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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Andrea Bustamante, Executive Director Community Schools Student Services
Franky Navarro, OAL Commissioner

Meeting Date March 13, 2024

Subject Under Armour, Inc. Highlight Athletic Agreement – High School Sports Teams – Oakland Athletic League (OAL)

Ask of the Board Ratification by the Board of Education of the Under Armour, Inc. Highlight Athletic Agreement by and between the District and Under Armour Inc. and BSN Sports, LLC, for the latter to allow discounts for the purchase of Under Armour products – apparel, accessories, uniforms, and all team footwear via the Oakland Athletic League, for the period of January 1, 2024 through June 30, 2026, for an annual allotment of \$9,000.00 per school for a total allotment not to exceed \$45,000.00.

Background This Agreement will allow OUSD to purchase Under Armour (UA) uniforms and products for OAL Athletic teams, coaches, staff, and students from Team Dealer BSN Sports. OUSD/OAL will be assigned a 35% discount on all uniform purchases and 30% discount on all footwear purchases. Under Armour will provide an annual allotment of \$45,000 to be used for the purchase of team uniforms.

Discussion For the purpose of this agreement, references to OUSD or OUSD Teams include all of the following High School Athletic Teams: Fremont HS, Oakland HS (except Varsity Basketball), Skyline HS, Coliseum College Prep Academy, Life Academy, Madison Park Academy HS, Oakland Technical HS, Castlemont HS, and McClymonds HS. Annual uniforms ordered are in accordance with OUSD’s Gender Equity handbook’s uniform ordering guidelines to be in compliance with Title IX.

Fiscal Impact Under Armour will provide OUSD an annual allotment of \$45,000.00 to be used for Team Uniforms. This annual allotment along with the assigned 35% discount will allow OUSD to expand purchasing power to ensure equitable purchase of team uniforms at all high schools.

Attachment(s)

- UA Highlight Athletic Agreement



UA HIGHLIGHT ATHLETIC AGREEMENT

AGREEMENT COVER PAGE

OAKLAND UNIFIED SCHOOL DISTRICT

SCHOOL KEY INFO

Name of Schools: **Fremont High School (Tigers), All Athletic Teams**
Oakland High School (Wildcats), All Athletic Teams except Varsity Basketball
Skyline High School (Titans), All Athletic Teams
Coliseum College Prep (Lions), All Athletic Teams
Life Academy (Biohazards), All Athletic Teams
Madison Park High Schools (Trojan-Warriors), All Athletic Teams
Oakland Technical High School (Bulldogs), All Athletic Teams
Castlemont High School (Knights), All Athletic Teams
McClymonds High School (Warriors), All Athletic Teams

Primary Contact
Name: **Franky Navarro**

Primary Contact Title: **Commissioner**

Primary Contact
Email: **Francisco.navarro@ousd.org**

Dealer: **BSN Sports, LLC**

Start Date: **1/1/2024**

End Date: **6/30/2026**

Term (Years): **2.5**



UA HIGHLIGHT ATHLETIC AGREEMENT

ATHLETIC AGREEMENT (“Agreement”) AMONG:

UNDER ARMOUR, INC. (“Under Armour”), OAKLAND UNIFIED SCHOOL DISTRICT (“OUSD”), AND BSN SPORTS, LLC (“TEAM DEALER”)

For the purposes of this Agreement, references to OUSD or OUSD Teams include only the following athletic teams:

- Fremont High School (Tigers), All Athletic Teams
- Oakland High School (Wildcats), All Athletic Teams except Varsity Basketball
- Skyline High School (Titans), All Athletic Teams
- Coliseum College Prep (Lions), All Athletic Teams
- Life Academy (Biohazards), All Athletic Teams
- Madison Park High Schools (Trojan-Warriors), All Athletic Teams
- Oakland Technical High School (Bulldogs), All Athletic Teams
- Castlemont High School (Knights), All Athletic Teams
- McClymonds High School (Warriors), All Athletic Teams

OUSD Teams does not include Oakland High School’s Varsity Basketball teams. Notwithstanding the terms contained herein to the contrary, the parties acknowledge that the Oakland High School varsity basketball teams are not included in nor bound by this Agreement.

OUSD’s Obligations to UNDER ARMOUR and Team Dealer

- The term of this Agreement commences on January 1, 2024 and ends on 6/30/2026 (“Term”).
- During the Term, OUSD shall exclusively purchase UNDER ARMOUR products for use by its participating schools’ (each, a “School”) athletic teams, coaches, staff and fans. (collectively, “Teams”) from the Team Dealer set forth below.
- OUSD shall ensure that all Teams exclusively wear and use head-to-toe Under Armour products, including without limitation footwear, socks, uniforms, and headwear by January 1, 2026. OUSD shall use best efforts to exclusively provide UNDER ARMOUR headwear and inflatables for the Teams. In the event Teams require products that UNDER ARMOUR does not produce, OUSD will secure such products from brands other than Nike, Adidas, Reebok, Russell, New Balance, Lululemon, and Puma.
- OUSD shall place orders with Team Dealer for custom and stock uniforms by:
 - (i) February 1 for Fall Sports
 - (ii) May 31 for Winter Sports
 - (iii) November 15 for Spring Sports
- Pursuant to OUSD BP1325, UNDER ARMOUR and/or Team Dealer shall receive placement of two (2) banners for display on-field and on-court for each Team upon UNDER ARMOUR’s request. Aside from UNDER ARMOUR and Team Dealer, no other manufacturer, distributor, marketer or seller of athletic goods shall have the right to place signage at Teams’ facilities EXCEPT at Oakland High School solely as it relates to the Varsity basketball teams.
- All Schools’ non-athletic activities will be given access to UNDER ARMOUR products when applicable, via webstore or traditional format and Schools may purchase UNDER ARMOUR products at the discounts listed in this Agreement.
- OUSD hereby grants to UNDER ARMOUR the right to reproduce, display and otherwise use game photographs and/or audiovisual footage of each Team’s games subject to applicable NCAA, NFHS, or applicable high school or governing body rules (collectively, “Rules”) and after procuring appropriate parental permission, when applicable.

UNDER ARMOUR and TEAM DEALER Obligations to OUSD

UNDER ARMOUR shall provide OUSD with a product allotment valued at UNDER ARMOUR’s then-current retail pricing as set forth below. Such free products shall be fulfilled after all products for all Teams have been shipped in each year.

- Under Armour will provide OUSD an annual Allotment of \$45,000 (\$9,000 per school) to be used for Team uniforms (Armourfuse or Stock).
- Under Armour will provide OUSD a quarterly rebate of 15% on all non-uniform purchases, including all team stores and fan stores. This rebate is calculated at Team purchase price and redeemed at Retail price. (Licensee products (including but not limited to uniforms, sport-specific equipment, team headwear, eyewear, etc.) cannot be purchased with the promotional product credit. Only 7 digit numeric catalog item numbers are eligible for promo).
- Under Armour will provide OUSD with a Media Kit for each School including signing day backdrop, tablecloth, and 2 10’x3’ school banners.



UA HIGHLIGHT ATHLETIC AGREEMENT

TEAM DEALER agrees to provide OUSD and each School with the following discounts for Under Armour products:

