

AMENDED AND RESTATED FISCAL SPONSORSHIP AGREEMENT



This Amended and Restated Fiscal Sponsorship Agreement ("Agreement"), dated June 30th 2018 ("Effective Date"), is made by and between the Oakland Public Education Fund, a California nonprofit public benefit corporation located in Oakland, California ("The Ed Fund"), qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code ("IRC") and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi), and the Oakland Promise Leadership Council, an unincorporated nonprofit association located in Oakland, California (the "Committee"). The Ed Fund and the Committee are sometimes referred to in this Agreement individually as "Party" and together as "Parties."

RECITALS

- A. The Ed Fund and the Committee previously entered into a Fiscal Sponsorship Agreement with the effective date of October 13, 2016 (the "First Agreement").
- B. Pursuant to the First Agreement, The Ed Fund Board of Directors established a restricted fund to receive donations of cash and other property designated for support of the project known as Oakland Promise (the "Project"), and to make disbursements in furtherance of the purposes of the Project's mission as a cradle-to-career education initiative that will, among other things, ensure every child in Oakland graduates with the expectations, resources, and skills to complete college and be successful in the career of his or her choice.
- C. The Parties wish to amend and restate the First Agreement to clarify the roles of the Parties, amend the fees charged against funds placed in the restricted fund in support of the Project, and to affirm the continued operation and fiscal sponsorship of the Project by The Ed Fund.

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

TERMS & CONDITIONS

- 1) **TERM OF AGREEMENT.** As of the Effective Date, The Ed Fund shall continue to sponsor the operation of the Project subject to the terms of this Agreement. This Agreement shall continue in effect unless and until terminated as provided in Paragraph 6.
- 2) **DELEGATION.** As of the Effective Date, The Ed Fund Board of Directors shall continue to delegate oversight of the program activities of the Project to the Committee, subject to the ultimate direction and fiduciary responsibility of The Ed Fund Board, as described in Exhibit A to this Agreement. The Committee serves as a subordinate body to The Ed Fund Board to assist with the fulfillment of the purposes of the Project. In matters governed by this Agreement: (a) the Committee's separate legal existence as an unincorporated nonprofit association will be solely for the limited purpose of holding, exercising, and enforcing the contractual duties and obligations The Ed Fund may owe to the Committee under this Agreement; and (b) those participating on the Committee do not have a financial conflict of interest and agree to represent the interests of the Project regardless of their employer. The Committee accepts such delegation, and agrees to work under the day-to-day direction of a designated project lead (the Executive Director of the Oakland Promise, referred to as the "Administrator" for the rest of this document) selected by The Ed Fund with consent of the Committee. Unless otherwise agreed in writing by the Parties, the Administrator shall serve as the primary liaison between the Parties with regard to the matters discussed in this Agreement. The Committee retains the right to remove any individual currently serving as Administrator, and to nominate a different individual to serve as Administrator; such removal shall not alter any individual's terms of employment or status as an independent contractor of The Ed Fund, as applicable. In the absence of an Executive Director, the Committee may assign the duties of the administrator to appropriate project staff until such time that a new Executive Director is selected. Specific duties and the divisions of authority among The Ed Fund, the Committee, and the Administrator are further delineated in Exhibit A to this Agreement.



3) PROJECT ACTIVITIES AND SPONSORSHIP POLICIES.

