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Enactment Date	4/14/2021 If

Board Cover Memorandum

To Board of Education

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

Meeting Date April 14, 2021

Subject Resolution No. 2021-0152 - Acknowledging Receipt of Commitment Letter from Roses in Concrete to Fund Positions at Howard Elementary School

Ask of the Board Adoption of Resolution No. 2021-0152 - Acknowledging Receipt of Commitment Letter from Roses in Concrete to Fund Positions at Howard Elementary School

Background 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 the attached Memorandum of Understanding (“Underlying MOU”), which brought the Roses program within Howard Elementary School (“Howard”). Among other things, the Underlying MOU stated that OUSD “would fund 5.4 full time equivalent” positions, with any additional positions not required by law being hired by OUSD with offsetting donations to OUSD by Roses.

Discussion Roses requested that OUSD create and hire 10.3 FTE to support the Roses program within Howard as follows:

- Administrative Assistant III Bilingual – 1.0 FTE
- Attendance Specialist – 0.7 FTE
- Instructional Assistant K-12 Bilingual – 2.0 FTE
- K12 Teacher - Teacher Education Enhancement – 0.6 FTE
- Outreach Consultant – 1.0 FTE
- Para Educator – 3.0 FTE
- Principal – 0.5 FTE
- Special Ed Teacher – 0.5 FTE
- Student Attendance Compliance Officer – 1.0 FTE

The estimated cost of these positions is \$635,808.10. Roses has committed providing this funding to OUSD via the attached Commitment Letter. The Resolution acknowledges receipt of the Commitment Letter.

Fiscal Impact

Receipt of \$635,808.10 to offset corresponding costs of new positions.

Attachment

- Resolution No. 2021-0152 - Acknowledging Receipt of Commitment Letter from Roses in Concrete to Fund Positions at Howard Elementary School
- Memorandum of Understanding between Oakland Unified School District and Roses In Concrete

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

Resolution No. 2021-0152

**Acknowledging Receipt of Commitment Letter from Roses in Concrete to Fund Positions at
Howard Elementary School**

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 that OUSD “would fund 5.4 full time equivalent” positions, with any additional positions not required by law being hired by OUSD with offsetting donations to OUSD by Roses; and

WHEREAS, Roses requested that OUSD create and hire an additional 10.3 FTE to support the Roses program within Howard at an estimated cost of \$635,808.10.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education (“Board”) hereby acknowledges receipt of Roses’ Commitment Letter (received February 3, 2021, via email, attached hereto, and incorporated herein by reference) that commits Roses to providing the District with \$635,808.10 in three installments pursuant to the details in the Commitment Letter.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 14th day of April, 2021, by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, VanCedric Williams, Gary Yee, Mike Hutchinson, Clifford Thompson,
Vice President Benjamin "Sam" Davis and President Shanthi Gonzales

NOES: None

ABSTAINED: None


RECUSED: None

ABSENT: Samantha Pal (Student Director) and Jessica Ramos (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 _____
April 14, 2021.

Legislative File	
File ID Number:	21-0803
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By:	



Shanthi Gonzales
President, Board of

4/15/2021



Kyla Johnson Trammell
Secretary, Board of Education

4/15/2021

Roses in Concrete Community School

8755 Fontaine Street
Oakland, CA 94605 510-698-3794

www.rosesinconcrete.org
community@rosesinconcrete.org



Dr. Kyla Johnson-Trammell
Superintendent
Oakland Unified School District
1000 Broadway, Suite 300 Oakland, CA 94607

Dear Superintendent Johnson-Trammell:

Roses in Concrete ("RIC"), a California non-profit public benefit, is very excited for the incorporation of the RIC program into Howard Elementary School ("Howard"). Under the Memorandum of Understanding ("MOU") between the Oakland Unified School District ("OUSD" or "District") and RIC, OUSD agreed to fund 5.4 full time equivalent ("FTE") teachers and a 0.3 FTE attendance clerk (assuming a certain level of enrollment). The MOU also stated that RIC "shall reimburse the District for any personnel costs [from incorporating the RIC program into Howard] . . . above and are beyond the personnel costs" for the 5.4 FTE staff. Pursuant to this provision and at the request of RIC, OUSD has created and funded the following 10.3 FTE ("10.3 FTE") to support the RIC program:

