

**CHARTER EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN**  
**TEACH FOR AMERICA, INC AND**  
**MAKING WAVES ACADEMY**

This educational professional services agreement (“Agreement”) is dated October 17, 2019 and is between Teach For America, Inc. (“Teach For America”), a Connecticut non-profit with regional office located at 685 Market Street, Suite 500, San Francisco, CA 94105 and Making Waves Academy (“Charter School”) located at 4123 Lakeside Dr, Richmond, CA 94806 (each, a “Party” and collectively “the Parties”).

**RECITALS**

WHEREAS, Teach For America is a national leader in recruiting, selecting, training and providing ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems.

WHEREAS, Charter School seeks to recruit new teachers who are trained to lead students to academic achievement and to equip said teachers with ongoing professional development and support to further develop and sustain their professional practice.

NOW THEREFORE, Charter School and Teach For America agree to be bound by the terms and conditions of this Agreement:

**AGREEMENT**

**I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING**

*Charter School Responsibilities:*

- A. Charter School agrees to hire the following numbers of Teachers from the Teach For America program (the “Agreed Number”):

- (i.) 0-4 Teachers for academic school years 2020-21 and 2021-22, and
- (ii.) 0-4 Teachers for academic school years 2021-22 and 2022-23.

B. Charter School and Teach For America will collaborate to facilitate the hiring of individual Teachers, in accordance with Charter School’s established hiring practices.

Teach For America Responsibilities:

C. Candidate Recruitment and Selection. Teach For America agrees to provide Charter School with the Agreed Number of Teachers, as defined in paragraph D below. While Teach For America will use reasonable efforts to supply the Agreed Number of Teachers, Teach For America does not guarantee its ability to do so.

D. Teacher Sourcing. Teach For America warrants that it will recruit, select, and present to the Charter School for hire teacher candidates who meet applicable federal, state and/or local educational standards and requirements for teacher licensure (herein referred to as “Teachers”) and who hold (or in the process of obtaining) appropriate certification. For the purposes of this Section, only those requirements in effect at the time that the Teacher is offered employment by Charter will be applicable.

II. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT

Charter School Responsibilities:

A. Charter School acknowledges that there is an expectation that it will employ Teachers hired under this Agreement for a minimum of two (2) years, provided that the Teacher remains an employee in good standing within Charter School’s sole discretion. Charter School may

also continue to employ individual Teachers beyond the two year commitment by mutual agreement between Charter School and such Teacher.

- (i.) Charter School agrees that Teachers hired under this Agreement will function as full-time classroom teachers and will not serve as aides, assistants, or in another adjunct capacity.
- (ii.) Charter School will provide Teachers the same salary and benefits as it provides for other similarly-situated teachers employed by Charter School. This obligation extends to providing Teachers returning for their second year of service with at least the same seniority rights and salary as are provided to other full-time alternatively certified second-year teachers. Notwithstanding the above, Teach For America acknowledges it exercises no control of the salary and benefits offered to Teachers by Charter School per this Agreement.
- (iii.) During the term of this Agreement, and to the fullest extent permitted by applicable law and regulation, Charter School will maintain employment practices liability insurance in amounts sufficient to protect its interests.
- (iv.) To the fullest extent permitted by law, Charter School agrees to share Teacher performance data in a timely manner so that Teach For America may provide on targeted professional development. Both Parties acknowledge that sharing this data does not create a joint employment relationship between the Parties. For the avoidance of doubt, Charter School remains solely responsible for all employment-related decisions.
- (v.) Subject to any obligations under pre-existing labor agreements and applicable municipal and state laws and regulations, Charter School shall use reasonable efforts not to terminate any employed Teacher from his/her teaching position in the event of a reduction in force (RIF), layoffs, “leveling” or other elimination or consolidation of teaching positions within Charter School. Charter School shall treat any Teacher employed in connection with this Agreement whose teaching position is eliminated at least as favorably as other teachers with the same job classification, certification status, and/or seniority rights.

- (vi.) For the avoidance of doubt, in the event Charter School is an at-will employer nothing in this Agreement shall be construed to grant additional employment rights to individual Teachers.
- (vii.) Nothing in this Agreement shall be construed to permit Teach For America to interfere in the employment relationship between Charter School and an employed Teacher.
- (viii.) Nothing in this Agreement shall be construed to permit Teach For America to function as the representative of any Teacher absent the express agreement among the Parties and the Teacher that Teach For America may operate in such capacity in a particular circumstance.
- (ix.) Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.
- (x.) Nothing in this Agreement shall be construed to make Teach For America a party to any employment agreement between the Charter School and the Teacher.

