

## AGREEMENT

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

## RECITALS

**WHEREAS**, KCPS acknowledges that the Department of Elementary and Secondary Education ("DESE") has estimated for school year 2021-22 that the amount of state aid owed to KCPS is not adequate to cover the state funding payments due to Kansas City local charter schools. KCPS further acknowledges that, as a result, DESE takes the position that it will be unable to pay the full amount of state aid to charter schools on a monthly basis;

**WHEREAS**, in order to correct the shortfall of state aid to the Kansas City local charter schools, KCPS desires to correct these shortfalls by directly making seven (7) incremental payments during the 2022 fiscal year to Charter School from the local aid received by KCPS;

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

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

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

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

## ARTICLE 1 KCPS OBLIGATIONS

**1.1 Payment Overview.** Due to DESE's current calculation which created the shortfall of aid to the charter schools, KCPS will bridge the gap and directly pay Charter School local aid funds to bring the total amount paid to charter schools up to the amount contemplated by the state aid formula. The calculation of the gap and payment shall be based on the formula in section 160.415.4, RSMo and as per the calculation currently followed by DESE. KCPS will consult with DESE to review its calculation. The payment calculation shall be based on Charter School's current year data.

**1.2** KCPS will make seven (7) installments utilizing the payment method described in this section. The first payment will be made in January 2022, the second through seventh payments will be made monthly, by the last day of each month, thereafter. The final installment will be by July 31, 2022. Payments under this agreement may be set off by any outstanding payment for separate goods and services

Charter School may owe to KCPS, if KCPS has billed and not been paid for those services for 60 days or more. Payments to Charter School will be made directly via Automated Clearing House (ACH).

**1.3 Installment Number 1.** No later than January 31, 2022, KCPS will remit payment to Charter School for the months of July through December 2021 for the estimated shortfall of aid calculated based on the payment method under section 1.1. That payment will be calculated as follows:

**1.3.1 Determining the Total Weighted Average Daily Attendance and Categorical Weightings.**

**1.3.1.1** Determination of Total Weighted Average Daily Attendance ("WADA") for KCPS plus individual charter schools will be calculated in a formula using the 1) September 2021 official membership counts as reported to DESE; 2) 2020-2021 attendance percentage as reported to DESE; 3) Categorical weightings applied using known information as reported and available from DESE; 4) 2021 summer school Average Daily Attendance ("ADA") as reported to DESE; 5) 2020-2021 tutoring or remedial hours as certified with DESE; and 6) Current year Pre-K ADA estimate as provided to DESE.

**1.3.1.2** Categorical weightings include: 1) Limited English Proficiency ("LEP") counts as filed in October 2021 in Core Data; 2) Individualized Education Program ("IEP") counts as filed in December 2021 in Core Data; and 3) Free and Reduced Lunch ("FRL") counts as filed in February 2021 in Core Data.

**1.3.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA:** Total estimated WADA, using this calculation, will be applied to the formula calculation to determine the estimated local revenue per WADA shortfall for 2021-2022. The annual estimated shortfall will be reimbursed at 50% (for the first six months).

**1.4 Installment Number 2 through 6.** Monthly, no later than the last day of February through June 2022, KCPS will remit payment to charter schools for the prior month, January through May 2022 respectively, for the estimated shortfall of aid calculated based on the payment method under section 1.1. That payment will be calculated as follows:

**1.4.1 Determining the Total WADA and Categorical Weightings.**

**1.4.1.1** Determination of Total WADA for KCPS plus individual charter schools will be calculated in a formula by using the 1) September 2021 and January 2022 official membership counts as reported to DESE and averaged; 2) 2020-2021 attendance percentage as reported to DESE; 3) Categorical weightings applied using known information as reported and available from DESE; 4) 2021 summer school ADA as reported to DESE; and 5) 2020-2021 tutoring or remedial hours as certified with DESE; and (6) current year Pre-K ADA estimate as provided by DESE.

**1.4.1.2** Categorical weightings include: 1) LEP counts as filed in October 2021 in Core Data; 2) IEP counts as filed in December 2021 in Core Data; and 3) FRL counts as filed in February 2022 in Core Data.

**1.4.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA:** Total estimated WADA, using this calculation, will be applied to the formula calculation to determine the estimated local revenue per WADA shortfall for 2021-2022. The annual estimated shortfall will be reimbursed at 8.33% each month (January through May) with any adjustments for the previously paid 50% based on changes in total and individual school WADA after a second set of membership counts and final FRL counts are added into the calculation.

**1.5 Installment Number 7.** No later than July 31, 2022 KCPS will remit payment to charter schools for the month of June 2022 for the shortfall of aid calculated based on the payment method under section 1.1. That payment will be calculated as follows:

**1.5.1 Determining the Total WADA and Categorical Weightings.**

**1.5.1.1** Determination of Total WADA for KCPS plus individual charter schools will be calculated in a formula by using the 1) September 2021 and January 2022 official membership counts as reported to DESE and averaged as finally adjusted; 2) 2021-2022 attendance percentage as reported to DESE; 3) Categorical weightings applied using known information as reported and available from DESE; 4) 2021 summer school ADA as reported to DESE; 5) Current year remedial or tutoring hours as certified with DESE; and 6) Current year Pre-K ADA as certified with DESE.