- Administrative Assistant III Bilingual – 1.0 FTE
- Attendance Specialist – 0.7 FTE
- Instructional Assistant K-12 Bilingual – 2.0 FTE
- K12 Teacher - Teacher Education Enhancement – 0.6 FTE
- Outreach Consultant – 1.0 FTE
- Para Educator – 3.0 FTE
- Principal – 0.5 FTE
- Special Ed Teacher (intervention/Special Ed) – 0.5 FTE
- Student Attendance Compliance Officer – 1.0 FTE

As required by the MOU, RIC hereby legally commits itself to providing OUSD the sum of \$635,808.10, to be provided to OUSD in three equal installments (i.e., \$211,936.33) on February 15, 2021, and April 15, 2021, and June 15, 2021.

This is the best estimate available at this time of the total compensation cost of the 10.3 FTE. By RIC providing these funds and OUSD accepting these funds:

- OUSD agrees that these payments fully and completely satisfy RIC's obligation under the MOU to "reimburse the District for any personnel costs [from incorporating the RIC program into Howard] . . . above and are beyond the personnel costs" for the 5.4 FTE staff.
- OUSD agrees that if the actual total cost of the 10.3 FTE is higher than \$635,808.10, then OUSD shall bear the additional cost and shall not seek additional payment from RIC.
- RIC agrees that if the actual total cost of the 10.3 FTE is lower than \$635,808.10, RIC will not seek and OUSD is not expected to return to RIC the difference.
- RIC and OUSD agree that should any of the 10.3 FTE become vacant, OUSD shall fill that position pursuant to the MOU and all applicable bargaining agreements OUSD has with its collective bargaining units.
- RIC and OUSD agree that should RIC request that OUSD create one or more new or different positions to support the RIC program, RIC will fully reimburse OUSD (above and beyond the \$635,808.10 provided pursuant to this letter) for the total cost of those positions pursuant to the MOU.
- RIC and OUSD agree that they each accept this arrangement, the risks therein, in order to provide certainty regarding the payment amount from RIC to OUSD.

Thank you for your partnership in this matter.

Sincerely,
DocuSigned by:

Carla C Gaymon-Victor
Carla Gaymon-Victor

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Enactment Number	20-1133
Enactment Date	6/29/2020 er



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Yvette Renteria, Deputy Chief-Innovation
Sonali Murarka, Executive Director-Office of Charter Schools
Josh Daniels, General Counsel

Board Meeting Date June 29, 2020

Subject Memorandum of Understanding between Roses in Concrete and OUSD

Action Approve the proposed Memorandum of Understanding between Roses in Concrete and the Oakland Unified School District

Background Roses in Concrete ("Roses") is a charter school in Oakland that opened in 2015 with an ethnic studies and racial social justice focus through an innovative curriculum.

On November 20, 2019, the Board denied Roses' petition for charter renewal. On February 11, 2020, Roses' appeal to the Alameda County Board of Education was also denied.

In anticipation of Roses' closure on June 30, 2020, the Roses leadership team and OUSD have been in conversation for the past several months about how the innovation from Roses could be brought into the District as a way to broaden the reach of Roses and bring innovation to OUSD.

Discussion Roses and OUSD staff have negotiated the attached Memorandum of Understanding ("MOU"), which bring Roses within Howard Elementary School. This represents a unique way for a traditional school district and charter school to partner. In particular, the MOU designates this upcoming school year (2020-21) as a "design year" during which time families and staff from both Roses and Howard would work together to explore how to design a vision for an innovative, fully-merged school at the Howard campus for 2021 and beyond.

Under the MOU, students from the Roses in Concrete Charter School will be given priority enrollment in the Roses program within Howard and will be enrolled in the Howard CDS code. Roses program staff (likely staff from the Roses in Concrete Charter School) will be formal

employee of the District. All decisions (affecting the Roses program at Howard) typically made by the OUSD Board will continue to be made by the OUSD Board. At the same, the programmatic intent of the MOU is to provide the Roses program at Howard with some autonomy to continue to operate key features of their program during the 2020-21 school year.

