

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	20-1222
Introduction Date	December 9, 2020
Enactment Number	20-1799
Enactment Date	12/9/2020



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Joshua R. Daniels, General Counsel

**Meeting Date** December 9, 2020

**Subject** Resolution No. 2021-0029 – Acknowledging Receipt of Legal Agreement with Roses in Concrete and the Proper Execution Thereof by the Superintendent

**Action** Approve Resolution No. 2021-0029 – Acknowledging Receipt of Legal Agreement with Roses in Concrete and the Proper Execution Thereof by the Superintendent

**Background & Discussion** Roses in Concrete (“Roses”) was a charter school in Oakland that opened in 2015. On November 20, 2019, the Board of Education denied Roses’ petition for charter renewal. On June 29, 2020, the Board approved an Memorandum of Understanding (“Underlying MOU”), which brought the Roses program within Howard Elementary School. Among other things, the Underlying MOU stated that the Parties would work in good faith to resolve two outstanding issues: (1) “the dispute between the Parties regarding the repayment of the Capital Impact Partners loan to the Non-Profit that was used to make capital repairs and improvements at the Steele Street campus owned by the District” and (2) “the issue of any outstanding payments the Parties owe each other.” The Underlying MOU then explicitly delegated authority to the Superintendent to negotiate, approve, and implement the resolution of these disputes without the need for Board action or ratification. Roses and the Superintendent have reached a legal agreement resolving the two outstanding issues. The Superintendent, pursuant to her delegated authority, has signed and executed that legal agreement. The legal agreement is attached and the Resolution acknowledges receipt of the legal agreement and that the Superintendent properly executes it based on her delegated authority from the Underlying MOU.

**Fiscal Impact** N/A

**Attachment**

- Resolution No. 2021-0029 – Acknowledging Receipt of Legal Agreement with Roses in Concrete and the Proper Execution Thereof by the Superintendent
- Memorandum of Understanding between Oakland Unified School District and Roses In Concrete regarding Repayment of Community Impact Partners Loan

**RESOLUTION OF THE  
BOARD OF EDUCATION  
OAKLAND UNIFIED SCHOOL DISTRICT**

**RESOLUTION NO. 2021-0029**

**ACKNOWLEDGING RECEIPT OF LEGAL AGREEMENT WITH ROSES IN CONCRETE AND THE  
PROPER EXECUTION THEREOF BY THE SUPERINTENDENT**

**WHEREAS**, Roses in Concrete (“Roses”) was a charter school in Oakland that opened in 2015;

**WHEREAS**, on November 20, 2019, the Board of Education (“Board”) denied Roses’ petition for charter renewal;

**WHEREAS**, on June 29, 2020, the Board approved a Memorandum of Understanding (“Underlying MOU”), which brought the Roses program within Howard Elementary School;

**WHEREAS**, the Underlying MOU stated, among other things, that OUSD and Roses would work in good faith to resolve two outstanding issues: (1) “the dispute between the Parties regarding the repayment of the Capital Impact Partners loan to the Non-Profit that was used to make capital repairs and improvements at the Steele Street campus owned by the District” and (2) “the issue of any outstanding payments the Parties owe each other”;

**WHEREAS**, the Underlying MOU explicitly delegated authority to the Superintendent to negotiate, approve, and implement the resolution of these disputes without the need for Board action or ratification;

**WHEREAS**, Roses and the Superintendent have reached a legal agreement resolving the two outstanding issues; and

**WHEREAS**, the Superintendent, pursuant to her delegated authority, has signed and executed that legal agreement.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Board hereby acknowledges receipt of the legal agreement and that the Superintendent properly executive it based on her delegated authority from the Underlying MOU.

**PASSED AND ADOPTED** on December 9, 2020, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE:None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, Jumoke Hinton Hodge, Gary Yee, Roseann Torres, James Harris, Vice

President Shanthi Gonzales, President Jody London

NOES: None

ABSTAINED: None

RECUSED: None

ABSENT: Jessica Ramos (Student Director), Samantha Pal (Student Director)

**CERTIFICATION**

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on

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By:	

**OAKLAND UNIFIED SCHOOL DISTRICT**



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Jody London  
President, Board of Education



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Kyla Johnson-Trammell  
Superintendent and Secretary, Board of Education

**MEMORANDUM OF UNDERSTANDING BETWEEN OAKLAND UNIFIED SCHOOL  
DISTRICT AND ROSES IN CONCRETE REGARDING REPAYMENT OF  
COMMUNITY IMPACT PARTNERS LOAN**

This Memorandum of Understanding (“Agreement”) is effective as of the date that all parties have signed (“Effective Date”), by and between the Oakland Unified School District (“District”) and Roses in Concrete (“Non-Profit” or “RIC”), a California non-profit public benefit corporation. The District and the Non-Profit are collectively referred to as the “Parties.”

