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OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education  
From Devin Dillon, Deputy Superintendent

Board Meeting Date

Subject **Agreement between the District and New Leaders, Inc.**

**Action Requested** **Approval by the Board of Education of an Agreement with New Leaders Inc.**

**Background and Discussion** Ratification by the Board of Education of an Agreement between the District and New Leaders Inc to provide ongoing coaching to the Deputy Superintendent, Dr. Devin Dillon. Dr. Aquino of New Leaders will visit for a half-day each month (total of ten (10) half-days) to provide personalized support aligned to the District leader's strengths, blind spots and organizational responsibilities. Together with the District and Deputy Superintendent, New Leaders and Dr. Aquino will work to develop a plan for this coaching that is tailored to the professional development needs of the Deputy Superintendent, and in support of the larger needs of the OUSD for the period of July 1, 2016 through June 30, 2017 in an amount not to exceed \$17,000.00.

**Recommendation** **Approval by the Board of Education of an Agreement with New Leaders Inc.**

**Fiscal Impact** \$17,000.00

**Attachments** • Agreement

## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement") is entered into as of July 1, 2016 (the "Effective Date") between New Leaders, Inc., located at 30 West 26th Street, 9th Floor, New York, NY 10010 ("New Leaders"), and Oakland Unified School District ("District" or "OUSD").

WHEREAS New Leaders is a national 501(c)(3) not-for-profit organization incorporated in Massachusetts; and

WHEREAS District is a school district in the state of California; and

WHEREAS District is retaining New Leaders to provide executive coaching services.

Therefore, in consideration of the foregoing premises and the respective agreements hereinafter set forth and the mutual benefits to be derived therefrom, New Leaders and District hereby agree as follows:

1. Services. New Leaders hereby agrees to provide services for District as described in Schedule 1 hereto, as may be amended by the parties upon mutual agreement in writing (the "Services"). New Leaders will perform the Services and other duties provided in this Agreement to the best of New Leaders' ability, in a trustworthy, efficient, professional and workmanlike manner, and will comply with District's policies and procedures pertaining to third-party consultants in all material respects to the extent it is informed of such policies and procedures by District. New Leaders may use consultants and other subcontractors to provide the Services without prior approval by District. While New Leaders will attempt to comply with District's requests for specific individuals to perform the Services, New Leaders shall be responsible for assigning and reassigning New Leaders' employees and consultants, as appropriate, to perform the Services.

2. Term. The Term of this Agreement will begin on the Effective Date and terminate on June 30, 2017, unless earlier terminated as provided herein.

3. Parties' Relationship. New Leaders is and will remain an independent contractor and will not constitute an employee, agent or representative of District for any legal, tax or other purposes. New Leaders will not directly or indirectly incur, create, or assume any liability, obligation or commitment, contractual or otherwise, for, on behalf of, or in the name of District, except as expressly agreed to in writing by District.

4. Compensation. In consideration for the Services, District agrees to pay New Leaders a flat fee of seventeen thousand dollars (\$17,000.00) ("Fee"). The Fee includes all labor, equipment, communications costs, materials and other disbursements required by New Leaders to complete the Services, and District will not pay additional compensation for such costs or expenses. Fifty percent (50%) of the Fee shall be due upon approval of this Agreement by the OUSD Board, and the remaining fifty percent (50%) of the Fee shall be due on or before January 1, 2017. District will pay such invoices within thirty (30) days of receipt. Upon reasonable prior notice, District, at its own expense, shall have the right to audit New Leaders' records to substantiate invoicing and payment for the Services.

5. Confidentiality.

(i) "Confidential Information" shall mean information of a confidential and proprietary nature revealed by or through a party (whether in writing, orally or by another means) to the other party in connection with this Agreement, including, without limitation, (i) all forms and types of

educational methods and training materials, financial, business, scientific, technical, economic, or engineering information including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing; (ii) information traditionally recognized as proprietary trade secrets; (iii) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing; and (iv) any information marked as confidential by a Party.

