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

Board Cover Memorandum

To Board of Education

From Sondra Aguilera, Acting Superintendent
Joshua R. Daniels, Chief Governance Officer

Meeting Date September 14, 2022

Subject Memorandum of Understanding between Oakland Unified School District, Native Sons of the Golden West Piedmont Parlor No. 120, and Aspire Public Schools, Inc.

Ask of the Board Adoption by the Board of Education of the Memorandum of Understanding between Oakland Unified School District, Native Sons of the Golden West Piedmont Parlor No. 120, and Aspire Public Schools, Inc.

Background On or about July 10, 1921, the Claremont Parlor No. 240 Native Sons of the Golden West and affiliated organizations dedicated a Golden Gate District WWI Memorial (“Memorial”). The Memorial is currently located on OUSD property, specifically the former Golden Gate Elementary School campus, which is now leased to Aspire Public Schools.

Since 1921, Piedmont Parlor has absorbed Claremont Parlor No. 240 Native Sons of the Golden West as well as the Fruitvale and Oakland Parlors.

Discussion Piedmont Parlor seeks to relocate the Memorial from its current location to the Fratellanza Club, Inc., located at 1140 66th Street, Oakland, California 94608. The proposed Memorandum of Understanding (“MOU”) would facilitate this move of the Memorial and would be at no cost to the District.

Fiscal Impact N/A

Attachment ● Memorandum of Understanding between Oakland Unified School District, Native Sons of the Golden West Piedmont Parlor No. 120, and Aspire Public Schools, Inc.

**MEMORANDUM OF UNDERSTANDING BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT,
NATIVE SONS OF THE GOLDEN WEST PIEDMONT PARLOR NO. 120, AND
ASPIRE PUBLIC SCHOOLS, INC.**

This Memorandum of Understanding (hereinafter referred to as this “MOU”) is made and entered into as of June 30, 2022 (hereinafter referred to as the “Date of this MOU”), by and among the Oakland Unified School District, a California Public School District (hereinafter referred to as the “District” or “OUSD”); Native Sons of the Golden West Piedmont Parlor No. 120 (“Piedmont Parlor”), a public benefit entity organized under the laws of the State of California; and Aspire Public Schools, Inc., a California non-profit public benefit corporation (“Aspire”), for Piedmont Parlor’s relocation of the Golden Gate District WWI Memorial located at 6200 San Pablo Avenue, Oakland, California 94608. District, Piedmont Parlor, and Aspire may be individually referred to herein as a “Party,” or may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, on or about July 10, 1921, the Claremont Parlor No. 240 Native Sons of the Golden West and affiliated organizations dedicated a Golden Gate District WWI Memorial (“Memorial”) with the following inscription: “In Memoriam of the boys of this District who made the supreme sacrifice”;

WHEREAS, the Memorial is currently located on that certain portion of the premises of that certain real property located at 6200 San Pablo Avenue, Oakland, California 94608 (“Site”);

WHEREAS, the District owns the Site;

WHEREAS, the District leases the Site to Aspire for the use and occupation by the Aspire Berkley Maynard Academy (“Charter School”);

WHEREAS, since 1921, Piedmont Parlor has absorbed Claremont Parlor No. 240 Native Sons of the Golden West as well as the Fruitvale and Oakland Parlors;

WHEREAS, Piedmont Parlor seeks to relocate Memorial from its location on that portion of the Site to the Fratellanza Club, Inc., located at 1140 66th Street, Oakland, California 94608 (“Fratellanza Club”); and

WHEREAS, all Parties agree that this MOU shall be for “no-cost,” meaning that no money or its equivalent shall be exchanged between the Parties.

NOW, THEREFORE, the Parties enter into this MOU, for good and valuable consideration, as a full statement of their respective responsibilities during the term of this MOU, and in consideration of the representations made above and the covenants and conditions set forth herein, the Parties agree as follows:

1. TERM

This MOU shall commence as of the Date of this MOU and shall terminate upon the Piedmont Parlor's completion of the Work, as set forth herein.

