

## AGREEMENT

THIS AGREEMENT is made effective July 1, 2024 by and between **The Graham School, Inc.** of Columbus, Ohio (“Graham”), and **Graham Elementary and Middle School, Inc.** of Columbus, Ohio (“GEMS”), each of which is an Ohio not-for-profit corporation.

### Recitals

**A.** GEMS is an Ohio public community high school desiring to use methods, techniques, management, and curricula developed by Graham, and to have Graham provide the personnel necessary to GEMS’ operations.

**B.** Graham is an Ohio public community high school that has developed unique and specialized instructional methods, technique, management, and curricula and is willing to provide its know-how, intellectual property, and personnel to GEMS so that GEMS may provide the benefits of the same to its students.

NOW, THEREFORE, in consideration of the mutual promises below, GEMS and Graham agree as follows:

### Provisions

**1. Personnel.** Graham shall hire and provide to GEMS all personnel necessary and appropriate to the operations of GEMS, as directed by GEMS from time to time, upon the following terms and conditions:

**(a) General Responsibilities of Graham.** In general, Graham shall provide the following personnel services to GEMS:

**(i) *Hiring.*** Graham shall recruit, evaluate, and hire personnel capable of performing the work duties required by GEMS and assign such personnel to provide services at GEMS for such duration as the parties determine is appropriate for each such person. During the term of this Agreement, the parties shall periodically agree as to the number, qualifications, titles, and duties of such personnel.

**(ii) *Positions Covered.*** The parties intend that all operating and administrative personnel at GEMS shall be provided under this Agreement, including, without limitation, teachers, administrators, administrative support staff, pupil support staff (collectively, the “Workers”).

**(iii) *Shared Personnel.*** Graham shall provide to GEMS the services of its Superintendent, Assistant Superintendents, Executive Director of Operations, Executive Director of Advancement, Director of Business and Personnel Services, Treasurer and other administrative, business and tech-

nical support staff who shall serve in such capacities for both schools and/or multiple schools affiliated within the family of Graham related schools.

(iv) *Compensation and Taxation.* Graham agrees to pay to or on behalf of each Worker all compensation earned, payroll and withholding taxes, unemployment insurance contributions, workers' compensation contributions, and all other taxes and withholdings required by law. Graham shall require all Workers to sign an agreement acknowledging that they are employees of Graham and are not entitled to compensation or benefits from GEMS and waiving any right that may be deemed to exist or that may come into existence with respect to entitlement to compensation or benefits from GEMS.

(v) *Regulatory Requirements.* Graham shall comply with all legal and regulatory requirements regarding the qualifications of the Workers for their positions, including, without limitation, background checks, misconduct reporting, licensing and registration requirements, and immigration status.

(vi) *Personnel Leave.* Graham shall provide to the Workers such vacation, personal leave, and medical leave benefits as determined by Graham or is otherwise required by law.

(vii) *Training.* Graham shall provide to the Workers such training and supervisions as Graham shall determine is necessary and appropriate to provide the Workers with the know-how and techniques necessary to implement the educational programs provided by GEMS, including management of experiential learning activities, design and structure of curriculum, management of student classroom and extra-curricular activities, and all other aspects of the educational program of GEMS.

(b) Indemnification By Graham. Graham agrees to indemnify GEMS against and hold GEMS harmless from any and all costs or liabilities, including reasonable attorneys' fees, arising from Graham's failure to pay (i) any compensation, employee withholding taxes, and employer mandated contributions (STRS, SERS, FICA, FUI and SUI) with respect to compensation paid to the Workers, and workers' compensation insurance contributions and claims for workers' compensation, and (ii) any employment liability claims resulting from Graham's acts or omissions.

(c) Employment Other Than At Will. No Worker shall be hired by Graham who is not subject to termination at will unless GEMS shall approve the terms of such Worker's employment agreement.

(d) Termination of Workers' Employment. Graham may terminate the employment of any Worker upon its determination or upon the request of GEMS, subject to the terms of such Worker's employment agreement, if any.

(e) General Responsibilities of GEMS. In general, GEMS shall perform the following:

(i) *Equipment, Materials, and Space.* GEMS shall provide to the Workers all equipment, materials, office and classroom space, and services necessary to the accomplishment of each Worker's duties, as reasonably determined by GEMS and similar to those provided by Graham to its employees engaged in similar positions at the Graham School facility.

(ii) *Payment.* GEMS shall reimburse Graham for all expenses incurred by Graham in connection with the provision of personnel for GEMS, as more fully provided elsewhere in this Agreement.

(f) Personnel Training and Development. Graham shall provide for the Workers training and development as determined to be appropriate by Graham, but not less than as required by law.

(g) Benefits and Insurance. Graham shall provide to the Workers the same benefits and liability insurance as provided by Graham to its employees engaged in similar positions at the Graham School facility.

