Title: Deputy General Counsel

Sponsor:

Rakuten, Inc. (solely in connection with Section 9.2 and 9.3)

By: _____

Name: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

OUSD shall make available to Good Tidings for refurbishment as depicted on Schedule 1 to this Exhibit A (as modified by GSW) and to GSW for the Event, a court at McClymonds High School which is located at 2607 Myrtle St, Oakland, CA 94607 (the "Court").

Good Tidings shall provide, install and construct at the Court as directed by GSW and agreed upon by OUSD, which shall consist of the following services:

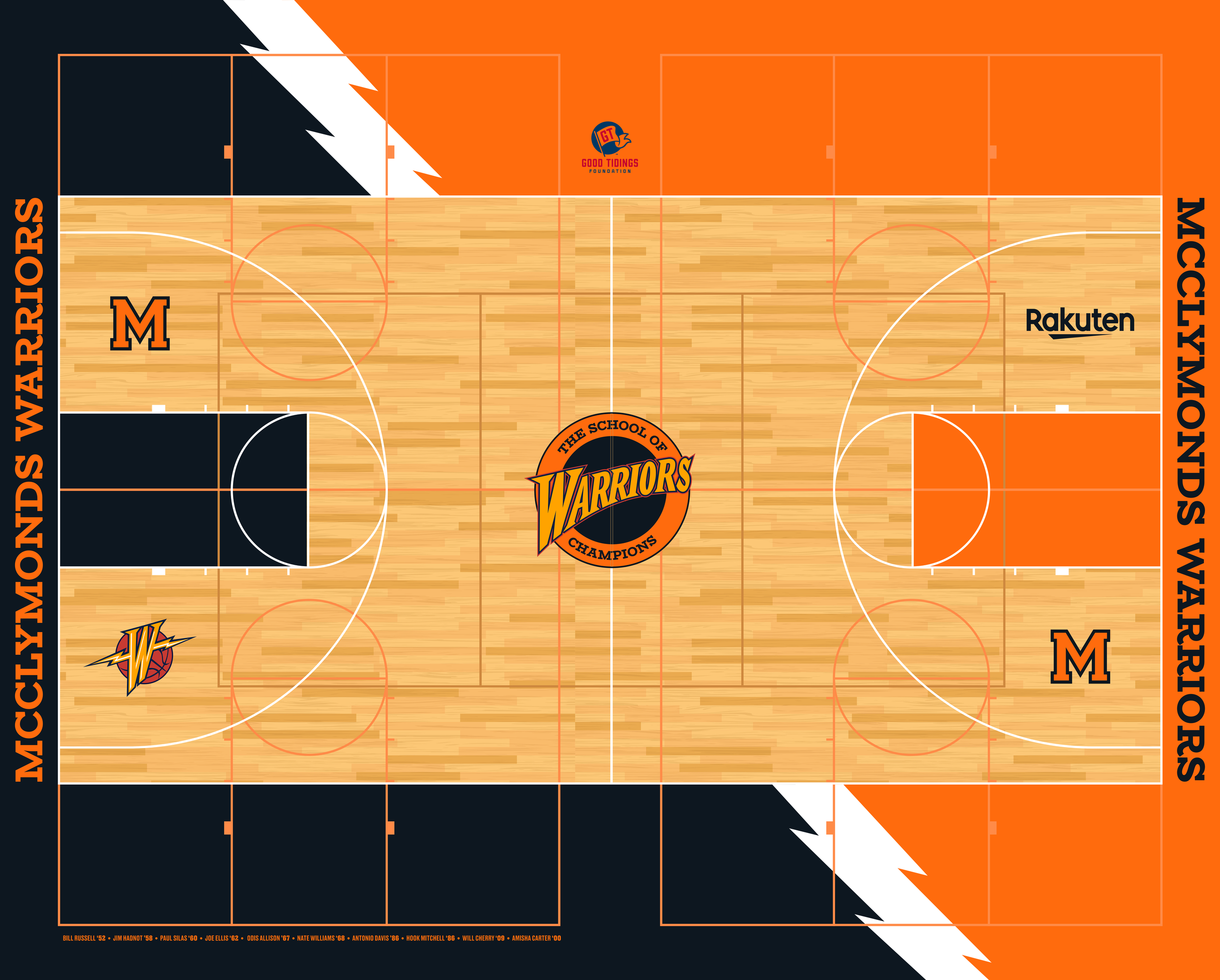
- Engage contractor as necessary to complete the Court refurbishment;
- Paint walls in color requested by GSW to the height of the current configuration;
- Sand approximately 10,000 square foot floor down to original surface;
- Paint Court with design logos, and play lines as requested by GSW: and
- Apply five coats of sealer to Court surface.

