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

# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Rebecca Huang, Principal, Skyline High School  
Rachel Kantor, Teacher, Skyline High School

**Meeting Date** June 26, 2024

**Subject** Swiirl Inc. - Community Partnership – Skyline High School

**Ask of the Board** Approval by the Board of Education of a Memorandum of Understanding by and between Swiirl, Inc., Newark, Delaware, for the latter to partner with OUSD to aid in fundraising efforts leveraging existing creative programs at Skyline High School, for the period of July 1, 2024 through June 30, 2025, at no cost to the District.

**Background** Swiirl is a platform that connects high school creative programs with brands interested in commissioning community generated content from emerging creators to support their community engagement programs. Skyline High School is interested in in piloting the program with Swiirl as a way to gain visibility and support school fundraising efforts

**Discussion** There is no cost of the program to Skyline. The essence of Swiirl’s approach is to create opportunities for Schools to build community partnership with mission-driven brands while securing sustainable funding to invest in creative and other school programs.

**Fiscal Impact** Skyline expects to generate an additional \$5-6k per commissioned project through Swiirl. This additional funding can grow exponentially the more Schools onboard with School and the more projects each program can take on

**Attachment(s)**

- Attached is a Swiirl 2-Pager attached for review. It outlines the program.



254 Chapman Rd, Ste 208  
Newark, Delaware 19702, USA  
<https://www.swiirl.io/>

## **MEMORANDUM OF UNDERSTANDING BETWEEN SWIIRL INC. AND OAKLAND UNIFIED SCHOOL DISTRICT**

**Effective Date:** July 1, 2024

### **Parties:**

This Memorandum of Understanding (“Memorandum”) is entered into on July 1, 2024, between Oakland Unified School District (“OUSD”) and Swiirl Inc. (“Swiirl”).

### **1. Pilot Overview:**

1.1 Swiirl proposes an art pilot program wherein brands are introduced to various schools by Swiirl, with such sponsoring brand(s) (each a “Brand”) allocating funds for digital artwork to be created by students of the applicable school (the “Pilot”). This purpose of this Memorandum sets out the mutual goal of OUSD’s participation in the Pilot. Skyline High School will be the first OUSD school to participate in the Pilot. Other OUSD schools may participate in the Pilot as indicated in the applicable Pilot Agreement (as defined below).

1.2 After execution of this Memorandum, Swiirl will use reasonable efforts to introduce a Brand to OUSD for the Pilot. Once a Brand has been confirmed, OUSD, Swiirl, and the applicable Brand shall enter into a Pilot Agreement (similar to the terms set out in Appendix A) which shall outline the terms and conditions regarding the specific project, including the scope of work, funding allocation, and the participating OUSD school.

### **2. Term:**

2.1 The term of this Memorandum shall commence on the Effective Date and conclude on June 30, 2025.

### **3. Funding Allocation:**

3.1 OUSD's participation in the Pilot shall be at no cost to OUSD. The Brand will allocate funds to OUSD in accordance with the applicable Pilot Agreement within thirty days of each Project Start End Date as outlined in subsequent agreements with each confirmed brand.

### **4. Collaboration and Communication:**

4.1 The Parties agree to maintain open communication throughout the Pilot to ensure the successful execution of the initiative.

### **5. Additional Terms and Conditions:**

5.1 This Memorandum does not constitute a partnership or joint venture between OUSD and Swiirl.

5.2 OUSD may at any time terminate this Memorandum upon thirty (30) days prior written notice. Any Party may terminate this Memorandum with written notice if the other Party breaches any material term.



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<https://www.swirl.io/>

5.3 This Memorandum constitutes the entire understanding between the Parties and supersedes all prior negotiations.

**6. Governing Law:**

6.1 This Memorandum shall be governed by and construed in accordance with the laws of California, United States of America.

**7. Signatures:** Each Party has the full power and authority to enter into and perform this Memorandum, and the person(s) signing this Memorandum on behalf of each Party has been given the proper authority and empowered to enter into this Memorandum .IN WITNESS WHEREOF, the Parties hereto agree and execute this Memorandum and to be bound by its terms and conditions:

**Swirl Inc.**

Name: Kay Boamah

Signature: 

Title: Co-Founder

Date: 5/17/2024

**Oakland Unified School District**

Name: Sondra Aguilera

Signature: 

Position: Chief Academic Officer


Date: 5/29/2024

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)



Benjamin Davis, President, Board of Educaiton  
6/27/2024

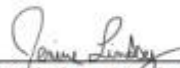
Name: Kyla Johnson-Trammell

Signature: 

Position: Superintendent Date:

6/27/2024

Approved as to form:

By:   
Jenine Lindsey, Interim General Counsel

Date: 5/17/24

## **Appendix A – Pilot Agreement Template**

### **SCHOOL PILOT AGREEMENT**

This Pilot Agreement ("**Agreement**") is entered into on [Date] ("**Effective Date**") between Oakland Unified School District ("**OUSD**"), the brand named in Exhibit A ("**Brand**"), and Swiirl Inc. ("**Swiirl**"). Each party shall be referenced herein as "**Party**" and together the "**Parties**".

#### **1. Pilot Overview:**

- 1.1 Swiirl has initiated an art pilot program wherein one or more brands are introduced to various schools by Swiirl and such sponsoring brand(s) allocate funds for digital artwork to be created by students of the applicable school (the "**Pilot**"). OUSD agrees to participate in the Swiirl Pilot.
- 1.2 Swiirl, Brand, and OUSD shall complete Exhibit A in relation to the art project ("**Project**"). Exhibit A shall include all relevant details regarding the Project including but not limited to, the applicable OUSD school site (each a "**School**"), the Brand's funding allocation amount, the Project term.

#### **2. Pilot Duration:**

- 2.1 The term of this Agreement shall commence on the Effective Date and conclude on June 30, 2025 ("**End Date**").
- 2.2 The Project duration shall be listed in Exhibit A and in no event shall it exceed the Term of this Agreement unless otherwise mutually agreed upon in writing.

#### **3. Funding Allocation:**

3.1 Swiirl and Brand each acknowledge and agree that OUSD's participation in the Pilot and/or Project shall be at no cost to OUSD. In consideration of participating in the Pilot and/or Project, the Brand agrees to allocate funds listed in Exhibit A to the OUSD. The Brand shall provide the total allocated funds to the OUSD within thirty days of each Project Start Date. Brand acknowledges and agrees that the funds shall be nonrefundable.

#### **4. Theme and Art Direction:**

- 4.1 The Brand may provide a theme for the artwork as listed in Exhibit A. OUSD's Art Staff will guide the creation process based on the theme.
- 4.2 The Art Staff may collaborate with the Brand's representative to incorporate insights and preferences into the artistic direction.

#### **5. Creation of Artwork:**

5.1 OUSD, under the guidance of the Art Staff, will be responsible for creating original artwork in line with the agreed-upon theme.

## **6. Digital Conversion:**

6.1 Swirl will convert the created artwork into digital assets and provide them to the Brand upon completion of the Project.

## **7. Exclusive Rights:**

Rights and waivers pertaining to the use of digital artwork created as part the Project will be detailed in subsequent addendums, which shall be completed and mutually agreed by the School and Brand upon the identification of the sponsoring brand. If no subsequent addendum is mutually agreed upon between the OUSD and Brand for any Project, excluding any intellectual property that existed prior to execution of this Agreement, Swirl and Brand each acknowledge and agree that the ownership of all artworks, drawings, plans, and materials created and/or produced by the students of the OUSD in connection with this Agreement shall be the property of the applicable Student. Swirl and/or Brand cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon such works produced under this Agreement and/or such Project without OUSD, the applicable Student, and its parent or guardian's express written permission. This Section 7 shall continue beyond this Agreement's termination.

## **8. Funding Utilization:**

8.1 The funds allocated by the Brand will be utilized by OUSD in accordance with Exhibit A. If the use of funds is not specified in Exhibit A, then OUSD may utilize such Brand funds at OUSD's sole discretion in relation to the School.

## **9. Collaboration and Communication:**

9.1 The Parties agree to maintain open communication throughout the Pilot and/or Project to ensure the successful execution of the initiative.