**2. Student Services, Records, and Student Insurance.** Graham shall provide services to support individual student and group testing, EMIS reporting and management, maintenance of student records, required student reporting for the Ohio Department of Education, and any required student insurance. It is anticipated that such services may be provided by personnel not located at the GEMS facility. Graham has a legitimate right to know student information and shall maintain the confidentiality of such information as required by law.

**3. Casualty and Public Liability Insurance.** Graham shall provide real and personal property and public liability insurance as it shall determine to be appropriate for the protection of GEMS, including, without limitation, at least such coverages and limits as shall be required of GEMS under any lease or other agreement, and shall include both GEMS and Graham as named insureds on such insurance.

**4. Property.** The operator with which the governing authority of a community school contracts for services shall not lease any parcel of real property to that community school until an independent professional in the real estate field verifies via addendum that at the time the lease was agreed to, the lease was commercially reasonable. This independent professional shall be immune from civil liability for any decision rendered pursuant to this requirement.

**5. Payments.** Payments to Graham for services provided under this Agreement shall consist of reimbursements and fees for services, as follows:

(a) Reimbursements and Direct Payments. GEMS shall pay directly to vendors, or shall reimburse Graham, as the case may be, for the following expenses attributable to the operations of GEMS:

(i) *Facility Expenses.* Any sums paid on account of (A) loan for the purchase of the building, (B) utilities, (C) casualty and public liability insurance as provided in Paragraph 3, (D) maintenance and repairs of buildings and equipment.

(ii) *Professional Services.* Any sums paid on account of (A) accounting and auditing services, (B) legal services, and (C) sponsorship fees.

(iii) *Equipment, Leasehold Improvements, and Furnishings.* Any sums paid to acquire, repair, or maintain (A) furnishings for office, classroom, or other uses, (B) equipment of all types, including communications equipment, computers and peripheral items, and janitorial and maintenance equipment, and (C) leasehold improvements and fixtures.

(iv) *Office Supplies and Services.* Any sums paid to for (A) delivery and postal services, (B) telephone, internet access, and other communications technologies, and (C) document services, including copying, printing, and binding.

(v) *Student Services.* The costs incurred by Graham allocable to GEMS for the provision of the services described in Paragraph 2, including a pro rata share of all personnel costs associated with the provision of such services.

(vi) *Federal and State Reimbursements.* The costs incurred by Graham for expenses under the Federal Title programs as outlined in the CCIP or other State or Federal grants.

(vii) *Private Grants.* Private grants and/or donations that are designated by the grant requirements or the private donor to be used for specific programs and/or supplies at the GEMS School.

(viii) *Parent Group Revenue.* Any revenue generated by the GEMS School Parent Group

(b) Fees for Services. As compensation to Graham for the services provided under this Agreement, and for the rights to use the service mark "Graham Family of Schools" and other marks and intellectual property of Graham, GEMS shall pay fees to Graham as follows:

(i) *Base Fee.* GEMS shall pay to Graham a fee equal to 3.0% of the projected state foundation budget amount, payable in eleven equal monthly installments and one final installment to balance to the actual state foundation payments, commencing on the fifteenth day of July, 2024 and continuing on the fifteenth of each month thereafter until paid in full; provided, however, that GEMS shall not be obligated to pay to Graham any amount in excess of the funds received by GEMS from all state and federal agencies (the “Government Funds”) on account of its July, 2024, through June, 2025, operations.

(ii) *Net Percentage Fee.* GEMS shall pay to Graham a sum equal to 95% of the Qualified Gross Revenues it receives on account of its July, 2024, through June, 2025, operations. “Qualified Gross Revenues” shall mean the revenues remaining after GEMS’ payment of or provision for (A) the direct payments required in accordance with Paragraph 4(a) and (B) the base fee in accordance with clause (i), above. Such amount shall be paid to Graham no later than the 20<sup>th</sup> day of each month following the month of receipt of any Qualified Gross Revenues on account of such operations. Qualified Gross Revenues shall include, but are not limited to, unrestricted grant in aid (USAC code 3100 series), student revenue fees (USAC codes 1600 & 1700 series), misc local revenue (USAC 1800 series codes unless otherwise designated by donor)

(c) Grants and Gifts. Any funds received by GEMS as grants or gifts for the support for its programs shall be used for the purposes required by the donors, notwithstanding the above provisions. The expenses associated with the fulfillment of such purposes shall be payable in accordance with Paragraph 4(a).

(d) Annual Payment Calculation. The Governing Board for Graham and GEMS will approve a final agreed upon calculation of payments to Graham for related costs in accordance with the provisions in this agreement at the June Board meeting. If there is no June Board meeting, then it will be approved at the next meeting held.

**6. Financial Records.** At the request of Graham, GEMS shall make available, within a reasonable time and in proper form, all of its financial records for review by Graham. The governing authority of the School, with the assistance of the School's fiscal officer, shall adopt an annual budget by the 31st day of October each year.

