



AIMS Board of Directors Meeting Item Cover Letter

Item:

Presented By:

Staff Recommendation:

Committee Approval:

Total Associated Cost:

Included in Budget?

Funding Source:

Over/Under Budget?

Amount Over/Under Budget?

Included in LCAP?

Which LCAP?



AGREEMENT FOR AFTER SCHOOL PROGRAM SERVICES & FUNDING

This Agreement for After School Program Services & Funding (“Agreement”) establishes the material terms of the business relationship between Bay Area Community Resources (“BACR”) and American Indian Public Charter School II (“AIPCS II” or “School”) for the provision of certain educational services (as further detailed below) at the AIPCS II school site during the 2021-22 school year. BACR and AIPCS II are each referred to individually as a “Party,” and collectively as the “Parties.” This Agreement is effective upon execution by representatives of each Party (“Effective Date”).

In exchange for the benefits and consideration set forth below, the sufficiency of which is hereby acknowledged by both Parties, AIPCS II and BACR will collaborate to implement the educational program detailed below (“Program”) and assure the fulfillment of the objectives and activities outlined in this Agreement.

I. SCOPE OF WORK AND RELATED TERMS - TRADITIONAL SCHOOL YEAR

BACR agrees to provide an after-school program aligned with the School's school day, program quality, and fiscal oversight, as follows:

A. Miscellaneous Program Details:

1. BACR will develop the Program and review it with School staff, making adjustments as necessary, reasonable, and within the budget set forth below.
2. The Program will include an educational and literacy element designed to provide tutoring and/or homework assistance in one or more of the following subject areas: language arts, mathematics, history and social science, science, and computer training.
3. The Program will have an educational enrichment element that may include, but is not limited to, STEM focused activities, recreation, physical fitness, and other activities.
4. The program will serve snacks provided by School that conforms to the nutrition standards in the California Education Code, Part 27, Chapter 9, Article 2.5, commencing with Section 49430
5. The Program will serve up to 104 School students at a maximum ratio of 20:1 (students to instructor). If it appears Program enrollment will exceed 110, BACR is open to accommodating more students. However, before Program enrollment exceeds 140 students, the Parties agree that they will confer and reach agreement on a written amendment to this Agreement, including the Program Budget and Management Fee terms set forth in Section IV below, with a revised Program Budget to allow for additional staff and Management Fee to reflect additional management efforts.
6. The program will operate daily, Monday through Friday, from August 9, 2021 to June 14, 2022. Program will begin immediately at the end of the regular school day on Monday-Thursdays (except scheduled minimum days) and 1:30 pm on Fridays and minimum days, and will stay open until 6:00pm daily
7. BACR will handle all human resources and accounting duties as related to hiring, training, paying, and otherwise managing Program staff, who are BACR employees or contractors.

B. Coordination between School, and BACR Program staff.

The School and BACR intend to provide a comprehensive after school program for the School’s students. To ensure a consistent experience for School students and families, the Parties hereby agree to the following:

1. Training. The BACR After-School Site Coordinator will attend, when able, training with School faculty and Staff (“School-Day Staff”). Additionally, both the School and BACR agree to be conscious of overlapping staff in scheduling professional development sessions so as to minimize disruption.

BACR Initials _____
School Initials _____

2. Fundraising. Because all fundraisers will affect the same group of parents, BACR must obtain written approval from AIPCS II prior to any fundraising efforts involving the School's parents, apart from those funds associated with Program Participation Fees as set forth herein.
3. Classrooms. Teachers at the School will provide a "classroom checklist" to the BACR staff using their classrooms. These checklists are to ensure minimal disruption in the classroom from day to day. BACR staff will commit to checking the list upon arrival and before leaving and reporting any issues regarding the same in a timely manner.
4. Events. BACR and the School will notify each other of any proposed School-related family events (including any shows or showcases) at least one month in advance and will be open to changing dates and times for optimal coordination and participation.
5. Check-Ins. The BACR After-School Site Coordinator will check in daily with the School-Day Site Administrator or such other School staff member that is designated by the School Administrator from time to time for informational handover about student behavior and Program-related matters. In addition, the BACR After-School Site Coordinator and School-Day Site Administrator (or his or her designee) will have additional meetings on weekly or monthly basis to address case management of students, including updates around suspensions and expulsions, where necessary, as well as general Program operations and coordination between the School and BACR.
6. Policies and Procedures. BACR employees working at the School must abide by all BACR, and School policies. BACR will communicate all relevant School policies and procedures to BACR staff and ensure that BACR staff abide by them at all times. These include but are not limited to the School's safety plans and procedures, discipline, social media, student restraint, and any other applicable elements from AIPCS II' Staff/Family Handbook. A current copy of AIPCS II' Staff/Family Handbook policies is attached as **Appendix A** and incorporated herein. AIPCS II, in its sole discretion, may change these policies from time to time. In the event of any such changes, AIPCS II will provide BACR with the updated versions of the policies.
7. Teacher communications. Specific discussions between teachers and the BACR staff using their room must involve BACR's After-School Site Coordinator and the School's School-Day Site Administrator.