A few features of potential interest also include:

- As the Roses will serve grades K-6, the District will pursue a change with the State for the Howard CDS code.
- OUSD is committing to paying for a 0.5 FTE (or a 1.0 FTE in certain situations) to lead the Roses program on a day-to-day basis. This position will serve in a role similar to a school principal. Roses will cover the other 0.5 FTE.
- OUSD is committing to provide an office space and likely seven (7) classrooms for the Roses program at Howard.
- OUSD is committing to funding certain staff for the Roses program at Howard commensurate with their enrollment, likely 5.4 FTE teachers and a 0.3 FTE attendance clerk.
- A separate labor MOU is being negotiated between Rosas Unidas (the CTA bargaining unit at Roses in Concrete), OEA, and OUSD.
- Two outstanding issues remain: a dispute regarding Roses' repayment of the Capital Impact Partners loan to the Non-Profit and the issue of any outstanding payments the Parties owe to each other. The MOU explicitly delegates authority to the Superintendent to negotiate, approve, and implement the resolution of these disputes without the need for Board action or ratification. This delegation of authority is necessary because these disputes must be resolved well before the next scheduled Board meeting in order to successfully implement the MOU.

Fiscal Impact

Estimated positive fiscal impact due to approximately 110 additional students enrolled in OUSD, less the costs for staffing.

Attachment

Memorandum of Understanding between Roses in Concrete and the Oakland Unified School District

**MEMORANDUM OF UNDERSTANDING BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
ROSES IN CONCRETE**

This Memorandum of Understanding ("Agreement") is effective as of July 1, 2020, ("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." This Agreement shall be enforceable only upon approval by the governing boards of each of the Parties unless otherwise noted.

RECITALS

- A. The Non-Profit operates 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. 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.
- C. 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.
- D. The Parties also intend to evaluate the feasibility and appropriateness of continuing these similar programmatic offerings beyond the 2020-2021 school year and, thereby, intend to create a local "Design Team", defined herein, to advise the Parties on the feasibility and appropriateness of continuing these similar programmatic offerings, in one form or another, beyond the 2020-2021 school year.
- E. This Agreement provides a clear timeline for the closure of the Charter School.
- F. The Parties acknowledge that their commitments and obligations, as articulated in this Agreement, are fully enforceable as a binding 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 July 1, 2020 or on the date upon which it is approved by the governing boards of each of the Parties, whichever is later, and shall expire on June 30, 2021. This term shall be referred to as the “Design Year.”
3. **Designation of School.** The program contemplated in this Agreement shall be referred to as “The Program at Howard Elementary School” or “The Program,” and will be a program of the District.
4. **Vacating Facility.** The Charter School shall vacate the Facility pursuant to the terms of the existing facilities use agreement between the Parties, incorporated herein by reference and as amended by this Agreement, no later than June 30, 2020, unless otherwise mutually agreed upon by both Parties. The Program shall operate at Howard Elementary School, 8755 Fontaine St, Oakland, CA 94605 (“Howard”) for the 2020-2021 school year and shall be part of Howard, with students to be enrolled at Howard. The Program shall occupy one (1) office space and shall receive seven (7) classrooms at Howard based on a projected enrollment of 110 students. If the projected enrollment is significantly above (e.g., 150 students) or significantly below (e.g., 50 students), the Parties shall work together in good faith to determine a different allocation of classrooms. The District shall also provide sufficient storage space for Program equipment and supplies. Program students will also have equitable access to all common spaces (e.g. library, multi-purpose room, playgrounds) and equipment.
5. **The Program.** The Parties shall work together in good faith to try to ensure that the students who were served by the Charter School during the 2019-2020 school year will continue to be served with similar programmatic offerings during the 2020-2021 school year.
 - a. Grades and Focus. The Program shall consist of instruction for students in Kindergarten through 6th grade, focused on addressing ethnic studies and racial social justice through an innovative curriculum. Subject to subparagraph “f,” below, Charter School programs that existed in the 2019-20 school year, including, but not limited to, Dual Immersion Spanish language instruction, visual and performing arts, and STEM, may continue to operate as part of the Program. The Non-Profit shall reimburse the District for any personnel costs incurred by offering the programs above and are beyond the personnel costs for the staff identified in Paragraph 7, below. There is no guarantee that these programs will continue at the campus for 2021-2022 and beyond.
 - b. The Program Leader. The Program shall be supervised on a day-to-day basis by the Program Leader, under the oversight, supervision, and direction of a District Network Superintendent. The Program Leader shall have the same duties and responsibilities for the Program as an elementary school principal has for an elementary school in the District. The Program Leader shall be an employee of the District, and shall be responsible for implementing and supervising the day-to-day operations of the

Program. The Program Leader shall work with the Howard Parent Advisory Committee, the Program's staff, the Howard Principal, the Howard staff, the District administration, and the community to ensure the Program is appropriately implemented.