B. Compliance with Anti-Harassment and Non-Discrimination Regulations. Teach For America believes all Teachers should be able to work in an atmosphere free from all forms of unlawful discrimination, including sexual harassment and any other form of unlawful harassment based on a characteristic or status protected by law, and as such, wishes to ensure Teachers are placed in safe, inclusive and equitable environments. To that end, Charter School will provide a copy of their internal harassment policies and/or procedures prior to signing this Agreement. Charter School acknowledges that not consistently enforcing their policies and procedures is grounds for termination of this Agreement, and that such judgment is at the sole discretion of Teach For America. Charter School acknowledges that any such termination will be without further Teach For America liability or obligation.

C. Prohibited Activities.

- (i.) Charter School acknowledges that Teachers serving at Charter School may be serving as members of AmeriCorps, and as such, are required to refrain from

engaging, directly or indirectly in certain activities while charging time to an AmeriCorps program, accumulating services hours towards an education award, or otherwise engaging in activities supported by the AmeriCorps program (45 CFR § 2520.65 and 2012 AmeriCorps Provisions IV.D.3). A full list of prohibited activities follows in **Exhibit A**, incorporated herein by reference, but in general, Teachers may not (1) attempt to influence legislation or (2) participate in or endorse political events or activities. For the avoidance of doubt, time spent on such activities may not be included on AmeriCorps timesheets, and Teachers may not wear the AmeriCorps logo or identify themselves as an AmeriCorps member while participating.

### Teach For America Responsibilities

D. Services. Prior to entering the classroom, all Teacher candidates will undergo pre-service training provided by Teach For America. During the course of the academic year, Teach For America will provide professional development services and activities for Teachers. These services may include periodic classroom observations by regional program staff, videotaping of instruction with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-level workshops facilitated by veteran teachers. If professional development services must be provided virtually, at Teach For America's discretion, Teach For America shall provide equivalent services to the extent possible.

E. Resources. Teach For America will facilitate teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. Professional development services will be available to all Teachers during their first two years in the classroom.

F. Data Access

- (i.) During the course of the academic year, Teach For America shall provide on behalf of School District various professional development services and activities for participating Teachers as well as on-line data storage services to facilitate such professional development services (the “Professional Development and Data Storage Services”). These services may include periodic classroom observations by regional program staff, videotaping of instruction with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-level workshops facilitated by veteran teachers. In addition, Teach For America shall facilitate Teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. These professional development services will be available to all Teachers during their first two years in the classroom. To facilitate provision of these professional development services, Teach For America may provide on-line data storage services, including transfer and storage of identifiable student information on Teach For America’s proprietary software and servers.
- (ii.) To facilitate provision of the Professional Development and Data Storage Services, Charter School may disclose to Teach For America student-related records and personally identifiable information contained in such records (collectively, “Student Records”). Pursuant to its obligations under the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (“FERPA”), Charter School hereby acknowledges that, in the course of providing the Professional Development and Data Storage Services, Teach For America is a school official with legitimate educational interests in the Student Records disclosed to Teach For America, pursuant to 34 CFR §99.31(a)(1).
- (iii.) Teach For America agrees to use, maintain, and redisclose Student Records only in accordance with the requirements of FERPA. Without limiting the foregoing, Teach For America agrees that it shall not maintain, use, disclose, or allow access to Student Records except as permitted by this Agreement or as otherwise

authorized by the Charter School or by law, and will use Student Records disclosed by the Charter School only for the purposes for which such disclosure was made.

- (iv.) Charter School acknowledges that Teach For America may re-disclose Student Records to third parties pursuant to Teach For America's provision of the Professional Development and Data Storage Services, as provided in 34 C.F.R. § 99.33(b), provided that Teach For America shall, in advance, provide to Charter School the names of such parties and a brief description of such parties' legitimate educational interest in receiving such information.

G. Certification. Teach For America will ensure that Teachers are enrolled in an alternative certification/licensure program that enables Teachers to obtain necessary credentials to become a classroom teacher of record, according to the requirements of the Every Student Succeeds Act and applicable state regulations in existence at the time of signature of this Agreement.

H. Credentialing. Individual Teachers are responsible for completing all credential requirements. Teach For America is not responsible in the event of any failure by an individual Teacher to fulfill obligations to maintain his/her teaching credentials or obtain necessary waiver(s) to remain a classroom teacher of record.