C. Communication and accessibility with parents.

The School and BACR recognize that communication with School parents and guardians is an important component of the Program's success. To that end, the Parties hereby agree to the following:

1. Announcements. The School can send information out to its entire parent body on behalf of BACR. This should be used only for major announcements, i.e., deadlines and applications for signing up. Program-specific information to participants will be managed by BACR, but subject to the Head of School prior approval. Communications should include the Head of School on the distribution list.
2. Key School Year Events. The BACR After-School Site Coordinator commits to attending the School's major school-year events, so that BACR has a presence at school-related activities that occur outside of the school day.
3. Welcoming events. BACR commits to being present at welcoming events for new families.
4. Attendance Records: BACR shall maintain accurate Program attendance records.
5. Research: BACR shall respond to any additional surveys or other methods of data collection that may be required throughout the life of the Program.
6. Student-to-Staff Ratio: BACR shall maintain a student-to-staff member ratio of no more than 20:1, except for in the case of temporary emergencies.
7. Qualifications: BACR shall establish qualifications for each position so that all staff members directly supervising students meet the minimum qualifications of an instructional aide.
8. Screening: BACR shall ensure that all Program staff and volunteers will fulfill health screening (Clear TB Test) and CalDOJ fingerprint clearance requirements in current law and in compliance with School policies (Certified Assurance #25)

D. Legal Compliance

BACR shall comply with all applicable federal, state, and local laws governing privacy of student information, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"), the Family Educational Rights and Privacy Act ("FERPA"), and the Individuals with Disabilities in Education Act ("IDEA").

BACR Initials _____
 School Initials _____

E. Safety and Crisis Protocol

To ensure the safety of all School students participating in the Program, the Parties agree that:

1. BACR shall enforce a clear safety and crisis protocol, applicable to Program operations, that outlines procedure, response times, and commitment to notifying and working with School staff. That Safe School Plan is attached hereto as **Appendix B.**
2. In the event that a crisis occurs while the BACR After-School Site Coordinator is not on the School-site, the BACR After-School Site Coordinator is expected to be available via phone within 5 minutes and physically present within 30 minutes, unless there are extenuating travel circumstances.
3. AIPCS II will identify a School staff member who will be on-call during BACR program hours, and who must be notified ASAP when a crisis occurs. The School staff member and BACR's Program Coordinator will jointly respond to the crisis.

II. PROGRAM PARTICIPANT FEES, AND PROGRAM FEE PAYMENT TERMS

A. Nature of the Program: The Program is an optional extra-curricular enrichment program that School families may elect to participate in, at their choosing, subject to the eligibility, payment of fees, and other criteria stated herein.

B. Program Fee Schedule:

BACR and AIPCS II have established Program Fees for participants who elect to participate in the Program in the 2021-2022 School Year ("Program Fee Schedule") as follows and based upon various factors including sibling participants and income tiers.

Income-Based Tier	Monthly Fee/Student	Monthly Fee w/ Sibling Discount (\$25)¹
1	\$50	\$25
2	\$75	\$50
3	\$100	\$75

C. Program Fee Payment Terms:

1. Program Fees will not be pro-rated for students who join the Program later than the beginning of the school year or participate on a less-than-full-time basis (both of which are discouraged), except in cases where the student joins after January, 2022. Students who join after January, 2022 will be responsible for paying one half of the full-year Program Fee.
2. Program Fees may be paid in one lump sum, at the time of enrollment in the Program, or on a monthly basis, received by BACR no later than 7th of each month following the initial payment.
3. BACR will provide participants a 7-day grace period for payment, to the 15th of each month. If no payment is received by then, the nonpayment will be reported by BACR to the School via the Program Fees Report, described below, and it will become the School's responsibility to pay BACR those funds on the terms set forth below.
4. All Program Fees shall be made on-line, by check, or by money order, made payable to "Bay Area Community Resources." No cash payments will be accepted.
5. Monthly Program Fees are due before participation begins, and then on a monthly basis going forward (unless paid in one lump sum), and are non-refundable in the event that a child leaves the program prior to the end of the year and/or only attend on a part time basis (both of which are discouraged).
6. As noted above, the Program will run until 6:00 pm. BACR will extend a 10-minute grace period for parents, guardians and other authorized persons to pick-up Program participants. BACR will not release a Program participant to an unauthorized person, and it will not allow a Program participant to simply leave on his or her own, without the authorized person. Program

¹ This sibling discount does not apply to the first-enrolled student, but instead applies to the second (and any additional) enrolled students from the same family. For example, for a Tier 3 family, the monthly fee for student 1 is \$100, and the monthly fee is \$75 for any additional students from that same family.

BACR Initials _____
School Initials _____

participants who remain after 6:10 pm may be charged a late fee of \$5.00 for every 10 minutes they are picked up late after the 10-minute grace period of 6:10pm. Late pick up fees will need to be paid by next Program day, online, by check or by money order. BACR will make every effort to collect fees from families. In the event any Program participants do not pay any late fee(s) in a timely manner, the School will pay BACR the applicable amount, as invoiced on a monthly basis.

7. Notwithstanding the foregoing, due to COVID-19, or any other major disruptive event (as may be agreed to by the Parties), the Parties acknowledge and agree fees payments may be suspended, adjusted, etc. depending on whether Schools are physically open, partially opened, closed, or engaged in distance learning.

III. PROGRAM ADMINISTRATION

A. Registration, Financial Aid, and First Collection of Program Fees

BACR will be responsible for registering students, collecting Program Fees, and administering the financial assistance programs. BACR will use its best efforts to collect Program Fees from all families other than those that qualify for financial assistance. BACR will not allow families who have not paid the Program Fee (other than those designated by the BACR as being eligible for financial assistance) to participate in the program. BACR retains all Program Fees as a contribution towards the cost of managing the program.