If the District employs the individual who was Head of School of the Charter School for 2019-20 as the Program Leader, the Non-Profit shall pay to the District one-half of the cost of the total compensation of the Program Leader (salary, stipends, benefits, etc.) for one school year and the Non-Profit shall make this payment no later than September 1, 2020, unless a later date is agreed to in writing by both Parties. If the individual who was Head of School of the Charter School for 2019-20 is not hired as the Program Leader, the Non-Profit shall not be obligated to make such a payment and the District shall be responsible for all of the cost of the total compensation of the Program Leader.

The District possesses full discretion over the hiring decision for the Program Leader and the Parties recognize the District shall make the hiring decision for the Program Leader consistent with all state laws, District policies, and applicable bargaining agreements. The District shall consult with the employees of the Non-Profit in making this hiring decision.

The Program Leader, the Non-Profit, and the District Network Superintendent shall work together in good faith to determine an appropriate evaluation system for the Program Leader that brings together elements of the District's Leadership Framework and the Non-Profit's Head of School Evaluation Framework to the extent permitted under state law, District policies, and applicable bargaining agreements.

- c. Shared Governance Committee. Starting July 1, 2020, the Non-Profit may create a Shared Governance Committee, as detailed in the Program's staff bargaining agreement. Two members of the Howard school community, as jointly selected by the Non-Profit and the District, shall sit on the Shared Governance Committee.
- d. Parent Advisory Committee. Starting July 1, 2020, the Non-Profit may create a Parent Advisory Committee ("PAC") for the 2020-2021 school year. The composition of the PAC shall be determined by the Non-Profit consistent with any applicable bylaws.
- e. Program Recommendations. The Non-Profit shall provide recommendations to the District regarding the operation of the Program (e.g., school structuring and scheduling, hiring staff, staffing levels, professional development, curriculum, assessments, instructional strategies, research and development activities, and student support services), but the District retains ultimate authority over all operation of the Program, and all matters typically brought to the District Governing Board for discussion or approval, such as contracts with outside vendors paid for by District funds, shall be brought to the District Governing Board for the Program.

- f. Curriculum. The Non-Profit may recommend a curriculum for the Program and shall present any recommended curriculum, in writing, to the District no later than July 15, 2020. To the extent that the approved curriculum does not align with the District's current curriculum offerings, the Non-Profit shall be responsible for providing the materials for the students and completing the necessary documentation so that the District can submit any necessary curriculum waiver. Any failure to properly or timely complete the necessary documentation may delay the implementation of that curriculum.
- g. The Howard School Site Committee. No later than January 1, 2021, at least two members of the Shared Governance Committee shall have the opportunity to join the Howard School Site Committee so long as it is consistent with any applicable bylaws or policies. During the term of this Agreement, the Howard School Site Committee shall consult with the Design Team, as discussed later in this Agreement.
- h. Calendar. The Program may use a school calendar different than the District's school calendar, to the extent permitted under state law and applicable bargaining agreements. The Program's planned school calendar shall be provided to the District by August 1, 2020.
- i. Student Information System. The District shall be responsible for CALPADS reporting for all students enrolled in the Program. Program staff shall be responsible for the same best practices for data entry in the District's Student Information System (Aeries) as all similar District staff are responsible for. Program staff shall maintain enrollment, attendance, discipline, master schedule, and 504 plan information, consistent with CALPADS reporting requirements, in Aeries. The Program may choose to additionally maintain a separate Student Information System for its purposes (e.g., for report cards), which shall be legally compliant and completely accessible to the District.