- a) The Parties shall abide by the Administrative Terms and Policies of The Ed Fund as set forth on the attached Exhibit B, and as adopted by The Ed Fund and provided to the Committee and Administrator from time to time. Such Administrative Terms and Policies may reference administrative fees, interest, and charges for extra services, to be paid to the general fund of The Ed Fund from the restricted fund described in Paragraph 4 below. Such fees, interest, and charges are necessary to compensate The Ed Fund for its services administering the Project, and thus become unrestricted rather than restricted assets when paid. Excluding the agreed upon fees described in Exhibit B, The Ed Fund may amend from time to time the Administrative Terms and Policies with advance written notice to the Administrator or the Committee. Any changes to the fees listed in Exhibit B must be expressly agreed upon in writing by the Parties. Violation of the Administrative Terms and Policies by the Committee or the Administrator shall constitute a breach of this Agreement by the Committee.
- b) Unless otherwise agreed, and subject to their consent, all personnel compensated for working on the Project shall be either independent contractors or employees of The Ed Fund on the effective date of hire and shall have access to benefits as required by law and be subject to appropriate personnel policies of The Ed Fund depending upon classification. The Ed Fund alone shall have final authority in determining the classification of individuals working on the Project for wage and hour purposes. The Ed Fund shall apply standards consistent with current IRS and Department of Labor regulations, as well as similar state regulations in determining final worker classifications. Any employees or independent contractors will be hired in accordance with The Ed Fund's established hiring procedures.
- c) The Committee may solicit gifts, contributions, public funds, and grants to The Ed Fund identified by the donors or grantors as in support specifically for the purposes of the Project. The Committee on a bi-annual basis will provide The Ed Fund a fundraising update and present a fundraising plan to meet fundraising targets, text of fundraising materials and other similar for the Project. All grant agreements, pledges, or other commitments with funding sources to support this Project shall be executed by The Ed Fund.
- d) All tangible and intangible property, including, without limitation, intellectual property, created or acquired by the Project's personnel in the course of their work for the Project or obtained by the Project from third parties since the Project has been a project of The Ed Fund and while this Agreement is in effect, is the property of the Ed Fund. The Ed Fund grants to the Project an exclusive, royalty-free, fully paid, worldwide license to use any such property including, without limitation, any intellectual property, in a manner that furthers the purpose of the Project and is consistent with The Ed Fund's exempt status under IRC Section 501. If this Agreement is terminated when the objectives of the Project can still be achieved, The Ed Fund understands that it will and irrevocably agrees to assign, transfer, and convey any and all rights it has in such property including without limitation, the intellectual property, to the agreed upon Successor.

- 4) **RESTRICTED FUND/VARIANCE POWER.** The Ed Fund shall continue to place all gifts, grants, contributions, and other revenues received by The Ed Fund for the purposes of the Project into the established restricted fund to be used for the sole benefit of the purposes of the Project, as those purposes may be defined by the Committee from time to time with the approval of The Ed Fund. Neither Party shall spend or otherwise obligate The Ed Fund to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either Party authorize or permit anyone to do so. The Ed Fund retains the unilateral right to spend such funds so as to accomplish the purposes of the Project as nearly as possible within The Ed Fund's sole judgment, subject to any more specific donor-imposed restrictions on the charitable use of such assets. The Parties agree that all money and the fair market value of all property in the restricted fund be reported as the assets of The Ed Fund on The Ed Fund's financial statements and tax returns. It is the intent of the Parties that this Agreement be interpreted to provide The Ed Fund with variance powers necessary to enable The Ed Fund to treat the restricted fund as The Ed Fund's



asset in accordance with Accounting Standards Codification ("ASC") paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board. Because the restricted fund is held under the charitable trust doctrine for the purposes of the Project as understood by and with funding sources, the Parties intend that assets in the restricted fund are not subject to the claims of any creditor or to legal process resulting from activities of The Ed Fund unrelated to the Project.