B. Ongoing Collection of Program Fees

Following launch of the Program, BACR will be responsible for ongoing collection of Program Fees. BACR will use its best efforts to collect Program Fees from all families, considering those that receive Program scholarships as noted above and as determined by the School. BACR will report to the School during the monthly meeting described below in Section IV, families who have not paid the Program Fee in full and in a timely manner (other than those designated by the School as being eligible for financial assistance). It shall then be the School's responsibility to take corrective action, if any, for non-payment. The School will report all such action(s) to BACR, so that BACR may act accordingly with respect to Program administration, collection of Program Fees in the future, etc. BACR retains all Program Fees as a contribution towards the cost of managing the Program and coverage of the Management Fee (defined below).

IV. PROGRAM BUDGET AND MANAGEMENT FEE

The budget for the Program at AIPCS II for the 2021-22 year is **\$177,382 ASES**. BACR will not exceed the 15% in administrative fee and minimal total of 85% direct service expenses.

School staff and BACR staff will meet at least quarterly in order to review various program-related matters, including enrollment numbers and Program Fee collections.

For the sake of clarity, the Parties expressly agree that the School (not BACR), shall solely fund any shortfall in collections of Program Fees, whether such shortfall is caused by lower than expected enrollment, non-payment by Program participants, or any other reason. But for this express agreement and commitment by AIPCSII, BACR would not enter into this Agreement on these terms.

In the event BACR receives payment of any Program Fees after the School has covered the same, e.g., in the event of an exceptionally late payment by Program participant to BACR, then BACR shall report the same to the School as part of the monthly meeting and that amount shall be used to offset any future payment of the Management Fee, so that BACR does not receive double payment at any time.

If enrollment trends over two (2) or more consecutive months indicate more than a 10% change in Program enrollment as compared to the current expected level of 110 participants, then the Parties will meet and confer on proposed changes to Program-related terms, including staffing, student groupings, and the Management Fee on a go-forward basis (i.e., non-retroactive) following execution of any addendum. The Parties will document the results of any such discussions and memorialize any related changes in an addendum to this Agreement.

V. TERM AND TERMINATION

BACR Initials _____
School Initials _____

The Term of the Agreement shall be from July 1, 2021 through June 30, 2022.

Either Party may terminate this Agreement at any time for any reason by giving at least thirty (30) days' written notice to the other Party.

Notwithstanding any other provision of this Agreement, BACR may terminate this Agreement immediately for cause, without any further obligation by BACR, by providing written notice of the same to the School upon the occurrence of any of the following events which shall constitute "cause" for such immediate termination: (1) bankruptcy, insolvency, loss or reduction of funds for the Program by the School; (2) assignment of this Agreement by the School to any other person or entity without the express advance written consent of BACR; (3) a material breach of this Agreement; (4) the School's failure to pay the Management Fee to BACR in a timely manner as set forth above; or (5) a Force Majeure as defined below.

In the event of any termination for cause by BACR, other than one based on Force Majeure (as defined below), the School shall pay BACR any and all outstanding Management Fees and pre-approved expenses due and owing to BACR or incurred by BACR under this Agreement. For the sake of clarity, the School shall pay BACR the full Management Fee in the event of any termination for cause of this Agreement (except one resulting from Force Majeure as defined below), unless BACR advises of cost savings due to early termination that may be deducted from the AIPCS II fee.

VI. INDEMNITY

BACR shall defend, indemnify, and hold the School, AIPCS II, its Board of Directors, officers, employees and agents harmless from and against any and all liability, loss expense, attorney fees for injury or claims for damages, arising out of BACR's performance of the agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims, for injury on damages are caused by or result from the grossly negligent or fraudulent acts or omissions of BACR, its officers, agents or employees.

AIPCS II shall defend, indemnify, and hold BACR, its Board of Directors, officers, employees and agents harmless from and against any and all liability, loss expense, attorney fees or claims for injury or damages, arising out of AIPCS II performance of the Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims, for injury on damages are caused by or result from the negligent or intentional acts or omissions of AIPCS II, its officers, agents or employees. Further, if AIPCS II exercises its rights pursuant to Section VII of this Agreement (Removal of Staff), then it shall indemnify BACR and its Board of Directors, officers, employees and agents for any liability, loss, expense, attorney fees, or claims for injury or damages related to that termination, under any theory, even if in its exercise of such rights the School has not engaged in any negligent or intentional acts or omissions.

VII. REMOVAL OF STAFF

In the event that AIPCS II, for reasonable cause, at any time during the term of this agreement, desires the removal of any BACR related persons, employees, representatives or agents from the School site and/or property, BACR shall immediately upon receiving notice from AIPCS II of such desire, cause the removal of such person or persons. Notwithstanding the foregoing, BACR will retain final authority over hiring and termination of any BACR staff, and any such hiring or termination will follow BACR HR policies.

VIII. CANRA COMPLIANCE

BACR will comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code 11164 -11174.