6. Program Students.

- a. Program Enrollment. The projected enrollment for the Program for 2020-2021 is approximately 110 students. Students seeking to enroll in the Program shall comply with the District's enrollment process and protocols. The Non-Profit shall provide the District, in writing, with a list of the names of students being served by the Charter School during the 2019-2020 school year who have expressed interest in continued enrollment with the Program for the 2020-2021 year ("Charter Students"). Charter Students shall have enrollment priority in the Program over all other District students.
- b. Student Discipline. Students enrolled in the Program ("Program Students") are District students, and therefore shall be subject to the student discipline and restorative justice policies and procedures of the District. The Program Leader or his/her/their designee shall manage all student discipline for the Program consistent with such policies and procedures.

- c. Special Education. The District's Special Education Local Plan Area ("SELPA") shall provide services to Program Students according to their Individualized Education Programs and in alignment with how all District students are supported. The Program Leader or his/her/their designee shall oversee special education at the Program in the manner similar to all District principals and will serve as the required site administrator at all Individualized Education Program ("IEP") team meetings.
- d. Interim Assessments. Students enrolled in the Program shall be administered a nationally normed and/or externally validated interim assessment twice a year for students in all grades. If the Program chooses to use the same interim assessments used by the District, the Program shall have access to those assessments at no cost.
- e. Custodial Services. The District shall provide custodial services for all spaces used by the Program in the same manner it provides custodial services to other Howard classrooms. The District and the Program shall work in good faith to determine custodial service coverage for any days when the Program is in session and the District is not, consistent with all applicable bargaining agreements.
- f. Food Services. The District shall provide food services to Program students in the same manner other Howard students receive food services. The District and the Program shall work in good faith to determine nutrition service coverage for any days when the Program is in session and the District is not, consistent with all applicable bargaining agreements.
- g. Transportation Services. The District shall provide transportation services to Program students in the same manner other Howard students receive transportation services. The District and the Program shall work in good faith to determine transportation service coverage for any days when the Program is in session and the District is not, consistent with all applicable bargaining agreements.
- h. Health Services. The District shall provide physical and mental health services (e.g. school nurse, counsellors) to Program Students in the same manner other Howard students receive physical and mental health services. The District and the Program shall work in good faith to determine health service coverage for any days when the Program is in session and the District is not, consistent with all applicable bargaining agreements.
- i. Student Safety. The District shall provide measures to ensure the safety of Program Students in the same manner other Howard students receive the same. The District and the Program shall work in good faith to determine student safety service coverage for any days when the Program is in session and the District is not, consistent with all applicable bargaining agreements.

7. Program Staffing.

- a. Hiring of Charter School Employees. The District intends to hire only Charter School employees employed by the Charter School in 2019-220 as Program staff consistent with all state laws, District policies, and applicable bargaining agreements. Upon ratification of this Agreement, the District shall consult with the Non-Profit regarding the District's selection, hiring and processing of employees that are currently employed by the Charter School. The final number of Charter School employees that will be hired to provide instruction in the Program shall be determined by the Program's actual enrollment on the Census Day, consistent with the District staffing formula applied to all District schools and any additional financial support that Non-Profit agrees to provide to the District. Assuming the Program enrolls near the expected 110 students, and that those students are relatively evenly distributed among grade levels, the District would fund 5.4 full time equivalent ("FTE") teachers and a 0.3 FTE attendance clerk for the Program. (A draft example formulation is attached to this Agreement, which includes estimated staffing for all of Howard, including the Program, based on projected enrollment of 110 Program Students.) The District shall have final approval of all hiring decisions and employment classifications of these employees, consistent with all state laws, District policies, and applicable bargaining agreements. Program staff must have the qualifications, credentials, and licensures required by the District. The Parties shall work together, in good faith, to implement this process.
- b. Program Staff. Consistent with all applicable bargaining agreements, Program staff shall be District employees and shall be eligible for membership in the applicable bargaining units, pending the outcome of negotiations between the California Teachers Association (which represents Charter School certificated staff) and the Oakland Education Association (which represents District certificated staff). The Non-Profit shall not be deemed the exclusive public school employer of the employees of the Program for purposes of the Educational Employment Relations Act. Consistent with Section 10, the Non-Profit may retain the services of independent contractors to supplement programming offered by the Program.