## **10. Additional Terms and Conditions:**

10.1 Confidentiality. The Parties agree to maintain the confidentiality of any proprietary information shared during the Pilot and/or Project, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged. Swirl and Brand each understands that student data is confidential. Swirl and/or Brand may only access or receive identifiable student data, other than directory information, in connection with this Agreement only after Swirl and/or Brand (as applicable) and OUSD execute the OUSD Data Sharing Agreement. Notwithstanding Indemnification provisions set forth in this Agreement, should Swirl and/or Brand access or receive identifiable student data, other than directory information, without first executing such an agreement, Swirl and/or Brand (as applicable) shall be solely liable for any and all claims or losses resulting from its access or receipt of such data. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

10.2 Limitation of liability

OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.

### 10.3 Indemnity.

a. To the furthest extent permitted by California law, Swiirl and Brand (each an “**Indemnifying Party**”) shall each indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“**OUSD Indemnified Parties**”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of Indemnifying Party’s performance of this Agreement. Indemnifying Party also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials to Indemnifying Party arising out of the performance of this Agreement. Indemnifying Party shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at Indemnifying Party’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that Indemnifying Party proposes to defend OUSD Indemnified Parties.

b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless Swiirl and Brand (as applicable) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend Swiirl and Brand (as applicable) at OUSD’s own expense, including reasonable attorneys’ fees and costs.

### 10.4 Insurance/ Background Checks

a. **Commercial General Liability Insurance.** Swiirl and Brand shall each maintain Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance.

b. **Workers’ Compensation Insurance.** Swiirl and Brand shall each procure and maintain, at all times during the term of this Agreement, Workers’ Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers’ Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

c. **Fingerprinting/Criminal Background Investigation.** Swiirl and Brand shall each ensure completion of fingerprinting and criminal background investigation for all individuals directly involved in the Project and shall request and regularly review subsequent arrest records. Swiirl and Brand each confirms that no individual has been convicted of a felony, as that term is defined in Education Code section 45122.1. Swiirl and Brand shall each provide the results of the investigations and subsequent arrest notifications to OUSD. For purposes of this subparagraph, Swiirl and Brand shall use either California Department



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of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUUSDPartner>) finger-printing and subsequent arrest notification services.

10.5 This Agreement does not constitute a partnership or joint venture between the OUSD, Swiirl and the Brand.

10.6 OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to the other Parties. Any Party may terminate this Agreement with written notice if the any other Party breaches any material term.

10.7 This Agreement constitutes the entire understanding between the Parties and supersedes all prior negotiations.

10.8 The obligations of Swiirl and/or Brand under this Agreement shall not be assigned by such Party without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

**11. Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of California, United States of America 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.

**12. Signatures:** Each Party has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement. IN WITNESS WHEREOF, the Parties hereto agree and execute this Agreement and to be bound by its terms and conditions:

**Swiirl Inc.**

Name:  
Signature:  
Title:  
Date:

**[Brand Name]**

Name:  
Signature:  
Title:  
Date:



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## Oakland Unified School District

Name: Sondra Aguilera

Signature: 

Position: Chief Academic Officer

Date: 5/29/2024

- Board President (for approvals)
- Chief/Deputy Chief/Executive Director (for ratifications)

Name: Kyla Johnson-Trammell

Signature:

Position: Superintendent

Date:

Approved as to form by OUSD Legal Department

Name:

Signature:

Date:



**Pilot Agreement  
Exhibit A**

1. Brand Name: [insert full legal entity name]
2. OUSD School Site:
3. Project Name: (if applicable)
4. Project Theme:
5. Funding Allocation and Use:
6. Project Term.
  - a. The Project will start on the below Project Start Date. If no date is entered, then the Project shall start on the latest of the dates on which each of the Parties signed this Agreement.  
**Project Start Date:** \_\_\_\_\_
  - b. The Project will end on the below Project End Date which shall not exceed the term of the Agreement. If no date is entered, then the Project End Date shall be the Agreement terminates.  
**Project End Date:** \_\_\_\_\_
7. Contacts.
  - OUSD  
Art Staff/Director: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_
  - Brand  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_
  - Swiirl  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_