IX. SUBCONTRACTING

BACR may elect to subcontract a portion of the work or activities to be performed under this agreement. In such an event, AIPCS II in its sole discretion, shall have the right to approve or disapprove the use of such subcontractors. BACR shall require each such AIPCS II-approved subcontractor to agree to abide by all terms of this Agreement, and to indemnify, hold harmless and defend AIPCS II, its officers, officials, employees, volunteers, or agents in accordance with the terms of Paragraph IV, above (Indemnity).

X. INSURANCE

BACR Initials _____
School Initials _____

During the term of this agreement, BACR shall maintain insurance as noted below and shall at all times name AIPCS II as additional insured under the applicable policy or policies. Upon request, BACR shall furnish copies of the policy forms indicating that AIPCS II is an additional insured under the policy or policies. Insurance shall include the following:

- *Property Insurance* - for replacement value, including coverage for all assets listed in AIPCS II' property inventory and consumables that BACR will utilize as part of the Program. If full replacement value coverage is not available, BACR shall procure property insurance in amounts as close to replacement value as possible.
- *General Liability* - providing coverage for negligence, errors and omissions, abuse and molestation, and employment practices liability of the School, its governing board, officers, agents, employees, or students.
- *Automobile Insurance* - to the extent necessary and in amounts appropriate for the type and use of the automobile.

XI. RELATIONSHIP BETWEEN THE PARTIES.

It is agreed that the relationship of BACR to AIPCS II is that of an independent contractor, that BACR shall provide all services under this Agreement as an independent contractor, and that BACR shall not have the authority to bind or make any commitment on behalf of AIPCS II. Nothing herein shall be construed to create a joint venture, partnership, employer-employee, association, or principal-agent relationship between BACR and AIPCS II.

XII. NOTICE

Any notice required or permitted to be given hereunder may be effectively given by letter delivered either by personal delivery, registered mail or electronic means (with delivery confirmation), addressed to the recipient as follows:

If to the School:

ATTN: Marisol Magana
American Indian Public Charter School II
171 12th Street
Oakland, CA 94607
510-220-9985 (Phone)

If to BACR:

ATTN: Martin Weinstein, CEO
191 Carlos Drive
San Rafael, CA 94903-2005
415-444-5581 (Phone)
415-444-5589 (Fax)
mweinstein@bacr.org

All notices must be in writing to the addresses set forth above, unless otherwise advised by a Party. Notices sent are deemed to have been received immediately upon personal delivery, three (3) business days following deposit of the same with an authorized carrier for delivery by registered mail, or on the next business day following issuance by email, but only if the recipient confirms receipt by email.

XIII. INTEGRATION

This Agreement is the final, complete, and exclusive agreement of the Parties with respect to the subject matter hereof, and it supersedes and merges all prior discussions between the Parties.

This Agreement may only be modified in a writing signed by both Parties that expressly references this Agreement.

XIV. LIMITATION ON LIABILITY

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BACR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE FEES PAID OR PAYABLE BY THE SCHOOL UNDER THIS AGREEMENT TO BACR.

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE SCHOOL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE

BACR Initials _____
School Initials _____

FEES PAID OR PAYABLE BY THE SCHOOL UNDER THIS AGREEMENT.

XV. EXCLUSION ON LIABILITY

IN NO EVENT SHALL BACR BE LIABLE FOR ANY CONSEQUENTIAL INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS, BUSINESS, REVENUE, DATA, GOODWILL OR USE, INCURRED BY SCHOOL OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, EVEN IF THE SCHOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL THE SCHOOL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS, BUSINESS, REVENUE, DATA, GOODWILL OR USE, INCURRED BY BACR OR ANY THIRD PARTY, WHETHER UNDER THE THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, EVEN IF BACR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

XVI. MISCELLANEOUS

- A. Force Majeure: If, for reasons beyond the control of either Party (a "Force Majeure" event), BACR is unable to carry out any of its obligations hereunder, or is required to make material changes to the schedule or activities comprising the Program, BACR shall make reasonable efforts to inform School of such changes and to provide appropriate substitutes to School, or to suspend performance of its obligations, up to and including cancellation of the Agreement, and shall provide pro rata refunds to School after meeting BACR's non-recoupable expenses. Force Majeure shall include, without limitation, riot, war, acts of God, third-party labor disputes, governmental action or inaction, and failure of power, telecommunication means, or third-party service providers upon which an obligation hereunder depends.
- B. Time is of the Essence: Time is of the essence with respect to the Parties' performance of the Services hereunder.
- C. No Waiver: No waiver will be implied from conduct or failure to enforce rights. No provision of this Agreement shall be deemed waived unless such waiver is in writing and signed by the authorized representative of the Party against whom it is sought to be enforced.
- D. Survivability: All provisions of this Agreement and any exhibit that are by their nature intended to survive the expiration or termination of this Agreement or any such exhibit, including obligations with respect to indemnification, shall survive such expiration or termination.
- E. Joint Negotiation: This Agreement is the product of BACR and School, and each provision hereof has been subject to the negotiation and mutual agreement of the Parties, and sufficient time for the review of their respective legal counsel and advisers. Accordingly, any rule of construction that a document shall be interpreted or construed against the drafting Party shall not be applicable.
- F. Choice of Law: This Agreement will be governed and construed in accordance with the laws of the State of California.
- G. Venue and Forum Selection: To the extent the courts need to be involved, the Parties irrevocably consent to the exclusive jurisdiction of any state or federal courts located in Alameda County, California and the Parties expressly waive any objection thereto and consent to personal jurisdiction therein.
- H. Prevailing Party: In the event that it shall become necessary for any Party to institute legal proceedings

against another Party for recovery of any amounts due and owing under the Agreement, it is expressly agreed that the prevailing Party in any such action shall be entitled to recover from the non-prevailing Party all costs related to such collection, including reasonable attorneys' fees and all expert witness fees incurred during pre-suit efforts, suit, and post judgment, appeal, or settlement collection.

