

AGREEMENT

THIS AGREEMENT is made effective July 1, 2023 by and between **The Graham School**, of Columbus, Ohio (“Graham”), and **Graham Elementary and Middle School** of Columbus, Ohio (“GEMS”), each of which is an Ohio not-for-profit corporation.

Recitals

A. GEMS is an Ohio public community 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. 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) mortgage 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 GEMS.

(viii) *Parent Group Revenue.* Any revenue generated by the GEMS 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, 2023 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, 2023, through June, 2024, 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, 2023, through June, 2024, 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 20th 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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 30th day thereafter, unless otherwise agreed.

10. Term. This Agreement shall terminate at the close of business on June 30, 2024, 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.

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

12. 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: Sara Neikirk
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

By: *Sara S. Neikirk*

Its: Board President

The Graham School

By: *Stephanie L. Neikirk*

Its: Board President