2. DISTRICT'S DUTIES AND RESPONSIBILITIES

- a. District hereby consents to Piedmont Parlor's access to and entry on the Site for the purposes of Piedmont Parlor's completion of the Work, subject to the terms of this MOU.
- b. District hereby agrees to reasonably and timely cooperate with Piedmont Parlor in assisting with any third party and governmental approvals and permits required with respect to the Work.

3. PIEDMONT PARLOR'S DUTIES AND RESPONSIBILITIES

- a. Piedmont Parlor hereby affirms and attests that it has the right and ability to take ownership of the Memorial and relocate the Memorial.
- b. Piedmont Parlor, and/or its contractor(s), shall safely clean, conserve, maintain, remove, and relocate the Memorial from its current position on the Site to the Fratellanza Club, Inc., located at 1140 66th Street, Oakland, California 94608 (collectively, the "Work").
- c. Upon its removal of the Memorial from the Site, Piedmont Parlor shall surrender any and all possession of the Site to the District in good order and condition, reasonable wear and tear excepted. Upon such removal, Piedmont Parlor shall, without expense to the District or Aspire, remove or cause to be removed all debris and rubbish from the approximately 3 feet by 3 feet enclosure in which the Memorial was located on the Site.
- d. Upon its removal of the Memorial from the site, Piedmont Parlor, and/or its contractor(s), shall repair the Site to the best of its ability such that no holes or other hazards remain, and the material used to repair the area is level with and reasonably matches the surrounding pavement in color and texture.
- e. Piedmont Parlor shall provide the District and Aspire with advance written notice of the proposed day(s) that the Work shall be done in order to ensure Piedmont Parlor's access to the Site, restrict student access to that portion of the Site if necessary, ensure the Work is not being conducted at a time that is disruptive to

Aspire's programs, and to minimize disruption to Aspire students and staff at the Site. The date(s) of the Work shall be scheduled with the prior written approval of the District and Aspire to minimize such disruption.

- f. Piedmont Parlor acknowledges that the District holds title to the Site. Piedmont Parlor shall not make alterations, additions, improvements, or modifications to the Site other than the Work expressly permitted herein.
- g. Piedmont Parlor shall assume sole responsibility for any and all damage to the Memorial, and any and all damage to the Site caused by or arising from the Work.
- h. Piedmont Parlor shall solely bear financial responsibility for all costs for the Work and shall hold the District and Aspire harmless for claims for payment by any contractors, subcontractors, or other parties, as well as any liens assessed as a result of the Work performed.
- i. Piedmont Parlor's contractors shall be duly licensed in the State of California.
- j. Piedmont Parlor shall follow all applicable federal, state, and local laws and requirements, along with District policies, with respect to the Work. Piedmont Parlor shall obtain any required third party and governmental approvals and permits required with respect to the Work.
- k. Piedmont Parlor bears exclusive responsibility for procuring insurance with respect to the Work set forth in this MOU, including but not limited to liability, automotive, workers compensation, and property insurance for any and all personal property and structures erected, moved, removed, and/or relocated by Piedmont Parlor or its contractors.

4. ASPIRE'S DUTIES AND RESPONSIBILITIES

- a. Aspire hereby consents to Piedmont Parlor's access to and entry on the Site for the purposes of Piedmont Parlor's completion of the Work, subject to the terms of this MOU.
- b. Aspire hereby acknowledges that this MOU does not interfere with or interrupt Aspire's exclusive use of the Site, as granted by the District under the terms of that certain Long-Term Facilities Use Agreement, dated on or about July 1, 2020, by and between the District and Aspire for the Site, and any other agreements between Aspire and the District related to the Site.
- c. Aspire hereby agrees to reasonably and timely cooperate with Piedmont Parlor in assisting with any third party and governmental approvals and permits required with respect to the Work.

5. INDEMNIFICATION

Piedmont Parlor shall hold harmless, indemnify, and defend the District and Aspire, their respective Boards of Education and of Directors, officers, agents, and employees from any and all claims, damages, losses, liability, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Piedmont Parlor's performance of, or failure to perform, any duties under this MOU or the law, including but not limited to breaches of the applicable standard of care. Piedmont Parlor also agrees to hold harmless, indemnify, and defend the District and Aspire, and their respective Boards of Education and Directors, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials in connection with the performance of this MOU. This provision shall survive the termination of this MOU.