- I. Severability: While the Parties consider the provisions contained in this Agreement reasonable, having the opportunity to seek independent legal advice, if any provision(s) of this Agreement is held to be invalid, illegal or unenforceable the remaining provisions shall be severable and enforceable. If a provision is excessively broad, such provision shall be limited or reduced in scope so as to be enforceable
- J. Interpretation: In this Agreement: (i) the headings are used for convenience only and do not affect any interpretation; (ii) reference to "person(s)" include incorporated and unincorporated persons; (iii) references to the singular include the plural and vice versa; (iv) references to the feminine include the masculine and vice versa; and (v) where the word "including" is used, it means "including without

BACR Initials _____
School Initials _____

- limitation.”
- K. Non-Assignability: This Agreement cannot be assigned or modified except pursuant to a written agreement signed by both Parties. Notwithstanding this term, BACR is permitted to subcontract as set forth herein.
 - L. Counterpart Execution: This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The Parties agree that a facsimile or electronic copy of this Agreement may be accepted as an original, and that facsimile or electronic copies of the executed Agreement constitute one and the same instrument. The Parties agree that a “including” is used, it means “including, but not limited to.”
 - M. Authority: The undersigned represent and warrant that they are duly authorized to sign this Agreement on behalf of their respective entities.

Effective as of the Date noted above upon signature of both parties.

American Indian Public Charter School II K-8

BAY AREA COMMUNITY RESOURCES, INC.

By: _____

By: _____

Its: _____

Its: _____

Printed Name: _____

Printed Name: _____

APPENDIX A: AIMS K-12 COLLEGE PREP CHARTER DISTRICT STAFF AND FAMILY HANDBOOK

APPENDIX B: SAFETY SCHOOL PLAN

APPENDIX C: ASSURANCES

BACR Initials _____
 School Initials _____



AIMS Board of Directors Meeting Item Cover Letter

Item:

Presented By:

Staff Recommendation:

Committee Approval:

Total Associated Cost:

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Over/Under Budget?

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In exchange for the benefits and consideration set forth below, the sufficiency of which is hereby acknowledged by both Parties, AIMS MS and BACR will collaborate to implement the educational program detailed below (“Program”) and assure the fulfillment of the objectives and activities outlined in this Agreement.

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1. Training. The BACR After-School Site Coordinator will attend, when able, training with School faculty and Staff (“School-Day Staff”). Additionally, both the School and BACR agree to be conscious of overlapping staff in scheduling professional development sessions so as to minimize disruption.

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School Initials _____

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C. Communication and accessibility with parents.

The School and BACR recognize that communication with School parents and guardians is an important component of the Program's success. To that end, the Parties hereby agree to the following:

1. Announcements. The School can send information out to its entire parent body on behalf of BACR. This should be used only for major announcements, i.e., deadlines and applications for signing up. Program-specific information to participants will be managed by BACR, but subject to the Head of School prior approval. Communications should include the Head of School on the distribution list.
2. Key School Year Events. The BACR After-School Site Coordinator commits to attending the School's major school-year events, so that BACR has a presence at school-related activities that occur outside of the school day.
3. Welcoming events. BACR commits to being present at welcoming events for new families.
4. Attendance Records: BACR shall maintain accurate Program attendance records.
5. Research: BACR shall respond to any additional surveys or other methods of data collection that may be required throughout the life of the Program.
6. Student-to-Staff Ratio: BACR shall maintain a student-to-staff member ratio of no more than 20:1, except for in the case of temporary emergencies.
7. Qualifications: BACR shall establish qualifications for each position so that all staff members directly supervising students meet the minimum qualifications of an instructional aide.
8. Screening: BACR shall ensure that all Program staff and volunteers will fulfill health screening (Clear TB Test) and CalDOJ fingerprint clearance requirements in current law and in compliance with School policies (Certified Assurance #25)

D. Legal Compliance

BACR shall comply with all applicable federal, state, and local laws governing privacy of student information, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"), the Family Educational Rights and Privacy Act ("FERPA"), and the Individuals with Disabilities in Education Act ("IDEA").

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E. Safety and Crisis Protocol

To ensure the safety of all School students participating in the Program, the Parties agree that:

1. BACR shall enforce a clear safety and crisis protocol, applicable to Program operations, that outlines procedure, response times, and commitment to notifying and working with School staff. That Safe School Plan is attached hereto as **Appendix B.**
2. In the event that a crisis occurs while the BACR After-School Site Coordinator is not on the School-site, the BACR After-School Site Coordinator is expected to be available via phone within 5 minutes and physically present within 30 minutes, unless there are extenuating travel circumstances.
3. AIMS MS will identify a School staff member who will be on-call during BACR program hours, and who must be notified ASAP when a crisis occurs. The School staff member and BACR's Program Coordinator will jointly respond to the crisis.