**RECITALS**

- A. The Non-Profit previously operated a public charter school, Roses in Concrete (the “Charter School”). The Charter School was initially authorized by the District’s Governing Board in 2015 for a term of five years. During that term, the Charter School operated at the District-owned facility located at 4551 Steele Street, Oakland, CA 94619 (“Facility”), and enrolled students in grades K-8.
- B. In 2016, RIC entered into a Loan Agreement with Capital Impact Partners, a non-profit corporation organized under the laws of the District of Columbia, borrowing funds to support installation and construction of additional improvements at the Facility (“Loan”).
- C. On June 22, 2016, the Parties entered into an Amendment to Facilities Use Agreement, attached here to as Exhibit A, whereby the District acknowledged RIC’s intention to improve the Facility, and agreed to provide “rent credits” to RIC.
- D. On November 20, 2019, the District’s Governing Board denied the Charter School’s petition for charter renewal. On February 11, 2020, the Charter School’s appeal to the Alameda County Board of Education was also denied.
- E. In anticipation of the Charter School’s closure, the Parties wish to work together to ensure that the students being served by the Charter School during the 2019-2020 school year will continue to be served with similar programmatic offerings, including RIC’s curriculum focused on social justice, during the 2020-2021 school year at a District school.
- F. On June 26, 2020, the Parties adopted a Memorandum of Understanding (“Underlying MOU”) to bring RIC’s program into Howard Elementary School, commencing with a “Design Year” effective School year 2020-2021. (Exhibit B.) Through that Underlying Memorandum of Understanding, the Parties agreed to work in good faith to resolve two outstanding issues: (1) “the dispute between the Parties regarding the repayment of the Capital Impact Partners loan to the Non-Profit that was used to make capital repairs and improvements at the Steele Street campus owned by the District” and (2) “the issue of any outstanding payments the Parties owe each other.”

G. The Parties wishes to address those two outstanding issues through this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, the Non-Profit and the District, separately and together, do hereby agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated herein and made part of this Agreement.
2. **Term.** This Agreement shall commence on the Effective Date, and shall expire on July 31, 2022.
3. **Payment.**

3.1. 2020-2021 School Year. As a charter school is occupying the Facility and paying rent to the District for use of the Facility for the entirety of the 2020-2021 school year, the District shall pay RIC a total of \$140,000 in the 2020-2021 school year. Payment shall be rendered as follows: 50% of the amount no later than January 2, 2021, 25% no later than April 1, 2021, and 25% no later than June 15, 2021.

3.2. 2021-2022 School Year. If a charter school occupies the Facility and pays rent to the District for use of the Facility for the entirety of the 2021-2022 school year, the District shall pay RIC a total of \$140,000 in the 2021-2022 school year. Payment shall be rendered in equal installments, on a quarterly basis. Payments shall be made no later than the following dates: November 1, 2021, January 1, 2022, April 1, 2022, and June 15, 2022. If a charter school does not pay rent to the District for use of the Facility for the entirety of the 2021-2022 school year, District shall pay RIC a total of \$70,000 in the 2021-2022 school year. Payment shall be rendered in equal installments, on a quarterly basis. Payments shall be made no later than the following dates: November 1, 2021, January 1, 2022, April 1, 2022, and June 15, 2022.

3.3. Method of Payment. Payments contemplated in section 3.1 and 3.2 above, shall be made by wire payable to Roses in Concrete using the banking information set forth below:

Account Name: Roses in Concrete  
Bank: Bank of America  
Account No.: 1641-0369-3603  
Routing No.: 121000358

4. **Waiver.** In return for the mutual promises and other consideration provided in this Agreement, RIC, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, employees, successors and assigns, fully release, acquit, waive and forever discharge the District, including its heirs, beneficiaries,

executors, administrators, officers, employees, successors and assigns, and its past, present or future Board of Education, from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses including expert fees, losses, attorneys' fees or reimbursements of whatever nature, whether or not known, related to any disputes regarding RIC's use and occupancy of the Site, including but not limited to rent credits and any other fiscal disputes between the Parties. The Parties expressly acknowledge that this release is intended to include all claims and causes of action, known or unknown, suspected or unsuspected, which RIC presently have or might have with regard to any disputes regarding RIC's use and occupancy of the Site, including but not limited to rent credits and any other fiscal disputes between the Parties.