8. Supplies, Furniture, and Equipment.

- a. Ownership. Supplies, furniture, and equipment previously purchased by the Charter School or the Non-Profit using the District's credit shall be considered District property. The District has full discretion to utilize and distribute District property as it sees fit. Furniture previously purchased by the Charter School or the Non-Profit without the District's credit shall be considered property of the Non-Profit, and shall not be moved or redistributed by the District. By June 1, 2021 or by any effective termination date, whichever is earlier, the Non-Profit shall provide the District with a written inventory of all supplies, furniture, and equipment over which it seeks to retain ownership. The Non-Profit shall be responsible for removing all such supplies, furniture, and equipment from District property no later than June 30, 2021, or within 15 days of

termination if this Agreement is terminated early, whichever is sooner. All supplies, furniture, and equipment not removed in this time frame shall be deemed surrendered to the District unless otherwise prohibited by law.

- b. *Moving Costs.* The District agrees to pay or reimburse any reasonable costs associated with moving the Charter School's supplies, furniture, and equipment to the Program's location at Howard Elementary School. The Non-Profit shall submit its request for reimbursement for reasonable moving costs, including the cost of moving supplies, to the District no later than September 1, 2020.
9. **Fiscal Relationship.** The Howard Elementary School's overall budget allocation shall include a budget for the Program. The District shall have final say over the appropriate allocation of funds to support the Program, but the money included in the Howard Elementary School's overall budget allocation for the Program shall be sufficient to cover core staffing costs (less any contribution the Non-Profit is required to make for the Program Leader), special education staffing, health services staffing, nutrition services, custodial services, Human Resources/payroll (including substitute teacher staffing), and any other District-provided services that are provided to all District schools/students. Any federal funds from ESSA/CSI (Elementary School and Secondary Act/Continuous School Improvement) for which the Program was eligible based on the 2019-2020 school year shall, to the extent that such funding is received by the District on behalf of the Program in 2020-21, be allocated to the Program's budget for their use and shall not have an impact on the budget allocation from the District for the Program.
10. **External Funding.** Nothing in this Agreement shall prohibit or prevent the Non-Profit from soliciting and holding (either holding itself or through a third party such as the Oakland Public Education Fund) money to support the Program. All external funding shall be expended to benefit the Program consistent with District policies and practices, and shall be used consistent with the purpose under which they were given. The Non-Profit shall be solely responsible for collecting and maintaining these funds.

Such external funds may be used for any purposes connected with the Program. Such external funds may also be used to contract with independent contractors or vendors so long as those independent contractors and vendors do not provide services to the Program that are typically provided by District employees; any use of external funds to contract with independent contractors or vendors to support the Program must be approved by the District.
11. **Design Team.** No later than August 31, 2020, the Parties shall create the "Design Team." The objective of the Design Team is to monitor and evaluate the efficacy of the Program during the 2020-2021 school year, brainstorm and collaborate on possible ways to improve the Program moving forward, and evaluate whether continuation of the Program, or something similar, can feasibly, appropriately and responsibly be continued into the 2021-22 school year and beyond.

- a. Membership. The Design Team shall consist of seven (7) members from the Program and seven (7) members from Howard. The seven (7) members from the Program shall include the Program Leader, three parents/guardians, and three school staff members.
 - b. Meetings. The Design Team shall hold regular meetings, which are intended to provide collaborative time to design and shape a possible future program into the 2021-22 school year and beyond. Such regular meetings may include walk-throughs of the Program's classrooms, alongside designated District staff.
 - c. Final Report. No later than March 30, 2021, the Design Team shall present a written report to the Superintendent, detailing, at a minimum: (1) the Design Team's review of the long-term financial stability of the Program, (2) the Design Team's review of the governance structure of the Program; (3) a proposed plan for the merged school's program, or something substantially similar for the following school year, including a financial analysis, a proposed curriculum, and a proposed staffing plan, and (4) a discussion of the feasibility of implementing the proposed plan.
 - d. Report Review. The Superintendent shall review the Final Report and shall determine what next steps to take, if any, based on the Final Report's recommendations. The District retains the authority to decide whether to continue the Program, in whatever form, into the 2021-2022 school year.
12. **COVID-19**. The Parties acknowledge that due to the COVID-19 pandemic, it may become necessary during the term of this Agreement for the District to take actions it deems necessary to protect the health and safety of District students and staff, including Program Students and Staff. The Parties acknowledge that the District must remain responsive to state and local government directives. The Parties therefore agree that the Program shall be treated substantially similarly to the traditional instruction program provided at Howard when addressing health and safety concerns related to the COVID-19 pandemic. The Program shall comply with any and all District COVID-19-related policies, procedures, protocols, directives, and orders. For example, if the commencement of in-person instruction during the 2020-2021 school year is delayed for the traditional instruction at Howard, the commencement of in-person instructions for the Program shall be similarly delayed. The Parties acknowledge that flexibility is needed during this time to provide quality instruction, while keeping students safe.

- 13. Termination.** Either Party may terminate this Agreement with thirty (30) days of written notice to the other Party. This written notice can be received no later than July 15, 2020, unless an extension is mutually agreed upon in writing by both parties.

Notwithstanding any other language in this Section or in this Agreement, the Non-Profit may terminate this Agreement for any reason, with immediate effect, upon written notification, on or before July 15, 2020, unless an extension is mutually agreed upon in writing by the Non-Profit and the District Superintendent or designee.

Notwithstanding any other language in this section or in this Agreement, the Non-Profit may terminate this Agreement, upon written notification, at any time prior to hiring the first employee pursuant to this Agreement, unless an extension is mutually agreed upon in writing by the Non-Profit and the District Superintendent or designee, if the Parties are not able to resolve the dispute between the Parties regarding the repayment of the Capital Impact Partners loan to the Non-Profit and the issue of any outstanding payments the Parties owe each other. This termination will take effect immediately.

Any payments by one party to the other made prior to the effective date of termination need not be returned, repaid, or otherwise undone. If this Agreement is terminated, both Parties shall work together in good faith to support the transition of students and staff from the Program.

- 14. Delegation of Authority to District Superintendent.** Without binding either Party to a specific outcome, agreement, or solution, the District agrees to work in good faith with the Non-Profit to resolve two issues by no later than July 15, 2020: 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. To the extent permitted by law, the District Governing Board delegates its authority to the Superintendent to negotiate, approve (without the need for Board action or ratification), and implement the resolution of these issues.

- 15. Insurance and Risk Management.**

a. Tail Coverage.

- i. Non-Profit shall be responsible for obtaining tail coverage for its professional liability insurance. Tail coverage shall be obtained for all liabilities arising out of actions or inactions that occurred prior to July 1, 2020 that are covered by its current professional liability insurance. This coverage shall be provided through June 30, 2021. Non-Profit shall obtain an endorsement with the purchased tail coverage naming District as the "Parent Company" for the duration of the tail coverage. Non-Profit shall be responsible for all costs associated with obtaining tail coverage.

- ii. Non-Profit shall also be responsible for obtaining tail coverage for sexual abuse liability arising out of actions or inactions that occurred prior to July 1, 2020 that are, with limits of not less than \$1,000,000.00 per occurrence. This coverage shall be provided through June 30, 2021. Non-Profit shall obtain an endorsement with the purchased tail coverage naming District as an “additional insured” or “additional covered party” for the duration of the tail coverage. Non-Profit shall be responsible for all costs associated with obtaining tail coverage for sexual abuse liability.
 - b. Subrogation. Non-Profit agrees to waive all rights of subrogation against the District, its Governing Board and Governing members, officers, officials, agents, volunteers, and employees for any all claims of bodily and personal injury arising out of or losses paid under the terms of the insurance policies identified in this Agreement. Nothing herein shall vary, alter, or extend any provision or condition of the insurance policies identified in this section.
 - c. Representations/Warranties. The Non-Profit hereby represents to District that any pending or potential claims or incidents arising under the Non-Profit’s or the Charter School’s insurance policies as of the effective date of this Agreement are listed in **Exhibit A**. The Non-Profit further represents that it has no actual or constructive knowledge of any other pending or potential claims or incidents arising under the Non-Profit’s or the Charter School’s insurance policies as of the effective date of this Agreement. Should Non-Profit become aware of any potential claims arising under the Non-Profit’s or the Charter School’s insurance policies identified in this Agreement predicated upon claims or incidents made against the Charter or the Non-Profit through and including Date of Execution of this Agreement, Non-Profit shall provide written notice to District within five (5) business days of learning about the claim or incident; failure to do so shall represent a material breach of this Agreement.
16. **Charter School Closure**. Upon execution of this Agreement, the Non-Profit shall immediately commence closure procedures for the Charter School, as identified in the charter for the Charter School, Education Code section 47605, and 47607 as well as California Code of Regulations, Title 5 (5 CCR), section 11962, including but not limited to providing notice to the relevant agencies and community members, transferring records as appropriate, completing the financial close out audit, and following procedures for disposition of liabilities and assets. The District agrees to expedite an accounting of all outstanding monies owed to or by the Charter School and provide this accounting to the Charter School no later than August 1, 2020. Any remaining assets of the Charter School shall be retained by the Non-Profit. All intellectual property including, but not limited to, curricular materials, instructional methods, and pedagogies developed by the Charter School or the Non-Profit shall remain the property of the Non-Profit. The Charter School closure procedures shall be completed in full, including full completion of the close out audit, no later than January 1, 2021.