- 5) **PERFORMANCE OF CHARITABLE PURPOSES.** All of the assets received by The Ed Fund under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of The Ed Fund. Expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by The Ed Fund. The Ed Fund shall not use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3). The Ed Fund has determined, based on the advice of tax-exempt legal counsel, that the restricted fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.
- 6) **TERMINATION.**
- a) This Agreement shall terminate when The Ed Fund determines the objectives of the Project can no longer reasonably be accomplished by The Ed Fund. In such cases, The Ed Fund, in good faith consultation with the Committee, may dispose of the balance of assets in The Ed Fund's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by The Ed Fund in connection with the Project, in any manner The Ed Fund may choose that is consistent with applicable tax and charitable trust laws, to be used for purposes as close as possible to the purposes of the Project.
 - b) If the objectives of the Project can still be accomplished, but either Party desires to terminate this Agreement, either Party may terminate this Agreement on sixty (60) days written notice to the other Party. In that case, the following shall apply:
 - i. The Committee will identify another nonprofit corporation which is tax-exempt under IRC Section 501(c)(3), and is not classified as a private foundation under Section 509(a) that is willing and able to sponsor the Project (a "Successor"). As used in this Paragraph, the word "able" shall mean that the Successor has charitable purposes compatible with the purposes of the Project and has the financial and administrative capacity to competently manage the Project, in The Ed Fund's reasonable judgment.
 - ii. Parties shall notify one another in writing if they approve the proposed Successor by the end of the 60-day period. The Ed Fund shall not unreasonably withhold its approval of a proposed Successor.
 - iii. If the Parties cannot agree on a Successor to sponsor the Project by the end of the 60-day period, the Committee shall have an additional sixty (60) days, or longer if agreed in writing by the Parties, to find and obtain approval of a Successor.
 - iv. Once a Successor is found and approved in accordance with this Paragraph 6(b), the balance of assets in The Ed Fund's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by The Ed Fund in connection with the Project, shall be transferred to the Successor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required.
 - v. If the Committee has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all restricted fund and other tangible and intangible assets held and liabilities incurred by The Ed Fund in connection with the Project, so long as such organization has received a



determination letter from the Internal Revenue Service, indicating that such qualifications have been met, no later than the end of the notice period or any extension thereof.

- vi. If the Parties are unable to find and approve a Successor in the notice period or any extension thereof, The Ed Fund may dispose of the Project assets and liabilities in a manner consistent with subsection (a) of this Paragraph.

- c) Either Party to this Agreement may terminate this Agreement if there is a material breach by the other Party that is not cured within thirty (30) days after the non-breaching Party gives written notice of the breach. If such breach remains uncured, such a termination will be effective at the end of the thirty (30) day notice period. If the Committee is the terminating Party pursuant to this subsection (c), the balance of assets in The Ed Fund's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by The Ed Fund in connection with the Project shall be transferred to a Successor in accordance with subsection (b) of this Paragraph. If The Ed Fund is the terminating Party pursuant to this subsection (c), The Ed Fund may dispose of the balance of assets in The Ed Fund's restricted fund for the Project, together with any other tangible and intangible assets held and liabilities incurred by The Ed Fund in connection with the Project in a manner consistent with subsection (a) of this Paragraph.

- 7) **DISPUTE RESOLUTION.** The Parties shall first attempt to resolve in good faith any controversy, claim, or dispute between them arising out of or related to this Agreement, or the alleged breach thereof. If good faith resolution fails or is not satisfactory, before invoking the binding arbitration mechanisms set forth in this Paragraph, the Parties agree to next participate in mediation administered by Judicial Arbitration and Mediation Services (JAMS) of any dispute arising out of or related to this Agreement, or the alleged breach thereof. If a Party has participated in mediation and is dissatisfied with the outcome, that Party may initiate arbitration proceedings. Any such controversy, claim, or dispute shall be determined in Alameda County, California, before one mediator or arbitrator, respectively. In the case of arbitration, the arbitration shall be pursuant to the JAMS Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This Paragraph shall not preclude a Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The costs of mediation and arbitration will be borne by the Parties equally.

8) **MISCELLANEOUS.**

- a) **Severability.** Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision.
- b) **Choice of Law & Venue.** This Agreement and any claim or controversy arising from this Agreement shall be interpreted and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. The Parties consent to personal jurisdiction in California and venue in the state courts located in Alameda County or the federal courts located in the Northern District of California.
- c) **Notices.** Notices under this Agreement must be in writing and delivered by mail, personal delivery, or email to the Parties at the addresses stated below their signatures. The addresses to which notices must be sent may be changed by written notice to the other Party. Notices given in the manner provided in this Paragraph will be considered given two business days after deposit in the mail or on the day that personal delivery occurs or the email is sent.
- d) **Waiver.** Time is of the essence of this Agreement and of each and every provision hereof. The failure of either Party to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights. Any waiver under this Agreement must be in writing and signed by the Party granting the waiver.
- e) **Assignment & Third Party Beneficiaries.** Neither Party may assign its rights or delegate its duties under this Agreement to any third party without the prior written consent of the other Party. This Agreement is for the