RIC expressly waives and releases all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance and consequence of such specific waiver of section 1542. Section 1542 of the Civil Code states as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

RIC hereby expressly waives the provisions of California Civil Code section 1542 and further expressly waive any right to invoke said provisions now or at any time in the future.

In return for the mutual promises and other consideration provided in this Agreement, the District, for itself and its past, present or future heirs, beneficiaries, executors, administrators, officers, employees, successors and assigns, fully releases, acquits, waives and forever discharges RIC, including its heirs, beneficiaries, executors, administrators, officers, employees, successors and assigns, and its past, present or future governing board, from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses including expert fees, losses, attorneys' fees or reimbursements of whatever nature, whether or not known, related to any disputes regarding RIC's use and occupancy of the Site, including but not limited to rent credits and any other fiscal disputes between the Parties. The Parties expressly acknowledge that this release is intended to include all claims and causes of action, known or unknown, suspected or unsuspected, which the District presently have or might have with regard to any disputes regarding RIC's use and occupancy of the Site, including but not limited to rent credits and any other fiscal disputes between the Parties.

The District expressly waives and releases all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance and consequence of such specific waiver of section 1542. Section 1542 of the Civil Code states as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

The District hereby expressly waives the provisions of California Civil Code section 1542 and further expressly waive any right to invoke said provisions now or at any time in the future.

5. **RIC Loan.** The Parties expressly acknowledge that the District is not a borrower on the loan between RIC and Capital Impact Partners. This Agreement does not create any relationship, whatsoever, between the District and Capital Impact Partners.
6. **Amendments to Agreement.** Any modification of this Agreement must be in writing and executed by duly authorized representatives of both Parties specifically indicating the intent of the Parties to modify this Agreement. No such modification or amendment shall be effective absent approval by the governing boards of both Parties.

In the event of changes in laws, the District and the Charter School agree to negotiate modifications to this Agreement as required by applicable law.

7. **Severability.** If any provision or any part of this Agreement is for any reason held to be invalid or unenforceable or contrary to law, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
8. **Venue.** The Parties agree that any legal action to enforce the terms of this Agreement shall be brought in the appropriate court in Alameda County, California.
9. **Assignment.** The rights and obligations hereunder shall not be assigned without the express written consent of both Parties. This Agreement and all rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their heirs, successor assignees and personal representatives.
10. **Prevailing Authority.** In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified. In the event of a conflict between the Non-Profit and the District regarding the terms of this Agreement, the Parties shall meet to amend the Agreement to reach consistency. If the Parties do not reach agreement regarding the consistency, the Parties agree to follow the procedures for dispute resolution as stated in this Agreement. The Parties further agree to jointly make any modification of this Agreement or the Charter needed to effectuate changes in state or federal laws occurring following execution of this Agreement.
11. **Dispute Resolution.** Any misinterpretation, misapplication or violation of this Agreement shall be addressed in accordance with the following procedures:

11.1. In the event of a dispute between RIC and the District, both agree to first frame the issue in written format (“dispute statement”) and to refer the issue to the Superintendent (or designee) and Executive Officer of RIC.

11.2. The Superintendent (or designee) or RIC Executive Officer shall informally meet and confer in a timely fashion to attempt to resolve the dispute.

11.3. In the event that this informal meeting fails to resolve the dispute, the Superintendent (or designee) and the RIC Executive shall meet to jointly identify a neutral third party mediator to engage the parties in a non-binding mediation session designed to facilitate resolution of the dispute. The format of the mediation session shall be developed jointly by the Superintendent (or designee) and the Non-Profit Executive. The costs of the mediator shall be split equally between the District and RIC. If mediation does not resolve the dispute either party may pursue any other remedy available under the law. All timelines and procedures in this section may be revised upon mutual written agreement of the District and RIC.

**12. Legal Notices.** All notices, requests, and other communications under this Agreement shall be in writing and submitted in writing to the addresses set forth below. Notice shall be deemed given on the second day following the mailing of notice by certified mail with confirmation by email.