**1.5.1.2** Categorical weightings include: 1) LEP counts as filed in October 2021 in Core Data; 2) IEP counts as filed in December 2021 in Core Data; and 3) FRL counts as filed in February 2022 in Core Data.

**1.5.2 Determining the Estimated Foundation Formula Total and Shortfall per WADA:** Once the Total WADA for Installment Number 6 has been determined as set forth in section 1.4.1.1 above, the specific Installment Number 7 payment due to Charter School will be calculated based on the adjusted estimated local revenue per WADA for 2021-2022 multiplied by the WADA for Charter School as calculated by the six factors outlined in 1.5.1.1 and in agreement with the final DESE calculations.

**ARTICLE 2  
CHARTER SCHOOL OBLIGATIONS**

**2.1 Accurate Data Reporting.** Charter School shall take all measures to ensure all estimated Core Data reporting, including but not limited to student membership count, attendance, and categorical reporting, is as accurate as possible to prevent any overpayment of funds.

**2.2 Overpayment.** Should Charter School receive an overpayment of funds after the July payment, as referenced in 1.5, Charter School shall repay KCPS for any overpayment made within thirty (30) days of notification of the overpayment by KCPS, but repayment shall be no later than December 30, 2022. KCPS reserves the right to review Charter School's final WADA in November 2022 and make final billings to or payments to Charter School.

**ARTICLE 3  
TERM AND TERMINATION**

**3.1 Term.** This Agreement shall be effective as of **October 1, 2021** and shall continue in full force and effect through **December 31, 2022**.

**3.2 Termination.** Either party may cancel this Agreement with fifteen (15) days' notice to the other party in writing. Should Charter School close prior to the expiration of this Agreement, this Agreement shall be immediately terminated as of the closure date or by June 30, 2022, whichever date is earliest.

**3.3 Responsibility upon Termination.** No payments scheduled to be paid to Charter School after the termination of this Agreement will be paid. Any overpayment identified after the data reported to DESE has been finally adjusted will be due and payable within thirty (30) days after receipt of an invoice of overpayment.

**3.4 Survival.** The provisions of Articles 2, 4, 5, and 7 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

#### **ARTICLE 4 RIGHT TO INJUNCTIVE RELIEF**

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

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

#### **ARTICLE 5 INDEMNIFICATION**

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

**ARTICLE 6  
NOTICES**

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

Kansas City Public Schools:

Attention: Name	Mark Bedell, Superintendent
Address	2901 Troost Avenue Kansas City, Missouri 64109
Telephone:	816.418.7610
Facsimile:	816.418.7411

Attention:	Chief Legal Counsel
Address:	2901 Troost Avenue Kansas City, Missouri 64109
Telephone:	816.418.7610
Facsimile:	816.418.7411

Charter School:

Attention: Name	
Address	Kansas City MO
Telephone:	
Facsimile:	

**ARTICLE 7  
GENERAL PROVISIONS**

**7.1 Construction of Terms.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

**7.2. Governing Law.** This Agreement is governed by and constructed in accordance with the laws of the State of Missouri without regard to any conflict of laws provision. The parties consent to venue and personal and subject matter jurisdiction in Kansas City, Jackson County, Missouri.

**7.3 Executed Agreement.** This Agreement will not become effective until the Agreement has been fully executed by authorized representatives of each party. Charter School understands that KCPS shall not be obligated to compensate Charter School prior to the execution of this Agreement.

**7.4 Amendments.** The Agreement may be altered, amended, changed, or modified only by agreement in writing executed by an authorized representative from both parties.

**7.5 Assignment.** No party may assign this agreement without the prior written consent of the other party.

**7.6 No Waiver.** Failure by either party to enforce any of the provisions of this Agreement or to require compliance with any of its terms shall in no way affect the validity of this Agreement and shall not be deemed a waiver of the right thereafter to enforce any such provision.

**7.7 No Third-Party Beneficiary Rights.** No third party may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, the Charter School or KCPS in the Agreement. Nothing in this Agreement, whether express or implied, is intended to create any rights or remedies of any third-party beneficiary.

**7.8 Annual Appropriation of Funds.** This agreement shall be subject to the annual appropriation of funds by KCPS in accordance with its normal funding practices and/or the receipt of funding by DESE. In the event that funds are not available in full or in part for any of the payments under Article 1, KCPS will notify Charter School of the payment amount at least 7 days prior to the date of payment. KCPS will use reasonable efforts to ensure appropriated funds are available to fund payments to charter school; however, will not be required to use reserves to make payments.

**7.9 Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, except for amounts owed prior to the Force Majeure Event, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: work action or strike; lockout or other labor dispute; national or regional emergency; flood; fire; pandemic; war; riot; theft; act of terrorism, earthquake or natural disaster. Either party desiring to rely upon any of the foregoing as an excuse for default or breach shall give notice within ten (10) days of the Force Majeure Event to the other party or as soon thereafter as is practical, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

**7.10 Entire Agreement.** This Agreement and any exhibits shall constitute the entire understanding and agreement between the parties with respect to the subject matter covered, and shall supersede all prior agreements, understandings, discussions, warranties and representations, oral or written, express or implied, not incorporated in this Agreement.

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

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

**KANSAS CITY PUBLIC SCHOOLS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Nate Hogan

Title: Chairman, Board of Directors

**CHARTER SCHOOL NAME**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

DRAFT #1