

AGREEMENT BETWEEN THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT
AND THE CITY AND COUNTY OF SAN FRANCISCO
FOR SUPERINTENDENT SERVICES

This Agreement dated for convenience as of October 22, 2024, in the County of San Francisco, State of California, is by and between San Francisco Unified School District, referred to as the "District," and the City and County of San Francisco, a municipal corporation referred to as the "City." Collectively, the District and the City are the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Government Code § 53060 authorizes the District to contract with and employ any person to furnish special services and advice in financial, economic, accounting, legal, or administrative matters if such person is experienced and competent to perform the special services required;

WHEREAS, the City has expertise in high level public administration including experienced personnel who oversee large budgets and departments that require prioritizing delivery of services, balancing department budgets, and overseeing operational and budgetary considerations while delivering services;

WHEREAS, the District is in the midst of a critical effort to stabilize public K-12 schools in San Francisco, including addressing concerns around a significant budget deficit, payroll and staffing, potential school closures, and other operational issues;

WHEREAS, the District also faces an urgent need for stabilization since it is under increased State oversight and must submit a plan to the State by the end of the 2025-26 school year to balance its budget, and, should the District fail to submit a sufficient plan to do so, the State may take over the District's governance and its financial, operational, and programmatic decisions;

WHEREAS, on September 22, 2024, the City announced its support for the District by deploying a School Stabilization Team, consisting of top City leaders and subject matter experts in the areas of children, families, education, budgeting, and fiscal oversight;

WHEREAS, on October 18, 2024, Superintendent of the District, Matthew Wayne, tendered his immediate resignation to the Board of Education, which accepted his resignation, leaving the District without a superintendent during this critical time for the public schools and the families they serve, and an urgent need for special services to stabilize and support the District;

WHEREAS, the City has authority to provide services to the District in furtherance of its municipal purpose in support of the City's approximately 49,000 public school students and their families, and in light of the financial support that the City provides to the District under the San Francisco Charter and otherwise; and

WHEREAS, the City represents itself able and, for the stated compensation, willing to perform the special services described further in Section 3 below for the benefit and at the request of the District, on the terms and conditions as mutually agreed by the Parties set forth below;

Now, THEREFORE, the Parties agree as follows:

AGREEMENT

1. The term of this Agreement shall commence on October 22, 2024 (the "Commencement Date"), and shall expire on June 30, 2026 (the "Initial Term"), unless terminated earlier by the Parties under Section 7 of this Agreement. Notwithstanding the foregoing, once signed and delivered by duly authorized representatives of both Parties this Agreement shall become effective only upon approval by the District's Board of Education and the City's Board of Supervisors. Additionally, the Parties may mutually agree in writing to extend the Initial Term of this Agreement for one additional two year period, subject to Sections 2 and 7 below.

2. All terms and conditions of this Agreement may be modified in writing by mutual agreement between the Parties, and with any approval by the Board of Education and the City's Board of Supervisors to the extent required. Any amendment or modification to this Agreement or extension of the term of this Agreement shall be effective upon execution and delivery by the duly authorized representatives of the Parties and approval or ratification by any necessary bodies, including the Board of Education and the Board of Supervisors.

3. The City agrees to perform the services set forth below (the "Services") for the District in exchange for the compensation from the District set forth in Section 5 below:

- a. As soon as possible after the Commencement Date, the City shall provide an experienced City employee to the District to perform the duties of the Superintendent of the District. The individual performing the duties of the Superintendent of the District, referred to as the "Superintendent," shall serve as the District's Chief Executive Officer and Secretary of the Board through the term of this Agreement. In that capacity, the Superintendent shall do and perform all services, acts or other tasks, necessary or advisable, to manage and conduct the business of the District consistent with the requirements of Education Code sections 35035 and 35250, and shall report only to the Board of Education.
- b. The Superintendent shall be and remain throughout the term of this Agreement an employee of the City, but will act in all necessary capacities as the Superintendent. The Superintendent shall not incur any employment rights, benefits, seniority, or compensation under any salary schedules and benefits offered to District employees. Subject to the obligations of the District to reimburse the City as provided in Section 5 below, the salary and all related employee benefits including retirement benefits, leave allocations, and seniority considerations due to the Superintendent shall be the sole responsibility of the City.

- c. The City shall have discretion to select the individual who shall serve as Superintendent. The City shall retain all rights as an employer to reassign, discipline, or terminate the employment of the individual serving as the Superintendent. In the event of reassignment or termination, the City shall promptly assign another individual to perform the services of Superintendent under this Agreement, subject to the approval of the District.
- d. In furtherance of this Section, the City will designate Maria Su, who has co-lead the City's School Stabilization Team, as the City employee serving as the Superintendent for the Initial Term of this Agreement. The District approves the designation of Maria Su for that purpose.

4. The District shall fulfill all obligations under California law, and specifically under the Education Code, to adopt resolutions and seek any appropriate or necessary waivers required to appoint a non-credentialed individual as an Superintendent or as otherwise required from any State official or agency for the City to provide the Services and for the Parties to fulfill the purposes of this Agreement. The Superintendent shall be subject to all fingerprinting and background check requirements under the Education Code.

5. The District shall reimburse the City \$385,000 dollars per year for the Services. This amount shall be prorated for any partial year during the term. The District shall pay the City for the Services on a monthly basis in immediately available funds, with amounts due to the City on the first working day of each month following the provision of Services for the prior month. In addition, the District shall also reimburse the City for its portion of the annual cost of the Superintendent's health, retirement, and other fringe benefits, the amount of which shall not exceed \$153,000 per year (again, prorated for any partial year). Except as set forth in this section, the District shall make no other financial contribution for the Services provided by the City under this Agreement.

6. The District shall indemnify and hold harmless the City, including its boards, commissions, departments, officers, employees, and agents and representatives, from and against any and all claims, damages, injuries, losses, liabilities, and expenses, including, without limitation, reasonable attorneys' fees and costs, (all referred to collectively as "Claims"), of any type whatsoever, arising out of the City's performance of this Agreement. This indemnity includes, without limitation, any Claims for injury to or death of a person, including but not limited to employees of the District, or loss of or damage to property. The City shall provide the District with prompt notice of any claim for which indemnification shall be sought under this section and shall cooperate in all reasonable respects with the District in connection with any such claim. The City shall, at its discretion, retain the authority to defend any such Claims arising out of its performance of this Agreement through the Office of the San Francisco City Attorney.

7. During the Initial Term, either Party may terminate this Agreement: 1) for cause (i.e., breach of the other Party's obligations), upon ten days advance written notice to the other Party; 2) upon 30 days advance notice in writing to the other Party if (a) the Parties are unable, after reasonable efforts, to reach an agreement regarding which City employee shall act as Superintendent or (b) the District hires a superintendent; or 3) for convenience (i.e., without

cause) upon 90 days advance notice in writing to the other Party and approval by the Board of Supervisors (in the event of termination by the City) or Board of Education (in the event of termination by the District) at a regularly scheduled public meeting of that body. Following the Initial Term of this Agreement, if the Parties extend this Agreement, then either Party has the right to terminate this Agreement for convenience (i.e., without cause) upon 30 days advance notice in writing to the other Party. Notwithstanding the foregoing, the City may terminate this Agreement at any time during the term, including the Initial Term or any extension, upon ten days advance written notice to the District in the event that the District moves into State receivership.

8. Each Party shall maintain, and provide a letter to the other upon request confirming that it will maintain, self-insurance sufficient to cover potential liabilities during the entire term of the Agreement. Additionally, the District shall, upon designation by the City of the Superintendent, add that individual as a named insured under the District's applicable insurance policies, including, but not limited to, director and officer or employment practices liability insurance policies. In no circumstances shall either Party's insurance coverage, or lack of such coverage, relieve or decrease the liability of either Party under this Agreement. A letter of self-insurance must provide that such self-insurance is primary to any other insurance available as to any claims arising out of this Agreement and that such self-insurance applies separately to each claim that is made or suit that is brought.

9. Any notices or communications required or permitted to be given by either Party under this Agreement must be: 1) given in writing; and 2) personally delivered or mailed, by prepaid, certified mail, overnight courier; or electronic mail transmission (including portal document format) with "read receipt" requested, to the Party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such Party as follows:

TO THE DISTRICT:

Office of the Board of Education
1st Floor
555 Franklin Street
San Francisco, CA 94102

Office of the Superintendent
3rd Floor
555 Franklin Street
San Francisco, CA 94102

TO THE CITY AND COUNTY OF SAN FRANCISCO:

Office of the Mayor
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

With a copies to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
cityattorney@sfcityatty.org

Office of the Controller
City Hall, Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A Party may, for purposes of this Agreement, change their address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other Party under this Section 9.

10. The Parties acknowledge that this Agreement and all records related to its formation are subject to the California Public Records Act, (California Government Code §§ 7920, *et seq.*), and the San Francisco Sunshine Ordinance (Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law. The Parties also acknowledge that the terms of this Agreement may be subject to Administrative Code § 67.29-6, and the District agrees to abide by the terms of that section. Before disclosing any records regarding this Agreement, the Parties agree to notify the other in writing at least 72 hours before disclosing such records. Notice should be given via email to the City via the San Francisco City Attorney's Office at cityattorney@sfcityatty.org and to the District at Public Records Act Officer, Legal Department, 3rd Floor, 555 Franklin Street, San Francisco, CA 94102.

11. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in San Francisco.

12. This Agreement sets forth the entire contract between the Parties for the Services, and supersedes all other oral or written provisions. The Parties shall comply with all applicable laws in the performance of this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed as the City's and the District's contractual commitment to comply with any law, regulation or ordinance to which the respective public agency is exempt.

13. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable,

then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

14. This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. Neither of the Parties shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

15. Original copies of this Agreement shall be executed by the respective Party's authorized signatory(ies). This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other. Electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature.

DISTRICT:

SAN FRANCISCO UNIFIED SCHOOL DISTRICT, a local education agency

By: 
Matthew H. Alexander
Board President

Date: 11-25-2024

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: 
London N. Breed
Mayor

Date: 11-25-2024

APPROVED AS TO FORM:

NAMITA S. BROWN
Interim General Counsel



APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: 
Kate G. Kimberlin
Deputy City Attorney