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- exclusive benefit of the Parties and not for the benefit of any third party including, without limitation, individual members of the Committee, The Ed Fund Board of Directors, or any officer, agent, or employee of either Party.
- f) **Entire Agreement; Modification; Controlling Documents.** This Agreement, and its Exhibits, constitute the final, complete, and exclusive agreement between the Parties relating to the subject matter, and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter of this Agreement, including, without limitation, any and all prior fiscal sponsorship agreements between the Parties. All Exhibits hereto are a material part of this Agreement and are incorporated by reference. This Agreement, including any Exhibits hereto, may not be amended or modified, except in a writing signed by all Parties to this Agreement, and except as described in Paragraph 3(a).
- g) **Authority, Counterparts, Electronic Signatures and Delivery.** Each individual signing this Agreement warrants and represents that the individual has full authority to so execute this Agreement on behalf of the Party on whose behalf he or she signs. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that electronic signatures of the Parties shall have the same force and effect as original signatures. Delivery of a copy of this Agreement by facsimile, electronic mail as an attached file (e.g., pdf), or by any other electronic means (e.g., DocuSign) shall be acceptable to bind the Parties and shall not in any way affect this Agreement's validity.

ACCEPTED AND AGREED TO

Oakland Promise Leadership Council Designated Representative	Oakland Public Education Fund
Signature:	Signature:
Name:	Name:
Email:	Email:
Title:	Title:
Address:	Address:

EXHIBIT A OAKLAND PROMISE ROLES AND RESPONSIBILITIES

OAKLAND PROMISE LEADERSHIP COUNCIL

Referred to as the Committee in the Agreement, the Oakland Promise Leadership Council is responsible for collectively making policy decisions for the Project and deciding the Project's overall direction, as delegated by The Ed Fund, and subject to the ultimate control and discretion of The Ed Fund.

The Committee's primary responsibilities include but are not limited to the following matters:

- Advising on the Project's overall organizational structure, as well as the structure of its committees and its personnel;
- Approving budgets for the Project's overall operations and for individual programs;
- Overseeing the investment of funds in and the disbursement of funds from the Generation Fund;
- Evaluating, and advising The Ed Fund to enter into, substantial financial commitments involving multi-year contracts, grants, or initiatives for the purposes of the Project or as part of Project programs and activities; and
- Defining and refining the mission, vision, and strategy for the Project's major programmatic activities, including, but not limited to: Brilliant Baby, K2C, Future Centers, College Scholarships & Completion, Communications, Data & Evaluation, and Community Engagement.
- Providing consent and input into the hiring and evaluation of the Administrator/Executive Director of the Oakland Promise as outlined in paragraph two of this agreement.

EXECUTIVE DIRECTOR OF THE OAKLAND PROMISE

The Ed Fund will hire, with consent from the Leadership Council, an Executive Director (referred to as "Administrator" in this agreement) and other dedicated personnel who are responsible for carrying out the day-to-day activities of the Project, subject to the oversight of The Ed Fund, and with the consent of the Committee. The Executive Director is selected in accordance with the provisions of paragraph two of this agreement.

The Executive Director, who is supervised by and reports to the Oakland Public Education Fund and the Leadership Council, has the following primary responsibilities, including but not limited to:

- Acting as the primary liaison between the Committee and The Ed Fund Board of Directors and other leadership staff as needed;
- Creation and maintenance of Project budgets and report on budgeting;
- Day-to-day training, development, discipline, and selection of Project personnel;
- Assisting the Committee and other personnel dedicated to the Project in adhering to the terms of the Agreement and The Ed Fund's Administrative Terms and Policies;
- The expansion or contraction of Project programs;
- The creation, management, and security of comprehensive data systems to track Project progress;
- The identification and cultivation of all funding sources sufficient to support programs, consistent with any requirements imposed under the Agreement or in any Administrative Terms and Policies of The Ed Fund;
- Contracting with external evaluators to assess the effectiveness of Project programs;
- Ensuring the quality, scale and sustainability of the Oakland Promise;
- The use of intellectual property created by and obtained for the Project; and



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- Creation and management of Project related strategic partnership with funders, implementing partners, and other stakeholders.