**7. Use of Name.** During the term of this Agreement, if GEMS adheres to the educational policies and procedures recommended by Graham, GEMS may, at its option, refer to itself as a member of The Graham Family of Schools and otherwise refer to its association with Graham in its publications and announcements.

**8. Relationship of Parties.** Nothing in this Agreement shall be deemed to create a partnership, joint venture, or other combination between the parties. It is intended that Graham shall be an independent contractor to GEMS. No other relationship or agency shall be inferred from this Agreement, and neither party shall hold itself out as having any authority to act on behalf of the other except as conferred in this Agreement.

**9. Tax Exempt Purposes.** The parties agree that all goods and services provided hereunder are for educational charitable purposes in the fulfillment of the tax-exempt purposes of the parties. Notwithstanding any other provision of this Agreement, neither party shall be required to provide, accept, or pay for any goods or services outside the scope of such purposes.

**10. Legal Impossibility.** Notwithstanding any other provision of this Agreement, if any federal, state, or local governmental entity passes, issues, or promulgates any law, rule, standard, regulation, or interpretation at any time while this Agreement is in effect that prohibits, restricts, limits, or in any way materially changes the method or amount of reimbursements or payment available to the parties or that otherwise materially affects either party's rights or obligations under this Agreement, then either party may give the other party written notice of intent to amend this Agreement in a fashion that is equitable to each party considering such prohibition, restriction, limitation, or change, and the parties shall negotiate in good faith to accomplish such amendment. If this Agreement is not so amended in writing within 30 days after such notice is given, either party shall have the right to terminate this Agreement as of midnight on the 30<sup>th</sup> day thereafter, unless otherwise agreed.

**11. Term.** This Agreement shall terminate at the close of business on June 30, 2025, except that any obligations to be performed after the term of this Agreement shall not thereby be waived, unless earlier terminated or extended by agreement of the parties.

**(a)** The Operator may terminate this Agreement with cause, prior to the end of the term specified in this Contract, or during an extended or renewed term thereunder or under the Contract, in the event that the school fails to remedy a material breach of this Agreement within ninety (90) days after written notice from the operator. A material breach may include, but is not limited to, failure to make payments to operator as required by this Agreement, failure of the State of Ohio to adequately fund the operations of the School, or the School's failure to adhere to the personnel, curriculum, program or similar material recommendations of the Operator. Upon such termination, the Operator shall have the option to reclaim any usable property or equipment (e.g., copy machines, personal computers) provided or installed by Operator from its Fee, and not paid for by the School, or to reclaim the depreciated cost of such equipment. Provided, however, all assets, to the extent fully paid for by the School, shall remain the property of the School.

**(b)** Termination by the School. The School may terminate this Agreement after prior written notice to the Operator, upon the occurrence of any of the following:

**(i)** Effective the date the School is to cease operations if it shall cease to be approved by the State as an Ohio Community School or cannot secure another sponsor; or

**(ii)** Upon sixty (60) days prior written notice, in the event that Operator shall be guilty of a felony or fraud, gross negligence, or other act of willful or gross misconduct in the rendering of services under this Agreement; or

**(iii)** In the event that the Operator fails to remedy a material breach of its duties or obligations under this Agreement within six (6) months after written notice of the breach is provided.

**(c)** Change in Law. If any federal, state or local law or regulation, or court decision has a material adverse impact on the ability of either party or carry out its obligations under this Agreement, then either party, upon written notice, may request renegotiation of the Agreement and if the parties are unable or unwilling to renegotiate the terms within ninety (90) days after the notice, the party requiring the renegotiation may terminate this Agreement upon thirty (30) days further written notice.

**12. Amendment.** No amendment of this Agreement shall be effective unless in writing and executed by the parties.

**13. Notices.** Any notices under this Agreement shall be effective if in writing and mailed by certified mail, return receipt requested, as follows :

If to Graham: Gregory Brown, Superintendent  
The Graham School  
3950 Indianola Avenue  
Columbus, OH 43214

With a copy to: Stephen Gussler  
President, Board of Directors  
The Graham School  
3950 Indianola Avenue  
Columbus, OH 43214

If to GEMS: Gregory Brown, Superintendent  
GEMS  
3950 Indianola Avenue  
Columbus, Ohio 43214

With a copy to: Joyce Swayne  
President, Board of Directors

GEMS  
3950 Indianola Avenue  
Columbus, Ohio 43214

And, in either case, with a copy to: Cheryl Long  
Executive Director of Operations  
The Graham School  
3950 Indianola Avenue  
Columbus, Ohio 43214


IN WITNESS WHEREOF, the parties have executed this Agreement  
to be effective as of the date first written above.

**Graham Elementary and Middle School, Inc.**

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

Its: Board President \_\_\_\_\_

**The Graham School, Inc.**

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

Its: Board President \_\_\_\_\_