To the District at: Joshua R. Daniels  
General Counsel  
1000 Broadway  
Suite 300  
Oakland, CA 94607  
[josh.daniels@ousd.org](mailto:josh.daniels@ousd.org)

To RIC at: Mehrnaz Boroumand Smith  
Kilpatrick Townsend & Stockton LLP  
Two Embarcadero Center  
Suite 1900  
San Francisco, CA 94111  
[mboroumand@kilpatricktownsend.com](mailto:mboroumand@kilpatricktownsend.com)

Carla C. Victor  
Roses in Concrete  
8755 Fontaine Street  
Oakland, CA 94605  
[cvictor@rosesinconcrete.org](mailto:cvictor@rosesinconcrete.org)

**13. Entire Agreement; Counterparts; Authority to Sign.** This Agreement, contains the entire agreement of the Parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the Parties with respect to the subject matter of this Agreement. This Agreement may be executed in counterparts, each

of which shall constitute an original. Facsimile copies of signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.

Pursuant to Section 14 of the Underlying MOU, the District Governing Board delegated its authority to the Superintendent to negotiate, approve (without the need for Board action or ratification), and implement the resolution of the issues addressed by this Agreement. This Agreement is signed by the Superintendent pursuant to this authority and shall be provided to and received by the Board as a regular or special Board meeting of the District's choosing. In doing so, this Agreement fully and completely addresses and resolves both issues identified in Section 14 of the Underlying MOU: the dispute between the Parties regarding the repayment of the Capital Impact Partners loan to the Non-Profit that was used to make capital repairs and improvements at the Steele Street campus owned by the District and the issue of any outstanding payments the Parties owe each other.

IN WITNESS WHEREOF, the Parties agree to be bound by this Agreement and each has caused this Agreement to be signed and executive by its duly authorized representative listed below.

DocuSigned by:  
  
EABF47F643B04CF...  
Dr. Jeff Duncan-Andrade  
Board Chair  
Roses in Concrete

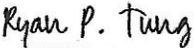
12/2/2020  
Date

DocuSigned by:  
  
4B7CAB86EB9145D...  
Mehrnaz Boroumand Smith  
Counsel for Roses in Concrete  
Kilpatrick Townsend & Stockton LLP

12/1/2020  
Date

  
Dr. Kyla Johnson-Trammell  
Superintendent  
Oakland Unified School District

12/4/2020  
Date

DocuSigned by:  
  
48CA2FCFC48B4A6...  
Ryan P. Tung  
Counsel for Oakland Unified School District  
Lozano Smith  
Approved as to form

12/2/2020  
Date

# **EXHIBIT A**

**FIRST AMENDMENT  
TO FACILITIES USE AGREEMENT BETWEEN OAKLAND UNIFIED DISTRICT  
AND ROSES IN CONCRETE COMMUNITY CHARTER SCHOOL**

THIS FIRST AMENDMENT TO FACILITIES USE AGREEMENT (the "Amendment") is entered into by and between the OAKLAND UNIFIED SCHOOL DISTRICT ("District"), a California public school district and Roses in Concrete Community Charter School ("RiC" or "Charter School") who agree as follows:

**RECITALS**

- A. WHEREAS, District and RiC entered into a Facilities Use Agreement ("Agreement") dated June 30, 2014, for RiC's use of the real property located at 4551 Steele Street, Oakland, CA 94619 ("Premises") for a not to exceed term of five (5) years;
- B. WHEREAS, the Agreement recites that RiC may elect to construct significant capital outlay improvements on the Premises, and thereby be entitled, subject to Board of Education approval, to exercise options to extend the term of the Agreement beyond the not to exceed five (5) year term ("Original Term");
- C. WHEREAS, the Agreement provides that the District shall remove at its own cost portables T,U,V,W,X,Y,Z and AA from the Premises no later than March 31, 2016;
- D. WHEREAS, the District has informed RiC that it will not fulfill its obligation to remove said portables as provided for in the Agreement;
- E. WHEREAS, RiC has informed the District that the remediation and/or removal of portables T,U,V,W,X,Y,Z and AA is necessary to RiC's planned 2016-2017 program expansion;
- F. WHEREAS, the Agreement stipulates in part that the District shall consider a reduction in the Rent for sums equal to the actual costs directly attributable to installation and construction of additional improvements or facilities;
- G. WHEREAS, RiC is ready and willing to proceed with the remediation, demolition, restoration and/or removal of portables T,U,V,W,X,Y,Z and AA ( the "Project") at its own cost and expense in exchange for a four (4) year extension of the Original Term in order to use the rent credit provided herein, and a reduction in the rent ("Rent Credit") for sums equal to the actual costs directly attributable to this Project, in an amount not to exceed SIX HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$624,000).