(ii) Each Party acknowledges that, through the performance of the Services, it may have access to Confidential Information. Each Party agrees not to publish or otherwise disclose to any person, without specific permission by the other Party, any Confidential Information, nor to use said Confidential Information for any purposes not related to the Services, unless any Confidential Information (i) is or becomes generally known to and available for use by the public other than as a result of a Party's acts or omissions in breach of this Agreement, or (ii) is required to be disclosed pursuant to applicable law or court order. In the event that a Party is requested or required by law or court order to disclose any Confidential Information, that Party will provide the other Party with prompt notice of such request or requirement in order to enable the other Party to seek an appropriate protective order or other remedy (and if a Party seeks such an order or remedy, the other Party will cooperate with it, at the expense of the Party seeking the order or remedy, in connection therewith). Upon expiration or termination of the Agreement, or at any other time a Party ("Disclosing Party") may request in writing, the other Party ("Receiving Party") will deliver to Disclosing Party or, at Disclosing Party's option, destroy, all Confidential Information and other documents relating thereto, that Receiving Party may then possess or have under his or her control, provided that Receiving Party will not be required to deliver to Disclosing Party or destroy any materials in Receiving Party's possession that were obtained or prepared by Receiving Party prior to the engagement hereunder or outside the scope of the Services. The parties hereto agree that Disclosing Party would suffer irreparable harm from a breach by Receiving Party of any of the covenants or agreements contained in this Section 5. In the event of an alleged or threatened breach by Receiving Party of any of the provisions of this Section 5, Disclosing Party or its successors or assigns may, in addition to all other rights and remedies existing in its favor, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce or prevent any violations of the provisions hereof without the requirement of posting any bond.

6. Data. Subject to Section 7 below, any data or other material furnished by District for use by New Leaders under this Agreement ("Data") shall remain the sole property of District. In addition, District shall be solely responsible for determining the existence of, and complying with, any laws applicable to the protection of Data as such laws and regulations may apply to the Services. For the avoidance of doubt, each Party acknowledges and agrees that it will abide by the requirements of the Family Educational Rights and Privacy Act, as applicable.

#### 7. Intellectual Property.

(a) The Parties acknowledge and agree that New Leaders retains and exclusively owns all right, title and interest in and to its intellectual property rights, including but not limited to: (i) inventions, patents and patent applications; (ii) trademarks, service marks, designs, logos, trade names, Internet domain names; (iii) copyrights or other works of authorship (whether or not copyrightable); (iv) trade secrets, know-how, processes, methodologies, techniques, ideas, and concepts; and (v) technology and software (collectively, the "New Leaders IP"). For the avoidance of doubt, the New Leaders IP includes any works authored or developed by New Leaders in connection with this Agreement. No license is granted in, to or under the New Leaders IP other than as expressly set forth herein.

#### 8. Representations and Warranties.

(a) New Leaders represents and warrants to District that New Leaders has the right and authority to enter into and perform its obligations under this Agreement and that it will comply with any applicable law in carrying out its obligations under this Agreement. Except as expressly stated in this Agreement, New Leaders makes no other warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, non-infringement, or otherwise.

(b) District represents and warrants to New Leaders that it has the power and authority to enter into and perform its obligations under this Agreement and that it will comply with any applicable law in carrying out its obligations under this Agreement. In addition, New Leaders shall be entitled to rely on all District decisions and approvals.

9. Indemnification. District hereby agrees to indemnify, hold harmless, and defend New Leaders and/or its subsidiaries, affiliates, employees, officers, directors, agents, or other partners from and against any claim, demand, loss, damage, or other liability, including reasonable attorneys' fees and expenses, (collectively, "Claims") arising out of or related to any breach of this Agreement by District, except for Claims arising out of the recklessness or willful misconduct of New Leaders. New Leaders will give District prompt notice of any claim asserted against it on the basis of which New Leaders intends to seek indemnification from District as herein provided (but the obligations of District under this Section will not be conditioned upon the receipt of such notice). The indemnification provisions of this Section will not require payment as a condition precedent to recovery.