GSW may plan and promote a public unveiling of the refurbished Court to occur on a date to be determined by GSW (the "Event") and agreed upon by OUSD. In connection with the Event, GSW will provide representatives to speak at such Event, which may include executive team members, Warriors community ambassadors, and/or current Warriors players, in each case as determined by GSW and subject to availability. Such appearances shall be (a) subject to GSW's standard appearance terms and conditions; and (b) for a maximum of sixty (60) minutes in length. OUSD Superintendent, or her designees, may attend the Event.

GSW shall pay Good Tidings for its services related to the Project an amount currently estimated at $59,500 on or before April 30, 2021. Any additional expenses must be approved by GSW in writing.

SCHEDULE 1 TO EXHIBIT A

DEPICTION OF REFURBISHMENT


MCCLYMONDS WARRIORS
GOOD TIDINGS FOUNDATION
Rakuten
THE SCHOOL OF WARRIORS CHAMPIONS
MCCLYMONDS WARRIORS
BILL RUSSELL '52 • JIM HADNOT '58 • PAUL SILAS '60 • JOE ELLIS '62 • ODIS ALLISON '67 • NATE WILLIAMS '68 • ANTONIO DAVIS '86 • HOOK MITCHELL '86 • WILL CHERRY '09 • AMISHA CARTER '00

