

AGREEMENT

This Agreement ("Agreement") is made by **Kansas City Public Schools**, a seven-director school district and political subdivision organized and existing under the laws of the State of Missouri, whose main office address is 2901 Troost Avenue; Kansas City, Missouri 64109 ("KCPS") and _____ ("Charter School"), a Missouri non-profit corporation, whose administrative offices are located at _____, Kansas City, MO 641__.

RECITALS

WHEREAS, KCPS acknowledges that DESE has estimated for school year 2019-20 that the amount of state aid owed to KCMSD is not adequate to cover the payments due to Kansas City local charter schools. KCPS further acknowledges that, as a result, DESE takes the position that it will be unable to pay the full amount of state aid to charter schools on a monthly basis;

WHEREAS, in order to correct the shortfall of state aid to the Kansas City local charter schools, KCPS desires to correct these shortfalls by directly making three (3) incremental payments during the 2020 fiscal year to Charter School based on local aid received by KCPS;

WHEREAS, Charter School desires to receive the shortfall of funds and will report its school's attendance and other Core Data information as correct as possible to ensure the most accurate payment;

WHEREAS, KCPS will only use such information for the purposes of calculating the local aid payment and shall be prohibited from using such information for marketing and advertising purposes and;

WHEREAS, KCPS and Charter School desire to enter into this Agreement for the purposes of establishing a framework for the calculation and payment of the shortfall.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1 KCPS OBLIGATIONS

1.1 Payment Overview. Due to DESE's current calculation which creates the shortfall of aid to the charter schools, KCPS will bridge the gap and directly pay Charter School local aid funds to bring the total amount paid to charter schools up to the amount contemplated by the state aid formula. The calculation of the gap and payment shall be based on the formula in section 160.415.4, RSMo and as per the calculation currently followed by DESE. The first payment will be in January based on September membership count data. The second will be in March using the average membership count data for 2019-20 and a final will be in July after final attendance data is filed with DESE. Payments under this agreement shall not be set off by any outstanding payment for separate goods and services Charter School may owe to KCPS.

1.2 Installment Number 1. No later than January 31, 2020, KCPS will remit payment to Charter School for the months of July through December 2019 for the estimated shortfall of aid calculated under the framework of section 1.1. That payment will be calculated using the following factors:

1.2.1 Determining the Total WADA. Determination of Total WADA for KCPS plus individual charter schools will be calculated in a formula by using the 1) September 2019 official membership counts as reported to DESE; 2) Prior year attendance percentage as reported to DESE, 3) Categorical weightings applied using known information as reported and available from DESE; and 4) Prior year, 2019, summer school ADA as reported to DESE

1.2.1.1 Categorical weightings applied using the information as reported and available from DESE include: 1) LEP as filed in October in Core Data; 2) IEP as filed in December in Core Data, and 3) FRL as filed in February in Core Data using the February 2019 counts.

1.2.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA: Total estimated WADA, using this calculation, will be applied to the formula calculation to determine the estimated local revenue per WADA shortfall for 2019-20. The annual estimated shortfall will be reimbursed at 50% (for the first six months).

1.3 Installment Number 2. No later than March 31, 2020, KCPS will remit payment to charter schools for the months of January through April 2020 for the estimated shortfall of state aid payments by DESE. That payment will be calculated using the following factors:

1.3.1 Determining the Total WADA. Determination of Total WADA for KCPS plus individual charter schools will be calculated in a formula by using the 1) September 2019 and January official membership counts as reported to DESE and averaged; 2) Prior year attendance percentage as reported to DESE, 3) Categorical weightings applied using known information as reported and available from DESE; and 4) Prior year, 2019, summer school ADA as reported to DESE.

1.3.1.1 Categorical weightings applied using the information as reported and available from DESE include: 1) LEP as filed in October in Core Data; 2) IEP as filed in December in Core Data, and 3) FRL as filed in February in Core Data using the February 2020 counts.

1.3.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA: Total estimated WADA, using this calculation, will be applied to the formula calculation to determine the estimated per WADA shortfall for 2019-20. The annual estimated shortfall will be reimbursed at 33% (January through April) with any adjustments for the previously paid 50% based on changes in total and individual school WADA after a second set of membership counts and final FRL counts are added into the calculation.

1.4 Installment Number 3. No later than July 31st, 2020, KCPS will remit payment to charter schools for the months of May and June 2020 for the shortfall of state aid reimbursement by DESE. That payment will be calculated using the following factors:

1.4.1 Determining the Total WADA. Determination of Total WADA for KCPS plus individual charter schools will be calculated in a formula by using the 1) September 2019 and January official membership counts as reported to DESE and averaged as finally adjusted; 2) 2019-20 attendance percentage as reported to DESE, 3) Categorical weightings applied using known information as reported and available from DESE; and 4) Prior year, 2019, summer school ADA as reported to DESE.

1.4.1.1 Categorical weightings applied using the information as reported and available from DESE include: 1) LEP as filed in October in Core Data; 2) IEP as filed in December in Core Data, and 3) FRL as filed in February in Core Data using the February 2020 counts.

1.4.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA: Once the Total WADA for Installment Number 3 has been determined as set forth in section 1.3.1 above, the specific Installment Number 3 payment due to Charter School will be calculated based on the adjusted estimated local revenue per WADA for 2019-20 as defined, multiplied by the WADA for Charter School as calculated by the four factors outlined in 1.4.1.