THE OAKLAND PUBLIC EDUCATION FUND AS FISCAL SPONSOR

The Ed Fund has ultimate responsibility over the funds and operations of the Project. In providing fiscal sponsorship and administrative services to operate the Project, The Ed Fund understands and acknowledges that time is of the essence and will provide these services in a reasonably timely fashion. Substantial failure to provide timely services will constitute a material breach of the Agreement. The Ed Fund is primarily responsible for the following activities, including but not limited to:

- **Administrative** – Maintain its own tax-exempt status as a 501(c)(3) public charity; operate the Project with oversight and delegation as provided in the Agreement and Exhibits;
- **Financial Services** – This service area includes, among other things, filing its own federal, state and local tax and information returns which will include Forms 199 and 990; providing IRS required acknowledgments for donations in support of the purposes of the Project, including those larger than \$250; accepting stock and online donations for the purposes of the Project, in its sole discretion; other financial record-keeping; independent contractor management for Project activities, including tax-related forms such as Forms W9 and Forms 1099; payroll tax remittance and filings for employees dedicated to the Project; independent audits as may be required under law; processing of contracts; financial planning, and budgeting support and development.
- **Payroll and Human Resources Management** – This service area includes, among other things: payroll management; online time-sheets; overtime tracking and mobile time recording system; leave tracking and management; benefits administration; processing of withholding orders; processing of tax documentation; collection and maintenance of work authorization forms; maintenance of personnel files and documentation; workers' compensation insurance and administration; grievance handling and administration; and employee hiring, on-boarding, and termination administration.
- **Grant Management** – This service area includes, among other things, consultation regarding and approval of funder development prospects and cultivation, including initial consultation on local government and foundation grants; tracking of grant reporting and related grant process documents; providing access to a grants management system; and assistance in billing for reimbursable grants.



EXHIBIT B ADMINISTRATIVE FEES AND POLICIES

FEES

The Ed Fund will retain a percentage of the deposits into the restricted fund for the Project as administrative fees on the schedules described below:

General schedule of fees:

Source Funding Type	Total Award Amount	Purpose	% Fee
Non-Governmental Funding (i.e. foundation grants and individual pledges)	Less than \$1,000,000	General program support	10%
	\$1,000,000 or more	General program support	8%
Governmental funding (i.e. grants from state, county, or federal agencies)	Less than \$4,000,000	General Program support	8%
	\$4,000,000 or more	General Program support	5%

Special purpose schedule:

Source	Total Award Amount	Purpose	% Fee
Governmental or Non-Governmental	Any	To support projects programs administered by the Oakland Unified School District (i.e. Future Centers)	5%
	Any	Specifically identified for student support (i.e. scholarships, and seed money for college-savings accounts). Including, but not limited to, any money that goes to East Bay College Fund (or the Project's designated scholarship provider) for scholarships and persistence support, and money that goes to The San Francisco Foundation and the East Bay Community Foundation for the	%0



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Generation Fund.

***Total award amount:** The Ed Fund will determine the fee at the time the grant is awarded and the fee will be based on the total amount of the grant. For example a \$2,000,000 private grant paid over 5 years would be assessed a percentage fee of 8% because the total award amount is over \$1,000,000.

Notwithstanding the above, The Ed Fund will assess a minimum annual project administrative fee of \$2,500. The fiscal year of The Ed Fund begins July 1 and runs through June 30 of the subsequent year. Fee tracking resets on July 1 every year. At fiscal year-end in June, The Ed Fund will charge the minimum annual project administrative fees required so that total fees assessed by The Ed Fund equal at least \$2,500 for the fiscal year.

The fees above cover normal and reasonable transactions and services. The Ed Fund reserves the right to negotiate and set a different fee for other transactions and services.