10. Limitation of Liability. In no event shall New Leaders or its officers, directors, trustees, employees, or other representatives be liable to District or any other person for any indirect, incidental, special, exemplary, consequential, or punitive damages, including loss of profit or goodwill, for any matter arising out of or relating to the Services or this Agreement, whether such liability is asserted on the basis of contract, tort, or otherwise, even if New Leaders has been advised of the possibility of such damages. New Leaders' total liability for all damages arising from or relating to the Services or this Agreement shall be limited to the amount of the Fee paid by District.

11. Termination. This Agreement will terminate: (a) immediately upon the insolvency or bankruptcy of New Leaders or District, (b) by either Party, upon material breach of any of the other Party's duties under this Agreement, provided that the breaching Party has failed to cure such breach within thirty (30) days following a written notice of such breach by the terminating Party, or (c) by either Party, at its option, at any time, for any reason, or no reason whatsoever, upon thirty (30) days notice to the other Party. In the event of termination hereunder for any reason, New Leaders will, upon receipt of notice from District, take all necessary steps, as specifically directed by District or otherwise, to bring New Leaders' work to a close in an orderly manner; furnish to District all results and proceeds of the Services to date and a status report on outstanding and in process work; and make best efforts to keep expenditures for this purpose to a minimum. The following provisions survive the termination of this Agreement for any reason whatsoever: Sections 5 (Confidentiality), 7 (Intellectual Property), 8 (Representations and Warranties), 9 (Indemnification), 10 (Limitation of Liability) 11 (Termination), and 12 (Miscellaneous).

12. Miscellaneous.

(a) Complete Agreement. This Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

(b) Severability. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision, and the other provisions of the Agreement will remain in full force and effect.

(c) Waiver. The failure of either District or New Leaders to insist upon strict performance of any of the provisions of this Agreement will not, in any way, constitute a waiver of its rights under this Agreement, at law or in equity, or a waiver of any other provisions or subsequent default by the other Party in the performance of or compliance with any of the terms of this Agreement.

(d) Counterparts. This Agreement may be executed in separate counterparts (including by means of facsimile, PDF, or electronically), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

(e) Assignment. Neither Party may assign its rights or delegate its duties or obligations hereunder without the prior written consent of the other Party. This Agreement shall be binding upon and shall inure to the benefit of the Parties' successors and permitted assigns.

(f) Choice of Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law or conflict of law provision or rule. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE BETWEEN THE PARTIES HERETO.

(g) Amendment. This Agreement may be amended or supplemented only by a written agreement of District and New Leaders.

(h) Headings. The headings of the sections of this Agreement are for reference purposes only and will not constitute a part hereof or affect the meaning or interpretation of this Agreement.

(i) Notices. Any notice required to be given under this Agreement will be in writing and will be deemed to have been duly given if delivered by personal delivery, or certified mail, return receipt requested, postage prepaid, to the following addresses, with a copy sent by email to the address noted:

If to District: Dr. Devin Dillon, Deputy Superintendent  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

If to New Leaders: Laura Kadetsky, General Counsel  
New Leaders, Inc.  
1003 K Street NW, Suite 500  
Washington, DC 20001  
lkadetsky@newleaders.org

Notice will be effective when received as indicated on registered mail or other delivery receipt.

IN WITNESS WHEREOF, New Leaders and District have caused this Services Agreement to be duly executed and delivered on the date first above written.

NEW LEADERS, INC.

OAKLAND UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_

By: *Devin Diller*

Date: \_\_\_\_\_

Date: 8/29/16

### **Schedule 1**

#### **SERVICES**

Dr. Jaime Aquino, New Leaders Chief Program Officer, will provide ongoing coaching to the Deputy Superintendent. Dr. Aquino will visit for a half-day each month (total of ten (10) half-days) to provide personalized support aligned to the District leader's strengths, blind spots and organizational responsibilities. Together with the District and Deputy Superintendent, New Leaders and Dr. Aquino will work to develop a plan for this coaching that is tailored to the professional development needs of the Deputy Superintendent, and in support of the larger needs of the OUSD.