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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sonali Murarka, Director-Office of Charter Schools

Board Meeting Date January 8, 2020

Subject Agreement to Join Common Charter Enrollment Application – Oakland School for the Arts

Action Vote

Background Oakland School for the Arts submitted a request for renewal at the Board meeting on October 23, 2019. A public hearing was held on November 6, 2019 with petitioners presenting. An initial decision meeting was held on November 20, 2019, but the decision was postponed. During that meeting, members of the Board asked the petitioners from Oakland School for the Arts (OSA) about whether they would be willing to sign an agreement to join the common charter schools enrollment application as a step towards increasing the diversity of their applicant pool.

Discussion The Office of Charter Schools staff and Superintendent recommend **approval** of the agreement between OSA and the District. The attached agreement outlines a commitment from OSA to join the Oakland Enrolls common charter schools enrollment application on a timeline that mirrors the phase out of their audition process. The agreement includes a statement that failure to comply with the agreement would constitute a breach of the charter school's renewal petition.

Fiscal Impact N/A

Attachment OSA Agreement - Join Common Charter Application

**Agreement Between
Oakland Unified School District and
Oakland School for the Arts**

This Agreement ("Agreement") is entered into as of December 3, 2019 by and between Oakland School for the Arts, a California nonprofit public benefit corporation ("Non-Profit"), operating Oakland School for the Arts ("Charter School"), and the Oakland Unified School District ("OUSD"). The Non-Profit and Charter School are collectively referred to as "OSA." OUSD and OSA are collectively referred to as the Parties.

RECITALS

Whereas, OUSD is the agency that authorized the current petition under which Charter School is operating. The District authorized that petition on December 3, 2014, for a term of five years, beginning on July 1, 2015 and expiring June 30, 2020.

Whereas, on October 23, 2019, OSA submitted its Renewal Petition to OUSD requesting a five-year renewal of its charter term, scheduled to begin on July 1, 2020 if approved; and

Whereas, the Renewal Petition was reviewed by OUSD staff to determine whether it met the standard for renewal; and

Whereas, the Renewal Petition delineates a process by which OSA would phase out its current audition requirement for admissions over three years.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, OSA and OUSD agree to the following Terms and Conditions:

TERMS & CONDITIONS

- I. **Use of Terms.** Unless otherwise stated, for the purposes of this Agreement, the terms Charter School, Non-Profit, and OSA may be used interchangeably, with the duties and responsibilities of the Charter School, Non-Profit, and OSA being the same under this Agreement.
- II. **Interaction of Agreement with Renewal Petition, and Conflicts.** The Renewal Petition is attached to this Agreement as Exhibit A. The Parties intend the terms and conditions of this Agreement to supplement the terms, conditions, standards and procedures set forth in the Renewal Petition and, in doing so, the Parties agree that this Agreement is consistent with the Renewal Petition. If any provision of this Agreement is inconsistent with the Renewal Petition, the terms of the Agreement shall prevail.
- III. **Term.** This Agreement shall commence on the date upon which it is executed by both Parties, but shall not be effective absent ratification or approval by the OUSD Governing Board. This Agreement shall cover the OSA charter term, beginning on July 1, 2020 and ending on June 30, 2025. If the Charter School's charter is revoked or the Charter School ceases operations prior to the expiration of the term of the Agreement, the Agreement shall immediately terminate.

- IV. **Consideration.** The parties have bargained for and expressly agree that the rights and obligations of each party contained in this Agreement constitute sufficient consideration to support this Agreement and bind the Parties.
- V. **Use of Common Charter Schools Application.**
- A. Subject only to Paragraphs B and C of this Section, OSA shall use the common charter schools application managed by Oakland Enrolls (“Common Application”), or its successor, for its admissions as follows:
- For 6th graders entering Fall 2021
 - For 6th and 7th graders entering Fall 2022
 - For 6th, 7th, and 8th graders entering Fall 2023
 - For all students entering OSA in any grade entering Fall 2024 and beyond
- B. If, for any reason not directly attributable to the Charter School, OSA is unable to use the Common Application for any school year for all or parts of its admissions as proscribed in Paragraph A of this Section, the parties shall work in good faith to ensure that OSA is able to use the Common Application for all of its admissions the subsequent year to the extent technically feasible. This shall not constitute a material breach of any provision of this Agreement or the charter.
- C. If a common charter application ceases to exist, the parties shall meet and confer in good faith to determine a suitable alternative.
- D. Unless otherwise stated, failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.
- E. This Section is intended to ensure that the Common Application is the default process by which prospective students apply to OSA. It is also intended to recognize that there may be instances where issues outside the control of OSA might prevent a small number of students from applying to OSA using the Common Application and that those instances do not violate the terms or intent of this Agreement. Examples of such instances may include, but are not limited to, technical glitches in the Common Application software and the inability of the Common Application, as currently designed, to enable applicants (regardless of grade) to identify which of the nine artistic areas to which they seek to apply.
- VI. **Revocation for Other Reasons.** Notwithstanding any provision of this Agreement, OUSD retains its full statutory and regulatory authority to revoke the Renewal Petition for any reason as permitted by law.
- VII. **Voluntary Closure, Revocation, and Waiver of Rights.** If OUSD determines that OSA has materially breached this Agreement for any reason, including but not limited to as set forth in section V,

OUSD will notify OSA in writing of the material breach. Upon making this determination, OUSD may initiate revocation proceedings against OSA pursuant to OUSD's authority under Education Code section 47607.

- VIII. **Indemnification.** OSA shall promptly defend, indemnify, and hold harmless OUSD, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the "Indemnified Parties") from and against any and all alleged or actual breach of any obligation imposed under this Agreement, or any other actual or alleged breach of any duty or obligation owed to OUSD or any third party, including any Charter School student (including any student placed with a school other than the Charter School, or in any nonpublic, nonsectarian school or in other special services to address special need or disability situations) or employee, by OSA or its officers, directors, employees, agents, representatives, volunteers, guests, students, administrators or trustees, successors or assigns.
- IX. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- X. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- XI. **Interpretations.** No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- XII. **Litigation.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- XIII. **Integration/Entire Agreement of Parties:** This Agreement, inclusive of the Renewal Petition, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- XIV. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.
- XV. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- XVI. **Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

XVII. **Agreement Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

IN WITNESS WHEREOF, the Parties execute the document, as dated below.

Oakland Unified School District

Name: Jody London

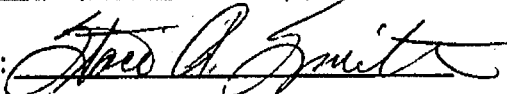
Signature: 

Title: President, Board of Education

Date: 1/9/2020

Oakland School for the Arts


Name: STACI A. SMITH

Signature: 

Title: INTERIM EXECUTIVE DIRECTOR

Date: 12/12/19

Name: Kyla Johnson Trammell

Signature: 

Title: Secretary, Board of Education

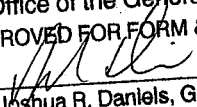
Date: 1/9/2020

Name: _____

Signature: _____

Title: _____

Date: _____

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  12/27/19
Joshua R. Daniels, General Counsel