### III. GENERAL PROVISIONS

A. Fees-for-Service. In recognition of the costs incurred by Teach For America for the recruitment, selection, training, and professional development support of Teachers, Charter School agrees to pay Teach For America an annual fee of \$5,000 for each Teach that is employed with Charter School as of December 1st for each year employed under this Agreement.

B. Invoice and Payment. Teach For America will invoice Charter School for all amounts due under this Agreement and Charter School shall make payment to Teach For America on or about January 4th of each academic school year under this Agreement.

A failure to provide an invoice does not constitute a breach on behalf of Teach For America nor does such failure negate the Charter School's responsibility to pay. For the avoidance of doubt, Charter School will be invoiced fees for each of the individual Teacher(s) initially employed by the Charter School. For the avoidance of doubt, Charter School shall pay all invoices within thirty (30) days of the date of the invoice.

- C. Non-Refund Policy. Teach For America has no obligation to refund to Charter School any amount paid by Charter School regarding any Teacher for any reason whatsoever. For the avoidance of doubt, Charter School will be invoiced for fees for each of the individual Teacher(s) initially employed by the Charter School
- D. Term. The term of this Agreement will cover the 2020-21 and 2021-22 academic years (2020 cohort). It will also cover the 2021- 22 and 2022-23 academic years (2021 cohort). This Agreement will expire on the last day of the final cohort's second academic year (2022-23) and may be renewed at the end of the term on the same or substantially similar terms by mutual agreement of the parties.
- E. Termination. This Agreement may be terminated at any time by mutual written agreement of the Parties. In the event of termination, Teach For America will be entitled to all outstanding amounts due up to the date of termination. The Agreement may also be terminated by either Party in the event of a material breach of this Agreement or purpose of this Agreement by either Party, where such breach is incapable of being cured or, if capable of being cured within thirty (30) business days following receipt by the breaching Party of written notice of such breach from the non-breaching Party.
- F. Survivability. In the event of the expiration or termination of this Agreement, Sections IIA and IIB (Charter School Responsibilities) shall survive and will remain in effect until such time as there are no Agreed Number of Teachers in their second year of employment with the Charter School. In addition, Sections IIIF (Survivability), and IIIG (Mutual

Indemnification/Limitation of Liability) shall survive the expiration or termination of this Agreement indefinitely.

G. No Warranty. Charter School hereby agrees and acknowledges that Teach For America does not make and has not made any representation and warranty (express or implied) as to the fitness of any Teacher presented or provided by Teach For America and Charter School shall indemnify and hold harmless the TFA Indemnities (as defined below in the Section related to Mutual Indemnification) from and against any Losses (also defined below in the same Section below) resulting from any claim related to the services provided by Teach For America, including, but not limited to, claims that any Teacher presented or provided by Teach For America was unfit for the position for which he or she was hired by Charter School.

H. Mutual Indemnification / Limitation of Liability

- (i.) To the extent permitted by applicable state laws and regulations, Charter School will indemnify and hold harmless Teach For America and its officers, directors, employees and agents (the "TFA Indemnitees") against any and all losses, liabilities, claims, damages, costs and expenses (including reasonable attorneys' fees) ("Losses") to which such TFA Indemnitee may become subject arising out of the provision by Teach For America to Charter School of services hereunder (including without limitation the designation of Teachers), except to the extent such Losses result from the willful misconduct or gross negligence of such TFA Indemnitee.
- (ii.) Teach For America will indemnify and hold harmless the Charter School and its officers, directors, employees and agents (the "Charter School Indemnitees") against any and all Losses to which such Charter School Indemnitee may become subject arising out of the provision by Teach For America to Charter School of services hereunder, except to the extent such Losses result from the willful misconduct or gross negligence of such Charter School Indemnitee.

- (iii.) Neither Teach For America nor any of its officers, directors, employees or agents shall be liable to Charter School for any Loss incurred by Charter School in connection with the matters to which this Agreement relates, except for a loss resulting from willful misconduct or gross negligence on the part of Teach For America; provided that in no event shall Teach For America and its officers, directors, employees and agents have any liability to Charter School or any such individual Partner School in connection with the matters to which this Agreement relates in excess of the aggregate amount of payments made to Teach For America by Charter School pursuant to this Agreement.
  - (iv.) To the extent permitted by applicable state laws and regulations, neither Party shall have any liability to the other Party for Losses asserted after 6 months of the expiration or termination of this Agreement, whichever is earliest.
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- I. Employment Status. Teach For America and Charter School agree that none of the Teachers assigned to Charter School under this Agreement is an agent or employee of Teach For America, and no such Teacher has any right or authority to create or assume any obligation, express or implied, on behalf of Teach For America or to bind Teach For America in any respect whatsoever.
  - J. Surveys. Charter School acknowledges that Teach For America may survey individual constituents, teachers, etc. at the school site regarding its programming and professional development of Teachers in the classroom.
  - K. Amendment/Modification. No amendment or modification of this Agreement, and no waiver hereunder, will be valid or binding unless set forth in writing and signed by each Party.
  - L. Non-Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or

otherwise by either party without the prior written consent of the other party, and any such assignment that is not consented to shall be null and void.

- M. Counterparts. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The execution of this Agreement by any Party shall not become effective until counterparts have been executed by all Parties.
- N. Construction. The headings of Sections contained in this Agreement are for convenience only, and they do not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the Sections of this Agreement. Any reference in this Agreement to gender includes all genders. Further, except where expressly specified to the contrary, the words “include,” “including,” and “such as” in this Agreement should be read to mean “include without limitation.”
- O. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of California, without regard to the conflict of laws provisions of such State. Any legal suit, action, or proceeding relating to this Agreement must be instituted in the federal or state courts located in California. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding.
- P. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section (Severability), then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

Q. Notices. Any notices to either Party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered or certified mail, return receipt requested, to the addresses set forth below or to such other address as that Party may hereafter designate by notice. Notice shall be effective when received, which shall be no greater than one (1) business day after being sent by a nationally recognized messenger service or three days after being sent by mail.

### CHARTER SCHOOL CONTACT

Name: Alton Nelson  
Title: Chief Executive Officer  
Address: 4123 Lakeside Dr., Richmond, CA  
94806  
Email: terence@caliberschools.org

### TEACH FOR AMERICA:

Name: Paul Keys  
Title: Executive Director  
Address: 685 Market Street, Suite 500  
San Francisco, CA 94105  
Email: Paul.Keys@teachforamerica.org

### **\*With an electronic copy to:**

Name: TFA Legal Affairs  
Email: [LegalAffairs@teachforamerica.org](mailto:LegalAffairs@teachforamerica.org)  
*\*Send only notices related to breach of contract and indemnity.*

R. Waiver. A waiver or a breach or default under this Agreement shall not be a waiver of any other subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.

S. Entire Agreement/Authority/Binding. This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of Charter School and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

**Making Waves Academy**

By: \_\_\_\_\_  
Name: Alton Nelson  
\_\_\_\_\_  
Chief Executive  
Title: Officer  
\_\_\_\_\_  
Address: 4123 Lakeside Dr.  
\_\_\_\_\_  
Richmond, CA  
94806  
\_\_\_\_\_

**Teach For America**

By: \_\_\_\_\_  
Name: Paul Keys  
\_\_\_\_\_  
Executive Director, Bay  
Title: Area  
\_\_\_\_\_  
Address: 685 Market Street, Suite 500  
\_\_\_\_\_  
San Francisco, CA 94105  
\_\_\_\_\_

**Teach For America**

**Contract Owner Attestation:**

This contract required legal changes to the required terms and was reviewed/approved by TFA Legal Affairs in this final form.

This contract did not require legal changes and was not reviewed by TFA Legal Affairs.

Name: Marissa Kanemura-Morin  
\_\_\_\_\_  
Title: Director, Partnerships  
\_\_\_\_\_

## EXHIBIT A

### AmeriCorps Prohibited Activities

- A. Teachers may exercise their First Amendment rights, participate in the political process and in the activities listed in this Exhibit A, on their own initiative, on non-AmeriCorps time and using non-AmeriCorps funds and resources.
- B. Charter School acknowledges that the following activities are prohibited for Teachers while charging time to an AmeriCorps program, accumulating service hours toward an education award, or otherwise engaging in activities supported by the AmeriCorps program:
1. Attempting to influence legislation
  2. Organizing or engaging in protests, petitions, boycotts, or strikes
  3. Assisting, promoting, or deterring union organizing
  4. Impairing existing contracts for services or collective bargaining agreements
  5. Providing abortion services or referrals
  6. Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office
  7. Participating in or endorsing events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials
  8. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization
  9. Providing a direct benefit to, a business organized for profit; a labor union; a partisan political organization; a nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these 9 provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and an organization engaged in the religious activities described in provision 8, above, unless grant funds are not used to support the religious activities.
  10. Conducting a voter registration drives or using CNCS funds to conduct a voter registration drive.
  11. Providing abortion services or referrals for receipt of such services; and
  12. Other activities as the Corporation for National Service may prohibit/