- **35 %** off of UNDER ARMOUR retail price for apparel (does not include decoration costs).
 - **35%** off of UNDER ARMOUR retail price for accessories (does not include decoration costs).
 - **35%** off of UNDER ARMOUR retail price for Uniforms & Uniform Decoration.
 - **30%** off of UNDER ARMOUR retail price on all team footwear.
- Team Dealers shall maintain appropriate levels of UNDER ARMOUR inventory to satisfy OUSD requirement on a timely basis; and provide sales data as requested.
 - Team Dealer shall set-up/manage either traditional player pack/fanwear order forms or webstore for any & all affiliated OUSD activities accounts. (Including but not limited to each School's activities, organizations and clubs' parents, students, alumni, faculty, staff, etc.)
- UNDER ARMOUR reserves the right to review this Agreement with Team Dealer on an annual basis and in the event UNDER ARMOUR determines, in its sole but reasonable discretion, that the then-current circumstances are materially different from the information supplied by OUSD on the prospect form (e.g., actual annual purchases of UNDER ARMOUR products are significantly lower than originally anticipated, etc.), UNDER ARMOUR may either (1) modify the terms of this Agreement via an amendment signed by the parties; or (2) terminate this Agreement by providing OUSD and Team Dealer with thirty (30) days prior written notice.
 - **Termination.** UNDER ARMOUR or OUSD may terminate this agreement in the event of a material breach of any term or condition of this Agreement by the other party and failure by the breaching party to cure the breach within ten (10) days following receipt of notice from the non-breaching party. In addition, Under Armour may change a Team Dealer upon thirty (30) days written notice to Team Dealer(s) and OUSD. Further, UNDER ARMOUR shall have the right to terminate this Agreement if: (a) a Team is required to wear and/or use athletic products that are not supplied by Under Armour; or (b) Team members or OUSD staff commit any act or are involved in any occurrence which in the sole but reasonable discretion of Under Armour reflects unfavorably upon Under Armour or its products.
 - **Right of First Negotiation; Matching Right.** During the Term, OUSD shall meet exclusively with UNDER ARMOUR to negotiate in good faith the terms of a renewal of this Agreement, and shall not engage in meetings or negotiations with any third party regarding Product supply, sponsorship, endorsement, or promotion with respect to Products. Notwithstanding the foregoing, the parties shall not be obligated to enter into a renewal of this Agreement if they cannot mutually agree, upon the terms of such renewal, subject to UNDER ARMOUR's matching rights set forth herein. Further, for a period of one hundred eighty (180) days after the expiration of the Term ("Matching Period"), UNDER ARMOUR shall have the right to match any third party offer that OUSD receive with respect to Products of such third party that OUSD intends to accept ("Third Party Offer"). If OUSD receive a Third Party Offer during the Matching Period, then OUSD shall submit to UNDER ARMOUR the material terms contained in the Third Party Offer ("Third Party Terms"), in an unredacted writing from such third party on its letterhead and signed by such third party. UNDER ARMOUR shall have thirty (30) days from the date it receives the Third Party Terms to notify OUSD whether UNDER ARMOUR will renew this Agreement on terms at least equal to the material, measurable, and matchable Third Party Terms. If UNDER ARMOUR notifies OUSD that it will renew the Agreement on such Third Party Terms, then OUSD and UNDER ARMOUR shall renew this Agreement on such Third Party Terms. OUSD shall inform all third parties of its requirements under this provision, and this provision will survive the expiration or termination of this Agreement during the Matching Period.
 - **Wear Testing.** Subject to the Rules, OUSD shall ensure that Teams make themselves reasonably available to UNDER ARMOUR with respect to wear testing UNDER ARMOUR products in development. Teams shall report to UNDER ARMOUR on the UNDER ARMOUR products tested, and such reports shall address fit, design, wear characteristics, function, materials and construction techniques. The actual UNDER ARMOUR products in development and any information regarding such UNDER ARMOUR products is confidential. UNDER ARMOUR is the owner of all right, title, and interest in and to any and all rights in and to all intellectual property rights in connection with such UNDER ARMOUR products. OUSD and Teams hereby assign and convey to UNDER ARMOUR all such intellectual property.
 - **Indemnification.** To the furthest extent permitted by California law, UNDER ARMOUR shall indemnify, defend and hold harmless OUSD, the Teams, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (collectively, "OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of UNDER ARMOUR's material breach of this Agreement. UNDER ARMOUR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials on behalf of UNDER ARMOUR pursuant to this AGREEMENT. UNDER ARMOUR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at UNDER ARMOUR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that UNDER ARMOUR proposes to defend OUSD Indemnified Parties.
To the furthest extent permitted by California law, Team Dealer shall indemnify, defend and hold harmless the OUSD Indemnified Parties from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of Team Dealer's material breach of this Agreement. Team Dealer also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials on behalf of Team Dealer pursuant to this Agreement. Team Dealer shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at Team Dealer's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that Team Dealer proposes to defend OUSD Indemnified Parties.
To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless UNDER ARMOUR, Team Dealer, and each of their respective affiliates, subsidiaries, officers, directors, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's material breach of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend UNDER ARMOUR and Team Dealer at OUSD's own expense, including attorneys' fees and costs.

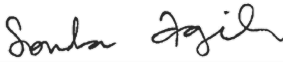


UA HIGHLIGHT ATHLETIC AGREEMENT

- Miscellaneous.** California law shall govern this agreement, without regard to principles of conflicts of laws thereunder. The parties agree that the terms of this agreement are confidential and except as required by applicable law, the parties shall not disclose in any way or to any third party any terms of this agreement. OUSD shall not assign its rights or obligations under this agreement without prior written consent of Under Armour. The relationship among Under Armour, Team Dealers, and OUSD shall be that of independent contractors. This agreement may be executed in two (2) counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same agreement. The signatures of the parties may be delivered by facsimile or imaged document, in PDF, TIFF, or JPEG format, and if delivered by facsimile or imaged document, said executed documents may be considered originals for all purposes.

IN WITNESS WHEREOF, each party acknowledges that a duly authorized representative of such party has executed this agreement as of the date set forth below, and acknowledges that such party has read, understands and agrees to the terms and conditions of this agreement.

Oakland Unified School District



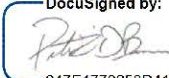
 Signature
 Sondra Aguilera

 Printed Name
 Chief Academic Officer

 Title
 2/13/2024

 Date

UNDER ARMOUR, INC.

DocuSigned by:


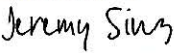
 Signature
 Patrick Bauer

 Printed Name
 Regional Sales Manager

 Title
 1/10/2024

 Date

BSN SPORTS, LLC

DocuSigned by:


 Signature
 Jeremy Sinz

 Printed Name
 VP of Sales

 Title
 1/9/2024

 Date

Approved as to form by OUSD Staff
Attorney Lynn Wu 1/5/24