6. DISPUTE RESOLUTION

In the event of any disagreement as to the terms of this MOU, the Parties shall use a dispute resolution process.

7. MISCELLANEOUS

- a. Captions. The captions of the paragraphs of this MOU are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this MOU.
- b. Integration; Entire Agreement of the Parties. This MOU constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written, pertaining to the subject matter contained herein. Exhibits attached hereto, if any, are deemed by attachment to constitute part of this MOU and are incorporated herein. This MOU may be amended or modified only by a written instrument executed by all Parties.
- c. Amendments. This MOU may only be amended in a mutually executed writing that specifically indicates its intent to modify and/or amend this MOU.
- d. Non-Discrimination. It is the policy of the District that in connection with all work performed under contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, age, or other legally protected class; therefore, Parties agree to comply with applicable federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735, and

applicable District policies. In addition, the Parties agree to require like compliance by their subcontractors, if any.

- e. Drug-Free/Smoke-Free Policy. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on District property. No students, staff, visitors, contractors, or subcontractors are to use controlled substances, alcohol, or tobacco on District property.
- f. Severability. If any term or provision of this MOU shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this MOU shall not be affected thereby, and each term and provision of this MOU shall be valued and be enforceable to the fullest extent permitted by law.
- g. Binding Effect. The Parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All provisions hereof shall bind and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
- h. Governing Law. The laws of the State of California shall govern this MOU. In the event of any suit or proceeding arising out of or related to this MOU, Alameda County Superior Court of California will have exclusive jurisdiction and the Parties will submit to the jurisdiction of that court.
- i. Assignment. No Party shall have the right to assign its rights or sublet any portion of the Site without the written consent of the District. No Party shall have the right to assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this MOU or any interest hereunder, permit any assignment, or other transfer of this MOU or any interest hereunder by operation of law without first procuring the written consent of the District. Any transfer made without the prior written consent of the District shall be null, void, and of no effect.
- j. Waiver.
 - i. The waiver by any 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.
 - ii. No provision of this MOU shall be deemed waived by either Party hereto unless expressly waived in a written instrument signed by a person on behalf of the Party waiving the provision. The waiver by any Party hereto of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

- k. Notices. All notices or demands of any kind required or desired to be given by any Party hereunder shall be in writing and shall be deemed delivered three (3) business days after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to each Party respectively at the following addresses:

Oakland Unified School District

ATTN: Office of the General Counsel
1000 Broadway, Suite 300
Oakland, CA 94607

Aspire Public Schools, Inc.

ATTN: Jay Stack, Principal, Aspire Berkley Maynard Academy
6200 San Pablo Ave
Oakland, CA 94608

Native Sons of the Golden West Piedmont Parlor No. 120

ATTN: Paul A. Berlin
Piedmont Parlor #120
Post Office Box 2253
Oakland, CA 94621-0153

- l. Interpretation. The language of all parts of this MOU shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against any Party.
- m. Corporate Authority. Each individual executing this MOU on behalf of the Parties, respectively, represents and warrants that they are duly authorized to execute and deliver this MOU on behalf of the represented and that this MOU is binding.
- n. MOU Contingent on District Board of Education's Approval. The District shall not be bound by the terms of this MOU until it has been formally approved by the District's Board of Education. This MOU shall be deemed to be approved by the District when it has been signed by the Board of Education and/or the Superintendent as its designee.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties execute this MOU effective the date and year first above written.

APPROVAL BY OAKLAND UNIFIED SCHOOL DISTRICT

830.40 9-15-2022

Gary Yee
President, Board of Education

Sondra Aguilera 9-15-2022

Sondra Aguilera
Acting Superintendent and Secretary, Board of Education

Approved as to Form:

[Signature] August 18, 2022

[Signature]
Attorney for the District

APPROVAL BY ASPIRE PUBLIC SCHOOLS, INC.

Jay Stack

Jay Stack
Principal, Aspire Berkley Academy

APPROVAL BY NATIVE SONS OF THE GOLDEN WEST
PIEDMONT PARLOR NO. 120

Paul A. Berlin

Paul A. Berlin
President