II. PROGRAM PARTICIPANT FEES, AND PROGRAM FEE PAYMENT TERMS

A. Nature of the Program: The Program is an optional extra-curricular enrichment program that School families may elect to participate in, at their choosing, subject to the eligibility, payment of fees, and other criteria stated herein.

B. Program Fee Schedule:

BACR and AIMS MS have established Program Fees for participants who elect to participate in the Program in the 2021-2022 School Year ("Program Fee Schedule") as follows and based upon various factors including sibling participants and income tiers.

Income-Based Tier	Monthly Fee/Student	Monthly Fee w/ Sibling Discount (\$25)¹
1	\$50	\$25
2	\$75	\$50
3	\$100	\$75

C. Program Fee Payment Terms:

1. Program Fees will not be pro-rated for students who join the Program later than the beginning of the school year or participate on a less-than-full-time basis (both of which are discouraged), except in cases where the student joins after January, 2022. Students who join after January, 2022 will be responsible for paying one half of the full-year Program Fee.
2. Program Fees may be paid in one lump sum, at the time of enrollment in the Program, or on a monthly basis, received by BACR no later than 7th of each month following the initial payment.
3. BACR will provide participants a 7-day grace period for payment, to the 15th of each month. If no payment is received by then, the nonpayment will be reported by BACR to the School via the Program Fees Report, described below, and it will become the School's responsibility to pay BACR those funds on the terms set forth below.
4. All Program Fees shall be made on-line, by check, or by money order, made payable to "Bay Area Community Resources." No cash payments will be accepted.
5. Monthly Program Fees are due before participation begins, and then on a monthly basis going forward (unless paid in one lump sum), and are non-refundable in the event that a child leaves the program prior to the end of the year and/or only attend on a part time basis (both of which are discouraged).
6. As noted above, the Program will run until 6:00 pm. BACR will extend a 10-minute grace period for parents, guardians and other authorized persons to pick-up Program participants. BACR will not release a Program participant to an unauthorized person, and it will not allow a Program participant to simply leave on his or her own, without the authorized person. Program

¹ This sibling discount does not apply to the first-enrolled student, but instead applies to the second (and any additional) enrolled students from the same family. For example, for a Tier 3 family, the monthly fee for student 1 is \$100, and the monthly fee is \$75 for any additional students from that same family.

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participants who remain after 6:10 pm may be charged a late fee of \$5.00 for every 10 minutes they are picked up late after the 10-minute grace period of 6:10pm. Late pick up fees will need to be paid by next Program day, online, by check or by money order. BACR will make every effort to collect fees from families. In the event any Program participants do not pay any late fee(s) in a timely manner, the School will pay BACR the applicable amount, as invoiced on a monthly basis.

7. Notwithstanding the foregoing, due to COVID-19, or any other major disruptive event (as may be agreed to by the Parties), the Parties acknowledge and agree fees payments may be suspended, adjusted, etc. depending on whether Schools are physically open, partially opened, closed, or engaged in distance learning.

III. PROGRAM ADMINISTRATION

A. Registration, Financial Aid, and First Collection of Program Fees

BACR will be responsible for registering students, collecting Program Fees, and administering the financial assistance programs. BACR will use its best efforts to collect Program Fees from all families other than those that qualify for financial assistance. BACR will not allow families who have not paid the Program Fee (other than those designated by the BACR as being eligible for financial assistance) to participate in the program. BACR retains all Program Fees as a contribution towards the cost of managing the program.

B. Ongoing Collection of Program Fees

Following launch of the Program, BACR will be responsible for ongoing collection of Program Fees. BACR will use its best efforts to collect Program Fees from all families, considering those that receive Program scholarships as noted above and as determined by the School. BACR will report to the School during the monthly meeting described below in Section IV, families who have not paid the Program Fee in full and in a timely manner (other than those designated by the School as being eligible for financial assistance). It shall then be the School's responsibility to take corrective action, if any, for non-payment. The School will report all such action(s) to BACR, so that BACR may act accordingly with respect to Program administration, collection of Program Fees in the future, etc. BACR retains all Program Fees as a contribution towards the cost of managing the Program and coverage of the Management Fee (defined below).

IV. PROGRAM BUDGET AND MANAGEMENT FEE

The budget for the Program at AIMS MS for the 2021-22 year is **\$177,382 ASES**. BACR will not exceed the 15% in administrative fee and minimal total of 85% direct service expenses.

School staff and BACR staff will meet at least quarterly in order to review various program-related matters, including enrollment numbers and Program Fee collections.

For the sake of clarity, the Parties expressly agree that the School (not BACR), shall solely fund any shortfall in collections of Program Fees, whether such shortfall is caused by lower than expected enrollment, non-payment by Program participants, or any other reason. But for this express agreement and commitment by AIMS MS, BACR would not enter into this Agreement on these terms.

In the event BACR receives payment of any Program Fees after the School has covered the same, e.g., in the event of an exceptionally late payment by Program participant to BACR, then BACR shall report the same to the School as part of the monthly meeting and that amount shall be used to offset any future payment of the Management Fee, so that BACR does not receive double payment at any time.

If enrollment trends over two (2) or more consecutive months indicate more than a 10% change in Program enrollment as compared to the current expected level of 110 participants, then the Parties will meet and confer on proposed changes to Program-related terms, including staffing, student groupings, and the Management Fee on a go-forward basis (i.e., non-retroactive) following execution of any addendum. The Parties will document the results of any such discussions and memorialize any related changes in an addendum to this Agreement.

V. TERM AND TERMINATION

BACR Initials _____
School Initials _____

The Term of the Agreement shall be from July 1, 2021 through June 30, 2022.

Either Party may terminate this Agreement at any time for any reason by giving at least thirty (30) days' written notice to the other Party.

Notwithstanding any other provision of this Agreement, BACR may terminate this Agreement immediately for cause, without any further obligation by BACR, by providing written notice of the same to the School upon the occurrence of any of the following events which shall constitute "cause" for such immediate termination: (1) bankruptcy, insolvency, loss or reduction of funds for the Program by the School; (2) assignment of this Agreement by the School to any other person or entity without the express advance written consent of BACR; (3) a material breach of this Agreement; (4) the School's failure to pay the Management Fee to BACR in a timely manner as set forth above; or (5) a Force Majeure as defined below.

In the event of any termination for cause by BACR, other than one based on Force Majeure (as defined below), the School shall pay BACR any and all outstanding Management Fees and pre-approved expenses due and owing to BACR or incurred by BACR under this Agreement. For the sake of clarity, the School shall pay BACR the full Management Fee in the event of any termination for cause of this Agreement (except one resulting from Force Majeure as defined below), unless BACR advises of cost savings due to early termination that may be deducted from the AIMS MS fee.

VI. INDEMNITY

BACR shall defend, indemnify, and hold the School, AIMS MS, its Board of Directors, officers, employees and agents harmless from and against any and all liability, loss expense, attorney fees for injury or claims for damages, arising out of BACR's performance of the agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims, for injury on damages are caused by or result from the grossly negligent or fraudulent acts or omissions of BACR, its officers, agents or employees.

AIMS MS shall defend, indemnify, and hold BACR, its Board of Directors, officers, employees and agents harmless from and against any and all liability, loss expense, attorney fees or claims for injury or damages, arising out of AIMS MS performance of the Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees or claims, for injury on damages are caused by or result from the negligent or intentional acts or omissions of AIMS MS, its officers, agents or employees. Further, if AIMS MS exercises its rights pursuant to Section VII of this Agreement (Removal of Staff), then it shall indemnify BACR and its Board of Directors, officers, employees and agents for any liability, loss, expense, attorney fees, or claims for injury or damages related to that termination, under any theory, even if in its exercise of such rights the School has not engaged in any negligent or intentional acts or omissions.

VII. REMOVAL OF STAFF

In the event that AIMS MS, for reasonable cause, at any time during the term of this agreement, desires the removal of any BACR related persons, employees, representatives or agents from the School site and/or property, BACR shall immediately upon receiving notice from AIMS MS of such desire, cause the removal of such person or persons. Notwithstanding the foregoing, BACR will retain final authority over hiring and termination of any BACR staff, and any such hiring or termination will follow BACR HR policies.

VIII. CANRA COMPLIANCE

BACR will comply with the Child Abuse and Neglect Reporting Act (CANRA) guidelines as mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code 11164 -11174.

IX. SUBCONTRACTING

BACR may elect to subcontract a portion of the work or activities to be performed under this agreement. In such an event, AIMS MS in its sole discretion, shall have the right to approve or disapprove the use of such subcontractors. BACR shall require each such AIMS MS-approved subcontractor to agree to abide by all terms of this Agreement, and to indemnify, hold harmless and defend AIMS MS, its officers, officials, employees, volunteers, or agents in accordance with the terms of Paragraph IV, above (Indemnity).

X. INSURANCE

BACR Initials _____
School Initials _____

During the term of this agreement, BACR shall maintain insurance as noted below and shall at all times name AIMS MS as additional insured under the applicable policy or policies. Upon request, BACR shall furnish copies of the policy forms indicating that AIMS MS is an additional insured under the policy or policies. Insurance shall include the following:

- *Property Insurance* - for replacement value, including coverage for all assets listed in AIMS MS' property inventory and consumables that BACR will utilize as part of the Program. If full replacement value coverage is not available, BACR shall procure property insurance in amounts as close to replacement value as possible.
- *General Liability* - providing coverage for negligence, errors and omissions, abuse and molestation, and employment practices liability of the School, its governing board, officers, agents, employees, or students.
- *Automobile Insurance* - to the extent necessary and in amounts appropriate for the type and use of the automobile.

XI. RELATIONSHIP BETWEEN THE PARTIES.

It is agreed that the relationship of BACR to AIMS MS is that of an independent contractor, that BACR shall provide all services under this Agreement as an independent contractor, and that BACR shall not have the authority to bind or make any commitment on behalf of AIMS MS. Nothing herein shall be construed to create a joint venture, partnership, employer-employee, association, or principal-agent relationship between BACR and AIMS MS.

XII. NOTICE

Any notice required or permitted to be given hereunder may be effectively given by letter delivered either by personal delivery, registered mail or electronic means (with delivery confirmation), addressed to the recipient as follows:

If to the School:

ATTN: Marisol Magana
American Indian Public Charter School II
171 12th Street
Oakland, CA 94607
510-220-9985 (Phone)

If to BACR:

ATTN: Martin Weinstein, CEO
191 Carlos Drive
San Rafael, CA 94903-2005
415-444-5581 (Phone)
415-444-5589 (Fax)
mweinstein@bacr.org

All notices must be in writing to the addresses set forth above, unless otherwise advised by a Party. Notices sent are deemed to have been received immediately upon personal delivery, three (3) business days following deposit of the same with an authorized carrier for delivery by registered mail, or on the next business day following issuance by email, but only if the recipient confirms receipt by email.