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, District and Charter School agree to amend the Agreement to, among other things, extend the term and adjust the rent provisions of the Agreement, and to incorporate additional provisions required by District policies and/or applicable California laws and regulations, subject to the terms and conditions set forth herein as follows:

## **AGREEMENT**

1. **Extension of Term.** District and RiC hereby agree to extend the term of the Agreement for an additional four (4) year term, commencing July 1, 2020, and expiring June 30, 2024 ("Extended Term"), subject to all the terms and conditions of the Agreement as hereby amended.

2. **Rent.** For and in consideration of the use of the Premises under Agreement, RiC agrees to pay District Facilities Use Lease Rents ("Rent"), subject to subsection 2.2 below, as follows:

- a. Rent during the Extended Term shall be based upon the *annually adjusted* Prop 39 Facilities Use Rate assessed by the District to other Charter Schools at District facilities multiplied by the Premise's total square footage.
- b. The District will credit RiC its actual costs directly attributable to the Project or in an amount not to exceed SIX HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$624,000), whichever is less, against the amount of Rent due each year (the "Rent Credit"). The table below summarizes the Rent Credit Schedule through School Year 2023-2024 based on 2015-16 Prop 39 Facilities Use Rate of \$3.80 which will be annually adjusted, but the overall Rent Credit will remain static.
- c. If the annually adjusted Prop 39 Facilities Use Rate increases during the Extended Term, RiC shall either pay the difference in Rent to the District per the Agreement or apply the differential against future Rent Credits, until the Rent Credit is exhausted.
- d. If the Project cost is less than SIX HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$624,000), then the lease term extension in paragraph 1 above will be reduced so that the lease term will expire when the Rent Credit is exhausted.

<b>YEAR</b>	<b>RENT CREDIT (adjusted)</b>	<b>Original Credit 2015-2020</b>	<b>Amended Credit 2016-2024</b>
<b>15-16</b>		\$89,368.40	-----
<b>16-17</b>		\$89,368.40	\$22,200
<b>17-18</b>		\$89,368.40	\$22,200
<b>18-19</b>		\$89,368.40	\$22,200
<b>19-20</b>			\$111,480
<b>20-21</b>			\$111,480
<b>21-22</b>			\$111,480
<b>22-23</b>			\$111,480
<b>23-24</b>			\$111,480
<b>TOTAL CREDIT</b>		<b>\$357,472</b>	<b>\$624,000</b>
			<b>\$981,472</b>

3. **Miscellaneous.**

- a. This Amendment may be executed in any number of counterparts all of which when taken together shall constitute one and the same document. Except as expressly modified by this Amendment, all other terms and provisions of the Agreement are in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern and control. This Amendment shall be governed and construed in accordance with the laws of the State of California.
- b. District shall be responsible for any long-term storage or relocation costs of the hazardous materials related to the Portable Removal Project that is the subject of this Amendment over the life of its storage offsite.
- c. This Amendment does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein. Any attempt to assign or transfer this Amendment is void.
- d. Except as expressly provided above, the Agreement is unchanged. This Amendment, together with prior the Agreement constitute the entire understanding and agreement between the Parties. All understandings, agreements, covenants, representations and warranties, express or implied, oral or written between are contained and merged herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by or between the Parties concerning the subject matter hereof. This is an integrated agreement. It may not be

altered, modified or otherwise changed in any respect except in a writing signed by each party.

- e. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: 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/portal/public/SAM>

The parties hereto have executed this Amendment as of the date set forth above.

**ROSES IN CONCRETE COMMUNITY CHARTER SCHOOL**



By Title

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
James Harris, President, Board of Education  
Antwan Wilson, Superintendent

File ID Number: 16-1433  
Introduction Date: 6-22-16  
Enactment Number: 161242  
Enactment Date: 6/22/16  
By: OL

**APPROVED AS TO FORM:**

  
Jacqueline Mingr, General Counsel

**Signature:** *Kyla Johnson*

**Email:** [kyla.johnson@ousd.org](mailto:kyla.johnson@ousd.org)