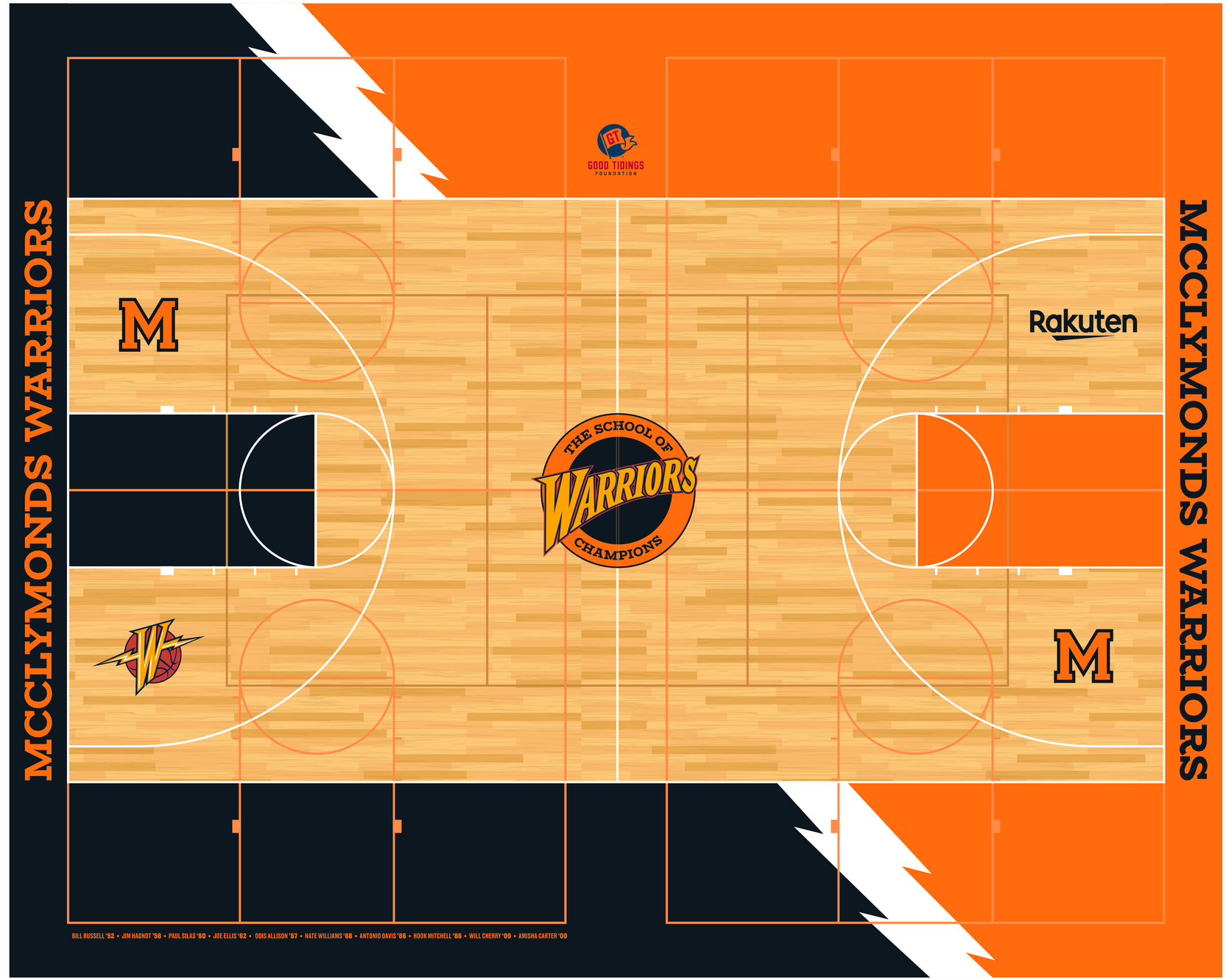
OAKLAND FOREVER

PRESENTED BY Rakuten

The Golden State Warriors are proud to honor the legacy of excellence built right here at McClymonds High School. Much of Oakland's basketball history was written within these walls and will continue to play out on these courts. As the city of Oakland is forever woven into the fabric of our franchise, we're grateful to team up with you as Warriors and thank each of your legendary alumni for the winning tradition they established on this court.

GOOD TIDINGS FOUNDATION

PMS 282 C	PMS 137C	PMS 2955C	PMS 180C	PMS 200C	PMS 7510C	White	PMS 1585C	PMS 1585C 80%	PMS Black 6C



Good Tidings Professional Services Agreement GSWCF McClymonds Final - NL signed

Final Audit Report 2021-04-05

Created:	2021-04-02
By:	Michael Savage (msavage@warriors.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA6Rp-SU-Yh-3CI8JigsQaz6qxalQvb4yS

"Good Tidings Professional Services Agreement GSWCF McClymonds Final - NL signed" History

Document created by Michael Savage (msavage@warriors.com)
2021-04-02 - 8:35:14 PM GMT- IP address: 136.25.175.16

Document emailed to Amit Patel (amit.patel@rakuten.com) for signature
2021-04-02 - 8:36:18 PM GMT

Email viewed by Amit Patel (amit.patel@rakuten.com)
2021-04-02 - 8:41:30 PM GMT- IP address: 185.69.129.84

Document e-signed by Amit Patel (amit.patel@rakuten.com)
Signature Date: 2021-04-05 - 6:48:11 PM GMT - Time Source: server- IP address: 185.69.129.84

Agreement completed.
2021-04-05 - 6:48:11 PM GMT

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Adobe Sign