By executing this Agreement, the Non-Profit and Charter School agree to waive any remaining right to appeal or challenge, in any way, the District's and/or the Alameda County Office of Education's decision to deny the petition for renewal and agree to withdraw any appeals previously submitted.

17. **Non-Profit Responsibilities and Dissolution.** The Non-Profit shall be responsible for completing the Charter School closure procedures identified above. The Non-Profit shall have no authority over the operation of the Program, except as set forth herein and other than to seek enforcement of the terms of this Agreement, if necessary.
18. **Indemnification.** The Non-Profit shall promptly defend, indemnify, and hold harmless the District, its Governing Board and Governing Board members, officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the "District Indemnified Parties") from and against any liabilities, claims, debts, demands, costs, losses, damages, or expenses arising out of any sole or separate negligence, joint negligence with a third party (indemnification provided to the extent of the Non-Profit's contributory negligence), wrongful or willful acts or omissions by the Non-Profit or the Charter School (or the Non-Profit's or Charter School's officers, directors, employees, agents, representatives, volunteers, administrators, trustees, successors or assigns) that occurred, in whole or in part, at any time.

The District shall promptly defend, indemnify, and hold harmless the Non-Profit, its Governing Board and Governing Board members, officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the "Non-Profit Indemnified Parties") from and against any liabilities, claims, debts, demands, costs, losses, damages, or expenses arising out of any sole or separate negligence, joint negligence with a third party (indemnification provided to the extent of the District's contributory negligence), wrongful or willful acts or omissions by the District (or the District's officers, directors, employees, agents, representatives, volunteers, administrators, trustees, successors or assigns) that occurred, in whole or in part, at any time.

19. **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.

20. **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.
21. **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.
22. **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.
23. **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.
24. **Dispute Resolution.** Any misinterpretation, misapplication or violation of this Agreement shall be addressed in accordance with the following procedures:
 - a. In the event of a dispute between Non-Profit 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 the Non-Profit.
 - b. The Superintendent (or designee) or Non-Profit Executive Officer shall informally meet and confer in a timely fashion to attempt to resolve the dispute.
 - c. In the event that this informal meeting fails to resolve the dispute, the Superintendent (or designee) and the Non-Profit 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 Non-Profit. 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 Non-Profit.
25. **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.

- a. To the District at: Joshua R. Daniels
General Counsel
1000 Broadway
Suite 300
Oakland, CA 94607
josh.daniels@ousd.org
- b. Non-Profit at: Mehrnaz Boroumand Smith
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center
Suite 1900
San Francisco, CA 94111
mboroumand@kilpatricktownsend.com

26. **Entire Agreement; Counterparts.** 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.

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:

88703F981A19409... Board Chair 6/28/2020

DocuSigned by:

BFF32EEA610B40E... Attorney 6/28/2020

DocuSigned by:

4B7CAB86ED3145D... Board Chair 6/28/2020

OAKLAND UNIFIED SCHOOL DISTRICT



Jody London, President
Board of Education 6/30/2020



Kyla Johnson Trammell, Secretary
Board of Education 6/30/2020



Josh Daniels
General Counsel
June 29, 2020
Approved as to form