**ARTICLE 2
CHARTER SCHOOL OBLIGATIONS**

- 2.1 Accurate Data Reporting.** Charter School shall take all measures to ensure all estimated Core Data reporting, including but not limited to student membership count, attendance, and categorical reporting, is as accurate as possible to prevent any overpayment of funds.
- 2.2 Overpayment.** Should Charter School receive an overpayment of funds after Installment Number 3, as referenced in 1.4, Charter School shall repay KCPS for any overpayment made within thirty (30) days of notification of the overpayment by KCPS but repayment shall be no later than December 30, 2020. KCPS reserves the right to review final WADA in November 2020 and make final billings to or payments to charters.

**ARTICLE 3
TERM AND TERMINATION**

- 3.1 Term.** This Agreement shall be effective as of **December 1, 2019** and shall continue in full force and effect through **December 31, 2020**.
- 3.2 Termination.** Either party may cancel this Agreement with fifteen (15) days' notice to the other party in writing.
- 3.3 Responsibility upon Termination.** No payments scheduled to be paid to Charter School after the termination of this Agreement will be paid. Any overpayment identified after the data reported to DESE has been finally adjusted will be due and payable within thirty (30) days after receipt of an invoice of overpayment.
- 3.4 Survival.** The provisions of Articles 4, 5, 7, 8, and 9 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

**ARTICLE 4
RIGHT TO INJUNCTIVE RELIEF**

Charter School acknowledges that the terms of this Agreement are reasonably necessary to protect the legitimate interests of KCPS, are reasonable in scope and duration, and are not unduly restrictive. Charter School acknowledges that a breach of any of the terms of this Agreement will render irreparable harm to KCPS, and that a remedy at law for breach of the Agreement is inadequate, and that KCPS shall therefore be entitled to seek any and all equitable relief, including, but not limited to, injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. Charter School acknowledges that an award of damages to KCPS does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

KCPS acknowledges that the terms of this Agreement are reasonably necessary to protect the legitimate interests of the Charter School, are reasonable in scope and duration, and are not unduly restrictive. KCPS acknowledges that a breach of any of the terms of this Agreement will render irreparable harm to the Charter School, and that a remedy at law for breach of the Agreement is inadequate, and that the Charter School shall therefore be entitled to seek any and all equitable relief, including, but not limited to,

injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. KCPS acknowledges that an award of damages to the Charter School does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

**ARTICLE 5
INDEMNIFICATION**

KCPS and Charter School hereby agree and consent to engage in good faith discussions and negotiations of any concerns regarding the execution of this Agreement. Charter School shall defend, hold harmless, and indemnify KCPS, its officers, directors, employees, and agents from and against any and every claim, demand, judgments, fines, and expenses, including all attorneys' fees and amounts paid in settlement actually and reasonably incurred by KCPS in connection with any threatened, pending, or completed action, suit, or proceeding, which made by reason or injury reason or injury to a person or property caused by any act, neglect, default, or omission under the performance of this agreement. KCPS shall defend, hold harmless, and indemnify the Charter School, its officers, directors, employees, and agents from and against any and every claim, demand, judgments, fines, and expenses, including all attorneys' fees and amounts paid in settlement actually and reasonably incurred by the Charter School in connection with any threatened, pending, or completed action, suit, or proceeding, which made by reason or injury reason or injury to a person or property caused by any act, neglect, default, or omission under the performance of this agreement. No language in this agreement shall be construed as a waiver of sovereign immunity by either party beyond the legislative expression in Missouri statutes, including but not limited to 537.600, RSMo.

**ARTICLE 6
NOTICES**

Communications. Communications relating to this Agreement must be communicated by electronic mail, certified mail, return receipt requested, facsimile, or overnight courier to the following addresses or as may be later designated by written notice to the other party:

Kansas City Public Schools:
Attention: Chief Legal Counsel
Address
Kansas City, Missouri
Telephone:
Facsimile:

Charter School:
Attention: Name
Address
Kansas City MO
Telephone:
Facsimile:

**ARTICLE 7
GENERAL PROVISIONS**

- 7.1 Construction of Terms.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.
- 7.2. Governing Law.** This Agreement is governed by and constructed in accordance with the laws of the State of Missouri without regard to any conflict of laws provision. The parties consent to venue and personal and subject matter jurisdiction in Kansas City, Jackson County, Missouri.
- 7.3 Executed Agreement.** This Agreement will not become effective until the Agreement has been fully executed by authorized representatives of each party. Charter School understands that KCPS shall not be obligated to compensate Charter School prior to the execution of this Agreement.
- 7.4 Amendments.** The Agreement may be altered, amended, changed, or modified only by agreement in writing executed by an authorized representative from both parties.
- 7.5 Assignment.** No party may assign this agreement without the prior written consent of the other party.
- 7.6 No Waiver.** Failure by KCPS to enforce any of the provisions of this Agreement or to require compliance with any of its terms shall in no way affect the validity of this Agreement and shall not be deemed a waiver of the right of KCPS thereafter to enforce any such provision.
- 7.7 No Third-Party Beneficiary Rights.** No third party may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, the Charter School or KCPS in the Agreement. Nothing in this Agreement, whether express or implied, is intended to create any rights or remedies of any third-party beneficiary.
- 7.8 Entire Agreement.** This Agreement and any exhibits shall constitute the entire understanding and agreement between the parties with respect to the subject matter covered, and shall supersede all prior agreements, understandings, discussions, warranties and representations, oral or written, express or implied, not incorporated in this Agreement.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed and does each warrant that their respective signatory whose signature appears below is fully authorized to execute this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

KANSAS CITY PUBLIC SCHOOLS

By: _____

Date: _____

Name: Patricia Mansur

Title: President, Board of Directors

CHARTER SCHOOL NAME

By: _____

Date: _____

Name:

Title: