**OAKLAND SCHOL FOR THE ARTS**

**FISCAL SPONSORSHIP AGREEMENT**

**FOR THE NORTHLAKE DISTRICT**

This Fiscal Sponsorship Agreement (“Agreement”) is made by and between Oakland School for the Arts (“OSA”), and the newly formed Northlake District (“District”) and, individually and jointly referred to as the “Party” or “Parties,” for the purpose of establishing funding and operations of the Northlake District (“Project”)

**Recitals**

WHEREAS, OSA is a California nonprofit tax exempt 501(c)(3) charter school; and

WHEREAS, OSA will host the Project as a direct fiscal sponsor; and

WHEREAS, the District is a California nonprofit mutual benefit corporation established to manage the affairs and operations of the Project; and

WHEREAS, the District intends to file a Form 1023 with the IRS to establish 501(c)(3) charitable status by {insert date}; and

WHEREAS, the District shall direct action on the Project by majority vote only, and no individual member of the District’s Board of Directors shall have the ability to direct the use of any funds collected for the Project independently of the decision of a majority of the District’s Board; and

WHEREAS, the District has set a goal to raise approximately ${\_\_\_\_\_\_\_\_\_\_\_\_\_\_} to fund the Project; and

WHEREAS, the Project proposes to create, implement, and fund security and placemaking improvements to the emerging Northlake District in downtown Oakland, California; and

WHEREAS, OSA’s Board of Directors has determined that the Project’s purpose is consistent with the OSA’s mission and purpose to, among other things, improve security and placemaking improvements in the Northlake District, and has approved the establishment of a separate restricted fund to receive donations of cash and other property designated for support of the Project and from which to make disbursements to support Project activities;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**AGREEMENT**

1. Term of Agreement: On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024 (the “Effective Date”), OSA will assume fiscal sponsorship of the Project, which shall continue in effect until the District obtains its IRS 501(c)(3) determination letter or it is otherwise terminated as provided herein, whichever occurs first.
2. Project Activities: All fundraising events, processing and acknowledgment of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts, disbursement of Project funds (including grants), and other activities conducted by the Project and the District shall be the ultimate responsibility of OSA and shall be conducted in the name of the OSA, beginning on the effective date.
3. Receipt of Funds: OSA agrees to receive contributions and gifts, including but not limited to grant funding if awarded, to be used for the Project, and to disburse those funds on the Project’s behalf. All funds received by OSA for the Project shall be tracked separately from OSA’s other funds. No funds collected under this Agreement shall be identified within the account by individual donor, and all such funds may be used for any appropriate purpose in furtherance of the Project.
4. Restricted Fund/Variance: Beginning on the Effective Date, OSA shall place all gifts, grants, contributions, and other revenues received by OSA for the Project into a restricted fund to be used for the sole benefit of the Project. Neither OSA or District shall spend or otherwise obligate OSA 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. OSA retains the unilateral right to spend such funds so as to accomplish the Project’s purposes as nearly as possible within OSA’s sole judgment, subject to any other 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 income of OSA on OSA’s financial statements and tax returns. It is the intent of the parties that this Agreement be interpreted to provide OSA with variance powers necessary to enable OSA to treat the restricted fund as the OSA’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 (FASB). Since the restricted funds are 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 OSA unrelated to the Project.
5. Performance of Charitable Purposes: All of the assets received by OSA under the terms of this Agreement shall be devoted to the purposes of the Project, within the tax-exempt purposes of OSA. No expenditures for any attempt to influence legislation within the meaning of IRC Section 501(c)(3) shall be spent pursuant to this Agreement. OSA 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). OSA has determined, based on the advice of financial professionals, 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. Delegation: As of the Effective Date of this Agreement and subject to approval by OSA’s Board of Directors, the District will have oversight of the Project and all authority necessary to direct the undertaking of Project activities, subject to approval for expenditures by OSA’s Board of Directors empowered to make final financial decisions relating to the Project. Notwithstanding the foregoing, the ultimate financial and fiduciary responsibility of the Project remains with OSA’s Board of Directors.
7. Policy Direction: The District shall be responsible for developing the overall policies and goals of the Project. The District shall regularly provide OSA reports regarding the status of the Project.
8. Fundraising: The District may solicit gifts, contributions, and grants that are earmarked for Project activities. The text of any fundraising materials is subject to review and OSA’s prior written approval and shall include an express disclosure of OSA’s variance power under Paragraph 4, set forth above. The OSA’s Board of Directors may delegate authority to approve such sources and materials to an ad hoc committee or to OSA’s Executive Director. All grant agreements, pledges, or other commitments with funding sources to support the Project shall be executed by OSA. Required reporting by funders of the Project shall be executed by the District and reviewed by OSA.
9. Compensation: In order to cover the administrative time and costs of the fiscal sponsorship, OSA shall deduct an administrative charge equal to six point six-six percent (6.66%) of all donations, contributions, grants, or gifts received by OSA for the Project. An administrative charge shall be assessed, recorded, and deducted each time a donation, contribution, grant or gift is received into the restricted fund. OSA, in its sole discretion, may deduct from the restricted fund any special or unusual cost or fee it incurs in its role as the fiscal sponsor and in the administration of the restricted fund for the Project (such as bank fees, fees for a returned check, etc.). The Parties agree that all such payments are a reasonable approximation of OSA’s costs incurred in performing its fiscal sponsor services. Any interest earned on amounts held in the restricted funds shall be retained by OSA’s general fund.
10. Protection of Tax-Exempt Status: The District agrees not to use funds or engage in activities that in any way could jeopardize OSA’s tax-exempt status. The District agrees to immediately comply with any written request by OSA that it cease activities that, in OSA’s sole opinion, might jeopardize OSA’s tax status, and further agrees that OSA may suspend its obligation to make funds available or terminate this Agreement in the event that the District fails to comply with any such request. Any changes in the purpose for which contributions are used must be approved in writing by OSA before implementation. OSA retains the right, if the District breaches this Agreement or jeopardizes OSA’s legal or tax status, to immediately return funds to the donor or to withhold the funds.
11. Staffing: Commencing on the Effective Date, the work described herein for the Project swill be performed by OSA employees and OSA will contract with Lakeside to provide project management services/function. If further staffing needs dictate, OSA reserves the right to retain an independent contractor to act as director for the Project, pursuant to a written service agreementPrior to retaining such independent contractor, OSA will notify the District of its intent. All compensation, and any costs related to the work of such independent contractor shall come exclusively from Project funds, withdrawn on an annual basis. Unless otherwise specified in writing, any independent contractor relationship created under this Agreement or in furtherance of the Project shall terminate when the Project is complete, or once sufficient funding for the independent contractor is no longer available. In no event shall an independent contractor retained in connection with the Project become an employee of OSA absent an express written employment agreement.
12. Accounting: OSA will keep and maintain accurate, complete, and separate Project records in accordance with generally accepted accounting principles, showing all Project assets, liabilities, income, and expenditures. OSA will prepare a quarterly and fiscal year-end Project balance sheet and income/expense statement for delivery to the District within 45 days after the close of the period. The District may inspect any Project records during regular business hours with OSA’s consent, which consent shall not be unreasonably withheld. OSA may inspect any Project records, and may require the District to turn over such records.