XIII. INTEGRATION

This Agreement is the final, complete, and exclusive agreement of the Parties with respect to the subject matter hereof, and it supersedes and merges all prior discussions between the Parties.

This Agreement may only be modified in a writing signed by both Parties that expressly references this Agreement.

XIV. LIMITATION ON LIABILITY

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL BACR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE FEES PAID OR PAYABLE BY THE SCHOOL UNDER THIS AGREEMENT TO BACR.

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE SCHOOL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE

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FEES PAID OR PAYABLE BY THE SCHOOL UNDER THIS AGREEMENT.

XV. EXCLUSION ON LIABILITY

IN NO EVENT SHALL BACR BE LIABLE FOR ANY CONSEQUENTIAL INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS, BUSINESS, REVENUE, DATA, GOODWILL OR USE, INCURRED BY SCHOOL OR ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, EVEN IF THE SCHOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL THE SCHOOL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, INCLUDING LOSS OF PROFITS, BUSINESS, REVENUE, DATA, GOODWILL OR USE, INCURRED BY BACR OR ANY THIRD PARTY, WHETHER UNDER THE THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR OTHERWISE, EVEN IF BACR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

XVI. MISCELLANEOUS

- A. Force Majeure: If, for reasons beyond the control of either Party (a "Force Majeure" event), BACR is unable to carry out any of its obligations hereunder, or is required to make material changes to the schedule or activities comprising the Program, BACR shall make reasonable efforts to inform School of such changes and to provide appropriate substitutes to School, or to suspend performance of its obligations, up to and including cancellation of the Agreement, and shall provide pro rata refunds to School after meeting BACR's non-recoupable expenses. Force Majeure shall include, without limitation, riot, war, acts of God, third-party labor disputes, governmental action or inaction, and failure of power, telecommunication means, or third-party service providers upon which an obligation hereunder depends.
- B. Time is of the Essence: Time is of the essence with respect to the Parties' performance of the Services hereunder.
- C. No Waiver: No waiver will be implied from conduct or failure to enforce rights. No provision of this Agreement shall be deemed waived unless such waiver is in writing and signed by the authorized representative of the Party against whom it is sought to be enforced.
- D. Survivability: All provisions of this Agreement and any exhibit that are by their nature intended to survive the expiration or termination of this Agreement or any such exhibit, including obligations with respect to indemnification, shall survive such expiration or termination.
- E. Joint Negotiation: This Agreement is the product of BACR and School, and each provision hereof has been subject to the negotiation and mutual agreement of the Parties, and sufficient time for the review of their respective legal counsel and advisers. Accordingly, any rule of construction that a document shall be interpreted or construed against the drafting Party shall not be applicable.
- F. Choice of Law: This Agreement will be governed and construed in accordance with the laws of the State of California.
- G. Venue and Forum Selection: To the extent the courts need to be involved, the Parties irrevocably consent to the exclusive jurisdiction of any state or federal courts located in Alameda County, California and the Parties expressly waive any objection thereto and consent to personal jurisdiction therein.
- H. Prevailing Party: In the event that it shall become necessary for any Party to institute legal proceedings

against another Party for recovery of any amounts due and owing under the Agreement, it is expressly agreed that the prevailing Party in any such action shall be entitled to recover from the non-prevailing Party all costs related to such collection, including reasonable attorneys' fees and all expert witness fees incurred during pre-suit efforts, suit, and post judgment, appeal, or settlement collection.

- I. Severability: While the Parties consider the provisions contained in this Agreement reasonable, having the opportunity to seek independent legal advice, if any provision(s) of this Agreement is held to be invalid, illegal or unenforceable the remaining provisions shall be severable and enforceable. If a provision is excessively broad, such provision shall be limited or reduced in scope so as to be enforceable
- J. Interpretation: In this Agreement: (i) the headings are used for convenience only and do not affect any interpretation; (ii) reference to "person(s)" include incorporated and unincorporated persons; (iii) references to the singular include the plural and vice versa; (iv) references to the feminine include the masculine and vice versa; and (v) where the word "including" is used, it means "including without

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- limitation.”
- K. Non-Assignability: This Agreement cannot be assigned or modified except pursuant to a written agreement signed by both Parties. Notwithstanding this term, BACR is permitted to subcontract as set forth herein.
 - L. Counterpart Execution: This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The Parties agree that a facsimile or electronic copy of this Agreement may be accepted as an original, and that facsimile or electronic copies of the executed Agreement constitute one and the same instrument. The Parties agree that a “including” is used, it means “including, but not limited to.”
 - M. Authority: The undersigned represent and warrant that they are duly authorized to sign this Agreement on behalf of their respective entities.

Effective as of the Date noted above upon signature of both parties.

American Indian Public Charter School II K-8

BAY AREA COMMUNITY RESOURCES, INC.

By: _____

By: _____

Its: _____

Its: _____

Printed Name: _____

Printed Name: _____

APPENDIX A: AIMS K-12 COLLEGE PREP CHARTER DISTRICT STAFF AND FAMILY HANDBOOK

APPENDIX B: SAFETY SCHOOL PLAN

APPENDIX C: ASSURANCES

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