13. Fund Disbursements. All disbursements from the funds by OSA will be treated as payments made to or on behalf of the District to accomplish the purposes of the Project. The District will provide OSA with proper documentation, to accomplish this, including furnishing OSA with District’s Federal Employer Identification Number (FEIN) and a vendor W9. OSA will disburse funds from the Project funds solely for the Project and in accordance with the Project budget preapproved by OSA as follows:

(a) As instructed in writing on completed OSA vouchers accompanied by required supporting documentation and only as authorized by this Agreement

(b) Disbursements will be restricted to the support and implementation of the Project only

14. Subcontracting: The District is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by OSA in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

 15. Tangible and Intangible Property: Unless otherwise agreed in writing by the Parties, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Project shall be the property of OSA, held for the charitable purposes of the Project, until expiration or termination of this Agreement, and then be transferred to the District.

16. Records: The District acknowledges that OSA is subject to the requirements of the California Public Records Act, and that records relating to the business and operation of OSA are public records that may be subject to disclosure upon request by any individual or corporation. The District expressly acknowledges that documents and other materials produced by the District may be subject to disclosure by OSA under the California Public Records Act. OSA agrees to notify the District of any request for District documents.

17. Insurance: OSA will maintain a policy of comprehensive general liability insurance of at least $1 million in coverage, and such other bonding and liability insurance, including but not limited to directors and officers, unemployment, and workers compensation insurance required by law or usual and customary with respect to the conduct of its activities, in amounts which it has determined are reasonably adequate. All such insurance shall cover Project activities undertaken by OSA, if such coverage is available. Any additional insurance or riders required by the Project shall be at the sole cost of the Project.

[Does Northlake District intend to have its own insurance?]

18. Indemnification and Defense of Claims: The District shall defend, indemnify and hold harmless OSA, its officers, directors, employees, agents, employees, and staff from and against all claims, demands, losses, liabilities, costs and expenses, including reasonable attorneys’ fees (collectively “Liabilities”) arising out of or resulting from the negligence or willful acts or misconduct of the District or a breach of the District’s obligations under this Agreement, except to the extent such Liabilities are caused by the intentional misconduct of OSA. This indemnity and defense of claims provision will survive the expiration and termination of this Agreement and remain in full force and effect.

19. Termination: Either party may terminate this Agreement by giving 30 days written notice to the other party. OSA may terminate this Agreement immediately

without the necessity of 30 days written notice if OSA determines that its continued fiscal sponsorship may jeopardize OSA’s tax-exempt status. Upon termination of this Agreement, the funds collected by OSA for the Project will be transferred to the District after they have obtained their IRS tax exempt status or to another California tax exempt nonprofit corporation designated by the District and in conformance with the requirements of the California Corporations Code.

20. Miscellaneous: In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys’ fees and costs of sustaining its position. 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. This Agreement shall be interpreted and construed in accordance with the laws of the State of California applicable to contracts to be performed entirely within such State. The failure of either party to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

21. Entire Agreement: This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. 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.

IN WITNESS WHEREOF, the parties have executed this Fiscal Sponsorship Agreement as of the Effective Date set forth in Paragraph 1 above.

**OAKLAND SCHOOL FOR THE ARTS (“OSA”)**

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

 Name:

Title:

Date:

**NORTHLAKE DISTRICT (“DISTRICT”)**

# By: \_

 Name:

Title: