

## Orinda Network for Education Operating Agreement

This Orinda Network for Education Agreement (this “**Agreement**”) is entered into by and among the Del Rey Parents’ Club (“**DRPC**”), the Glorietta Parents’ Club (“**GPC**”), the Educational Foundation of Orinda (“**EFO**”), the Orinda Intermediate School Parents’ Club (“**OISPC**”), the Miramonte High School Parents’ Club (“**MHSPC**”), the Sleepy Hollow Parents’ Club (“**SHPC**”) and the Wagner Ranch Parents’ Club (“**WRPC**”) and is effective as of March 4, 2020 (the “**Effective Date**”). Each are a “**Party**” and collectively the “**Parties**” to this Agreement.

WHEREAS, the Parties each are non-profit organizations that raise funds for the support of public education in Orinda at the Orinda Schools;

WHEREAS, the Parties have participated together over the last several years in discussions about ways to collectively improve fundraising for public education in Orinda; and

WHEREAS, the Parties entered into a Memorandum of Understanding generally describing how the Parties could work together in a new Orinda Network for Education; and

WHEREAS, the Parties agree that EFO should transition to become the Orinda Network for Education (“**ONE Orinda**”); and

WHEREAS, the Parties received and read the proposed amended articles of incorporation and amended bylaws, attached to this Agreement as Appendices 1 and 2, that, when adopted by EFO, will cause EFO to become ONE Orinda; and

WHEREAS, the Parties have agreed to certain operating principles for ONE Orinda;

NOW THEREFORE, the Parties agree as follows.

### 1. Background, Scope and Intent of this Agreement.

The Parents’ Clubs and EFO have collaborated with each other over the last several years to develop a new plan for educational fundraising in Orinda that is intended to address the modern reality of public education funding and expenses in California. The result of that collaboration is this agreement to create the Orinda Network for Education, colloquially called ONE Orinda. It is a plan to simplify and bring transparency to school fundraising by combining what have historically been separate fundraising campaigns for each school by that school’s parents’ club and EFO into one campaign with “one ask.”

The Parties intend for EFO to evolve into and become ONE Orinda. ONE Orinda will be governed by a board consisting of representatives from each of the Parents’ Clubs and members of the Orinda community. ONE Orinda will also create an advisory board to maintain close ties with OUSD, AUHSD, the City of Orinda, and other leaders of Orinda’s active civic, volunteer and philanthropic communities. ONE Orinda will employ full and part time professional staff to assist Parents’ Clubs with fundraising, manage the administration of funds and engage in direct fundraising efforts with high net worth donors, the Orinda community, potential corporate donors and foundations that may make grants to ONE Orinda.

A primary goal of this effort is to establish and grow an endowment fund, or a substantial base of funds functioning as an endowment, comprised initially of the original EFO funds functioning as an endowment and a contribution of reserves from all of the participating Parents’ Club, so that all Orinda Schools can benefit from greater growth of those funds, including potentially higher returns that come from professional investment of an increased capital base.

This Agreement is intended to serve as an operating agreement to govern and provide guidance for the relationship between and among the different Parents’ Clubs and EFO / ONE Orinda. It is also intended to be a baseline that can be flexible and accommodate change over time.

### 2. Definitions.

- 2.1. “**Annual Grant Request**” has the meaning given to the term in Section 8.5.
- 2.2. “**Applicable Laws**” means all governmental laws, ordinances, codes, rules, regulations, and orders applicable to non-profit organizations raising funds for public schools in Orinda, including without limitation laws and regulations regulating organizations exempt from federal income tax under section 501(c)(3) of Title 26 of the United States Code.

- 2.3. “**AUHSD**” means that Acalanes Union High School District and any successor entity to it.
- 2.4. “**Baseline Reserve Requirement**” has the meaning given to that term in Section 11.3.1.
- 2.5. “**Budget Completion Date**” has the meaning given to the term in Section 8.2.
- 2.6. “**Confidential Information**” means any confidential or proprietary information disclosed or made available by one Party (the “**Discloser**”) to the other Party (the “**Recipient**”) that is (a) marked “confidential” or “proprietary” before its disclosure; (b) orally disclosed by Discloser to Recipient, if it is identified as confidential by Discloser at the time of its disclosure and if, within thirty (30) days after disclosure, Discloser delivers to Recipient a written document describing such Confidential Information in detail; or (c) would reasonably be understood to be of a confidential nature, given the circumstances surrounding the disclosure and nature of the information. Confidential Information automatically includes Donor Data. Notwithstanding the foregoing, Confidential Information does not include any information that Recipient can demonstrate (a) was publicly available at the time of disclosure, or later became publicly available through no act or omission of Recipient; (b) was already in Recipient’s possession at the time of disclosure; (c) was rightfully received by Recipient from a Third Party without any obligation of confidentiality; or (d) was independently developed by or for Recipient without use of Discloser’s Confidential Information.
- 2.7. “**Club Account**” has the meaning given to the term in Section 10.1.
- 2.8. “**Data Laws**” means any laws applicable to the collection, storage or processing of Personal Data by a non-profit organization operating in California.
- 2.9. “**Donor Data**” means any and all information associated with a donation or matching grant made to ONE Orinda or a Parents’ Club, including without limitation Personal Data, all financial information (e.g., amount of donations, frequency of donations and payment information), and whether or not the donor wishes to be publicly acknowledged. Donor Data does not include aggregate, anonymized information such as total donations raised or campaign participation rates, even when such information is identified by such non-personally identifiable factors such as school or grade year.
- 2.10. “**FFE**” means funds functioning as an endowment. If ONE Orinda adopts a full endowment model in addition to or in lieu of FFE, then the references to FFE in this Agreement will also mean all ONE Orinda endowments that are not use-restricted.
- 2.11. “**Funding Grant**” has the meaning given to the term in Section 9.2.5.
- 2.12. “**Funding Requirement**” has the meaning given to the term in Section 8.4.
- 2.13. “**Funding Year**” means the time period between and including July 1 of one calendar year and June 30 of the following calendar year for which an Annual Grant Request has been approved by ONE Orinda.
- 2.14. “**Fundraising Account**” has the meaning given that term in Section 10.1.
- 2.15. “**Fundraising Ask**” has the meaning given to the term in Section 6.1.1.
- 2.16. “**Maximum Reserves Amount**” has the meaning given to the term in Section 11.6.
- 2.17. “**ONE Articles**” means the amended articles of incorporation, attached as Appendix 1, that will cause EFO to become ONE Orinda.
- 2.18. “**ONE Board**” means the board of directors of ONE Orinda.
- 2.19. “**ONE Bylaws**” means the amended bylaws of EFO, attached as Appendix 2, that will become the initial bylaws of ONE Orinda.
- 2.20. “**Operating Budget**” means the budget approved by a Parents’ Club for operations in a school year that includes funding for School District Payments and that club’s general operating expenses.
- 2.21. “**Operating Revenue**” means revenue received by a Parents’ Club through the provision or sale of goods or services. Examples of Operating Revenue include without limitation revenue received from the operation of after school care programs and lunch programs.

- 2.22. **“Orinda Schools”** means Del Rey Elementary School, Glorietta Elementary School, Orinda Intermediate School, Miramonte High School, Sleepy Hollow Elementary School and/or Wagner Ranch Elementary School, individually or collectively as context requires.
- 2.23. **“OUSD”** means the Orinda Union School District and any successor entity to it.
- 2.24. **“Overflow Account”** has the meaning given to that term in Section 10.1.
- 2.25. **“Parents’ Club(s)”** means DRSPC, GPC, OISPC, MHSPC, SHPC and/or WRPC, individually or collectively as context requires.
- 2.26. **“PC Donations”** means donations solicited by Parents’ Clubs to meet their Operating Budgets, whether by annual fund campaigns, auctions, or any other means.
- 2.27. **“Personal Data”** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 2.28. **“Processing”** means processing or other actions taken with regard to Personal Data as described in applicable Data Laws.
- 2.29. **“Reserve Account”** means a separate numeric account maintained in the ONE Orinda Endowment to hold reserve funds for a Parents’ Club as described in Section 11.2.1.
- 2.30. **“School District Account”** has the meaning given to the term in Section 10.1.
- 2.31. **“School District Payment(s)”** means the amount that any Parents’ Club or ONE Orinda, acting on behalf of one or more Parents’ Clubs, is obligated to pay either OUSD or AUHSD in any school year based on that Parents’ Club’s or ONE Orinda’s written agreement with the applicable school district.
- 2.32. **“Special Project”** and **“Special Project Funds”** have the meaning given those terms in Section 6.6.
- 2.33. **“Special Project Account”** has the meaning given to that term in Section 10.1.
- 2.34. **“Special Project Grant Request”** has the meaning given to that term in Section 8.9.
- 2.35. **“Supermajority Vote”** means a vote of (a) a majority of the directors of the ONE Board that were selected by Parents’ Clubs, and (b) a majority of all the ONE Orinda directors then in office.
- 2.36. **“Term,” “Initial Term”** and **“Renewal Term”** all have the meaning given to those terms in Section 14.1.
- 2.37. **“Termination by Agreement”** has the meaning given to the term in Section 14.5.
- 2.38. **“Third Party”** means any entity that is not a Party to this Agreement and/or any person who is not employed by or an officer of a Party to this Agreement.

**3. Creation of ONE; Governance.**

- 3.1. Agreement to become ONE Orinda. EFO agrees to become ONE Orinda and to take all steps required to legally cause it to become ONE Orinda.
- 3.2. EFO Approval of Actions Authorizing the Transition to ONE Orinda. EFO represents and warrants that:
  - 3.2.1. The EFO board of directors has voted to approve and authorize the transition of EFO to ONE Orinda; and in connection with such reorganization
  - 3.2.2. the EFO board of directors has voted to approve and adopt the ONE Articles;
  - 3.2.3. the EFO board of directors has authorized the filing of the ONE Articles; and
  - 3.2.4. the EFO board of directors has voted to approve and adopt the ONE Bylaws; and
  - 3.2.5. EFO has taken all other corporate action required of it to approve and authorize the filing of the ONE Articles;

- 3.2.6. all in a manner complying with EFO's articles of incorporation and bylaws existing at the time of such action.
- 3.3. Parents Club Approvals of ONE Governing Documents. Each Party other than EFO represents and warrants that:
  - 3.3.1. the Party's board of directors or members reviewed the ONE Articles and the ONE Bylaws; and
  - 3.3.2. the Party's board of directors or members approved creation of ONE, subject to the ONE Articles; and
  - 3.3.3. the Party's board of directors or members approved creation of ONE, subject to the ONE Bylaws, and
  - 3.3.4. the Party's board of directors or members approved the Party's participation in ONE as described in the ONE Articles and ONE Bylaws,
  - 3.3.5. all in a manner complying with the Party's own articles of incorporation and bylaws.

**4. Independent Entities; Joint Cooperation.**

- 4.1. Independent Entities. The Parties to this Agreement are independent entities and independent of each other. This Agreement is not intended to and does not create any relationship of partnership, joint venture, employment, franchise or agency between the Parties. No Party will have the power to bind any other Party or incur obligations on any other Party's behalf. No Party is responsible for or has any authority over the Operating Budget or operations of any other Party. Each Party is solely liable for its own Operating Budget and operations and has no liability for any other Party's Operating Budget or operations. Except as expressly set forth in this Agreement, no Party has any obligation to raise funds for or to fund any other Party's Operating Budget or Annual Grant Request.
- 4.2. General Cooperation. Subject to Section 4.1:
  - 4.2.1. The Parties will make reasonable, good-faith efforts to share best practices for budgeting, fundraising and operations.
  - 4.2.2. The Parties will make reasonable, good-faith efforts to promote ONE Orinda and all fundraising efforts described in this Agreement.
  - 4.2.3. The Parents' Clubs affiliated with schools that are part of OUSD will make reasonable, good-faith efforts to work together when negotiating with OUSD for funding to be paid to OUSD.
  - 4.2.4. MHSPC will make reasonable, good-faith efforts to work together with other high schools in AUHSD when negotiating with AUHSD for funding to be paid to AUHSD.
- 4.3. Joint Reviews. The Parties will meet together at least twice every Funding Year to discuss issues including the progress of school fundraising campaigns, marketing plans, budgets, interactions between the Parents' Clubs and ONE Orinda, best practices, future plans and other relevant issues.

**5. Completion of EFO Fundraising for 2019-2020**

- 5.1. Current Fundraising Campaign. The Parties acknowledge and agree that EFO has committed to raise \$1,690,000.00 for Orinda schools during the 2019-2020 school year and that the evolution of EFO into ONE Orinda will not change and is not intended to change that commitment.
- 5.2. Establishment of EFO Committee. The Parties agree that, after the Effective Date, the members of the EFO Executive Board, General Board and the Investment Committee as of the Effective Date will continue to work with ONE Orinda as a special "EFO Committee" appointed by the ONE Orinda Board to complete the 2019-2020 EFO fundraising campaign and fulfill EFO's original 2019-2020 commitment to Orinda schools. The Parties agree that the EFO Committee will be a volunteer committee and that its members will not have the powers or the obligations of the board of directors of ONE Orinda or the pre-Effective Date board of directors of EFO.
- 5.3. Power and Authority of EFO Committee. The EFO Committee will operate subject to the general supervision and control of the ONE Orinda Board and be authorized to complete on behalf of ONE Orinda

the 2019-2020 EFO fundraising campaign and satisfy ONE Orinda's funding commitments as approved by the EFO board of directors prior to the Effective Date. This includes, without limitation, the power and authority to spend funds previously allocated and budgeted by the EFO board of directors for such purposes and to take all other steps that the EFO Committee or its members determine(s) are necessary or desirable to complete the 2019-2020 EFO fundraising campaign and fulfill EFO's original 2019-2020 commitment to Orinda schools. If, after the Effective Date, the EFO Committee determines that funding beyond what the EFO board of directors has approved as of the Effective Date is required to complete the campaign and commitment, the EFO Committee must receive approval for such additional funding from the board of directors of ONE Orinda.

## 6. Fundraising

- 6.1. **Fundraising Generally.** Each Parents' Club is responsible for fundraising on behalf of ONE Orinda to meet that club's Funding Requirement from families with one or more students enrolled at the Orinda School affiliated with that Parents' Club.
- 6.1.1. **Fundraising Ask.** Working in collaboration with ONE Orinda, its school administration and OUSD or AUHSD, as applicable, each Parents' Club will determine, for each school year, the total per student donation amount that it will ask families to donate to meet its Funding Requirement for that school year (the "**Fundraising Ask**"). The DRSPC, GPC, SHPC and WRPC will cooperate with one another and make reasonable efforts to establish Fundraising Asks that do not vary significantly from school to school.
- 6.1.2. **Fundraising Methods.** Each Parents' Club will determine the method(s) (e.g., annual fund campaign, auction, walkathon) that it will use to raise funds to meet its Funding Requirement.
- 6.1.3. **Collection and Flow of Funds.** Each Parents' Club will organize its fundraising so that PC Donations will be made directly to ONE Orinda for the benefit of the Parents' Club that solicited the donation. Operating Revenue, if any, will be collected and retained by the Parents' Club generating that revenue. Each Parents' Club can solicit and collect donations through any means selected by that Parents' Club; however (i) each electronically collected donation must be routed directly to an account designated by ONE Orinda, and (ii) each check must be written in favor of "Orinda Network for Education" or "ONE Orinda." Solicited checks should identify the school raising the funds in the check's information line or be otherwise identified by the Parents' Club collecting the check as being properly allocated to that Parents' Club. Nothing in this section or elsewhere in this Agreement is intended to restrict the ability of any Party to accept a non-cash donation of value, e.g., stocks, art, real estate, etc. that would be made to ONE Orinda.
- 6.1.4. **Eventual Collection and Flow of Funds.** The Parents' Clubs and ONE Orinda will work together to determine the feasibility of having all PC Donations collected and managed directly by a single system operated by ONE Orinda.
- 6.2. **Fundraising by ONE Orinda.** ONE Orinda will serve as a resource for Parents' Clubs and engage in its own direct fundraising for Orinda Schools. In fulfilling those roles, ONE Orinda will use its best efforts to (a) assist Parents' Clubs as reasonably requested to fundraise from school families; (b) raise funds from the general Orinda community directly, through community fundraising events or by any other means; (c) raise funds from corporate donations; (d) raise funds from available government, private foundation or corporate grants, if any; (e) raise funds for special projects (e.g., the Wagner Ranch Nature Area); and (f) develop fundraising plans for Orinda School alumni, among other efforts. ONE Orinda may seek restricted or unrestricted funds, and nothing in this section is intended to limit the scope of ONE Orinda fundraising.
- 6.2.1. **Flow of Funds.** Funds raised directly by ONE Orinda (e.g., as described in Section 6.2 (b) – (d)) will be held by ONE Orinda for ONE operating expenses and FFE or, if one is established, a general endowment unless the source of such funds requires that the funds be restricted for a specific purpose or to a specific school.
- 6.3. **Tax Receipts.** Each Parents' Club will be responsible for providing its donors with legally compliant tax receipts on behalf of ONE Orinda using any reasonable method adopted by that Parents' Club. Each tax receipt will provide ONE Orinda's tax identification number, which ONE Orinda will provide to each

Parents' Club. ONE Orinda will be responsible for providing its direct donors with legally compliant tax receipts. All the Parties will work together to implement best practices for meeting these obligations.

- 6.4. Matching Fund and Institutional Remittances. In Spring 2020, the Parents' Clubs and ONE Orinda will collectively develop a plan to inform and will inform companies and institutions that have historically remitted funds to any of the Parents' Clubs or EFO that EFO has become the Orinda Network for Education, dba ONE Orinda, before the beginning of the 2020-2021 school year.
- 6.4.1. When ONE Orinda receives a donation or a match from any institution, including, for example, donor advised funds or charitable foundations, that indicates the name of the student(s) on whose behalf the donation or match is made, ONE Orinda will allocate those funds to the account for the Parents' Club affiliated with the Orinda School attended by that student, as described in Section 10.1.
- 6.4.2. If a donation or match indicates it is made on behalf of students attending different schools (e.g., two siblings, one of whom attends an elementary school and the other who attends OIS), then ONE Orinda will first attempt to allocate the funds to the appropriate Parents' Club account based on the Fundraising Asks by each Parents' Club. If the total amount of the donation or match is more than the combined Fundraising Asks of each Parents' Club, then the excess amount will be allocated to the account of each Parents' Club on a pro-rata basis. If the total amount of the donation or match is less than the combined Fundraising Ask of each Parents' Club, then the total amount will be allocated to the account of each Parents' Club on a pro-rata basis.
- 6.4.3. If a donation or match does not indicate that it is made on behalf of any specific student, then ONE Orinda will make a good faith effort to determine the family associated with the donation or match and then allocate the donation or match to the appropriate Parents' Club(s) account(s) based on the student(s) school enrollment as described above. If, having made a good faith effort, ONE Orinda is unable to determine the family associated with the donation or match, then the resulting funds will be treated as funds raised directly by ONE Orinda as described in Section 6.2.1.
- 6.4.4. Upon request of a Parents' Club, and to the extent legally permitted, ONE Orinda will provide that Parents' Club with access to matching gift gateways / portals so that the Parents' Club can assist with determining the students / families associated with matching gifts
- 6.5. Misdirected Funds. If a Parents' Club receives PC Donations that are directed to it instead of ONE Orinda – e.g., a matching check made payable to the Parents' Club or ACH transfers into the Parents' Club bank account – that Parents' Club will (a) track those funds and designate them for ONE Orinda; (b) aggregate all such funds; (c) transfer all such funds to ONE Orinda at intervals to be agreed upon between ONE Orinda and the Parents' Club; and (d) inform ONE Orinda of the amount collected but not yet transferred at intervals to be agreed between those Parties. Upon receipt, ONE Orinda will designate the transferred funds into the appropriate Fundraising Account(s) for the Parents' Club transferring the funds.
- 6.6. Special Projects. From time to time, a Parents' Club may want to undertake a special fundraising project to fulfill a specific need for their school that would not customarily be included in that club's annual Operating Budget (a "**Special Project**"). Fundraising for Special Projects can also take place through ONE Orinda. A Parents' Club raising funds for a Special Project must still raise sufficient funds to meet its Funding Requirement, subject to this Agreement, during the time of the Special Project campaign. Donations for Special Projects ("**Special Project Funds**") should be designated as restricted funds for that project.

## 7. Database; Access; Personal Data and Data Security.

- 7.1. Compliance. The Parties will all comply with Data Laws at all times when performing the obligations of this Agreement, including without limitations the requirements in this Section 7. A Party will be excused from performing any obligation that conflicts with Data Laws now or in the future, but in the case of such conflicts will work in good faith with the Party(ies) to which the obligation(s) flow to find alternative methods to meet the same general intent, if any exist.
- 7.2. General. ONE Orinda will maintain, at a minimum, a database that will track Donor Data and make Donor Data available to each Parents' Club for the student(s) attending the school associated with that

Parents' Club. When a student moves between Orinda Schools, ONE Orinda will make all the historical Donor Data for that student's family available to the Parents' Club for the school where the student is currently enrolled.

- 7.3. Sharing of Donor Data with ONE Orinda. Until and unless all PC Donations are processed by a single system maintained by ONE Orinda, each Parents' Club agrees to provide ONE Orinda with the Donor Data available to that Parents' Club, excluding any private financial account information. Parents' Clubs will provide all such information in any available format reasonably requested by ONE Orinda and at intervals agreed upon between each Parents' Club and ONE Orinda.
- 7.4. Sharing of Donor Data by ONE Orinda. ONE Orinda will share with or make available to any requesting Parents' Club any or all of the following: (i) Donor Data for the specific fundraising campaign being conducted by that Parents' Club; (ii) historical Donor Data for fundraising campaigns conducted by that Parents' Club; (iii) historical Donor Data for families with students currently enrolled at the Orinda School associated with that Parents' Club; provided, however, that ONE Orinda shall not share financial account information.
- 7.5. Confidentiality of Data. The Parties agree that all Donor Data is Confidential Information under this Agreement and may not be used or disclosed except for purposes of fundraising to support Orinda Schools and as otherwise provided in this Agreement.
- 7.6. No Sharing Data with Third Parties. No Party may sell or share Donor Data with any Third Party, except that the Parties may (a) publicly acknowledge donors who have not requested anonymity; (b) disclose aggregated data that cannot be used to identify specific donors; and (c) use vendors to process Donor Data as required to raise funds and/or perform the Party's obligations subject to the requirements in Section 7.8.
- 7.7. Data Retention. The Parties agree that ONE Orinda should adopt a data retention policy that recognizes the need to retain historical donation data throughout the time a family has children enrolled in Orinda Schools, the need to retain data regarding community and recurring donors, and other considerations recommended by ONE Orinda professionals, balanced with the need to respect individual data privacy, information security and compliance with Data Laws.
- 7.8. Requirements for ONE Orinda Vendors. ONE Orinda will ensure that its agreements with vendors for processing donations, processing donor information and/or storing donor information all require (a) that the vendor comply with all applicable Data Laws; (b) that the vendor will use Donor Data only as necessary to provide the services requested by ONE Orinda; (c) that the vendor will not use Donor Data for any other purpose; (d) that the vendor will not sell, use, retain, disclose, or further collect Donor Data for the vendor's own commercial benefit; and (e) that vendor will comply with all applicable laws, rules, regulations and directives related to information security.

## **8. Operating Budgets, Annual Grant Requests and Funding Agreements.**

- 8.1. Generally. Parents' Clubs will adopt Operating Budgets for each school year in the spring before the start of that school year. For example, the Operating Budget for the 2020-2021 school year would be adopted in the spring of 2020.
- 8.2. Historical Budget Information. Within 60 days of the Effective Date, each Parents' Club will provide ONE Orinda with copies of its approved Operating Budgets and operating results (i.e., the application of actual funds raised and other revenue to the Operating Budgets) for the 2016-2017, 2017-2018 and 2018-2019 school years. Each Parents' Club will provide ONE Orinda with copies of its approved Operating Budgets and operating results for the 2019-2020 school year within 45 days following the closing of a Parents' Club fiscal year covering that school year.
- 8.3. Preliminary Budgets. Each Parents' Club, working together with its school's administration and OUSD or AUHSD as applicable, will create an Operating Budget for the subsequent school year no later than 30 days before the last day of the school year in which the budget is created (the "**Budget Completion Date**").

- 8.4. Calculating a Funding Requirement. A Parents' Club's "**Funding Requirement**" for Funding Year is equal to its Operating Budget for that year after subtracting (i) Operating Revenue, if any, used to fund any part of the Operating Budget, and (ii) funding allocated to a Special Project.
- 8.5. Funding Grants by ONE Orinda. On or before the Budget Completion Date each Parents' Club will submit its approved Operating Budget and request that ONE Orinda make a grant to fund its Funding Requirement. The amount requested by a Parents' Club under this Section is its "**Annual Grant Request.**"
- 8.6. Automatic Approval of Annual Grant Requests. ONE Orinda will approve a grant in the amount of any Annual Grant Request if any one of the following conditions is met:
- 8.6.1. The Operating Budget supporting the Annual Grant Request funds substantially similar activities as the previous school year's budget and is no more than five percent higher than the prior Funding Year's Funding Requirement for the Parents' Club submitting the request.
- 8.6.2. In the case of the Parents' Clubs associated with Orinda Schools in OUSD, if the increase in the Annual Grant Request as compared to the prior year's Annual Grant Request is due to documented increased costs charged by OUSD.
- 8.6.3. In the case of MHSPC, if the increase in the Annual Grant Request as compared to the prior year's Annual Grant Request is due to documented increased costs charged by AUHSD.
- 8.7. Discretionary Approval of Annual Grant Requests. If a Parents' Club's Annual Grant Request does not meet one of the automatic approval conditions set out in Section 8.6, then ONE Orinda, in its sole discretion, may either (a) approve the Annual Grant Request; (b) reject the Annual Grant Request and require that the Parents' Club resubmit an Annual Grant Request that meets at least one of the conditions in Section 8.6; or (c) approve a different Annual Grant Request amount determined by ONE Orinda to satisfy one of the conditions in Section 8.6.
- 8.8. Funding Agreements. Within 30 days of ONE Orinda approving an Annual Grant Request, ONE Orinda and the applicable Parents' Club will enter into an agreement substantially in the form of Appendix 3 that will (a) require the Parents' Club to use good faith, best efforts to raise the amount of the Annual Grant Request from the families with students attending the Orinda School affiliated with the Parents' Club; (b) require ONE Orinda to meet the approved Annual Grant Request as described in this Agreement; and (c) authorize and require ONE Orinda to make required payments to OUSD or AUHSD, as applicable, on behalf of the Parents' Club and in accord with Section 10.3.1.
- 8.9. Special Project Grant Requests. If a Parents' Club wants to fund a Special Project, that club should present ONE Orinda with a separate grant request for that Special Project (a "**Special Project Grant Request**"). Each Special Project Grant Request will set out the purpose for the grant, a plan for raising the Special Project funds, the time frame for the fundraising effort, and the club's plan to ensure that the Special Project campaign does not impact annual fundraising required to meet the annual Funding Requirement. ONE Orinda may approve or decline a Special Project Grant Request in its sole discretion.
- 8.10. No ONE Orinda Budgeting Authority. Except under extraordinary circumstances as set forth in Section 8.11, (i) ONE Orinda's sole authority with respect to Operating Budgets is to approve or not approve Annual Grant Requests under Section 8.6 and/or Section 8.7; (ii) ONE Orinda will have no authority to change Operating Budgets submitted by Parents' Clubs; (iii) ONE Orinda may not require changes to an Operating Budget as a condition of approving any Annual Grant Request; and (iv) no Parents' Club will be required to obtain permission from ONE Orinda to deviate from its Operating Budget.
- 8.11. Extraordinary Circumstances. In order to protect all the Parties from extraordinary circumstances, including fraud or mismanagement, involving any single Party, all the Parties agree that ONE Orinda may (a) require changes to any Parents' Club's Operating Budget; (b) require changes to any Parents' Club's Annual Grant Request; and /or (c) reject an Annual Grant Request and require that a Parents' Club withdraw from this Agreement on a temporary or permanent basis if the ONE Board finds by a Supermajority Vote that one or more of the following extraordinary circumstances has occurred or is occurring:

- 8.11.1. There is clear and convincing evidence that the Parents' Club has committed fraud or is continuing to commit fraud.
- 8.11.2. There is mismanagement of the Parents' Club such that ONE Orinda and/or the remaining Parents' Clubs would be forced to take on a disproportionate share of funding for that Parents' Club as compared to historical norms.
- 8.11.3. There is mismanagement of the Parents' Club that poses a threat to the financial viability of ONE Orinda or other Parents' Clubs. A threat to the ability of ONE Orinda to make School District Payments for other Parents' Clubs is one example of a threat to the financial viability of ONE Orinda or other Parents' Clubs.
- 8.11.4. The Parents' Club has adopted an Operating Budget with an extraordinary expense that falls outside the historical norms of the expenses that have been funded by general Parents' Club and EFO fundraising (e.g., a significant capital expense or a staffing expense that has not been traditionally funded or which would create inequity between comparable Orinda Schools).
- 8.11.5. The Parents' Club has made insufficient efforts to raise funds from within its parent community for at least two of the three Funding Years preceding the vote under by the ONE Board under this section (which can include the Funding Year in which the vote is being taken) as demonstrated by a significant decline in participation rate or funding amounts as compared to historical data for that Parents' Club.

## 9. Fulfilling Approved Annual Grant Requests.

- 9.1. General. The Parties recognize and acknowledge that OIS and MHSPC have historically received more EFO funds than their enrolled families have contributed to EFO. From year to year, one or more elementary schools have received more from EFO may also receive more funds than its enrolled families contribute, but to a lesser degree. While all Parents' Clubs will be tasked with raising all the funds necessary to meet their Funding Requirements, the Parties agree that no school should be in a worse fundraising position after entering into this Agreement than it was before entering into this Agreement. To achieve that goal, Section 9.2 is intended to replicate, to the extent possible, current funding flows.
- 9.2. Funds Used to Fulfill Approved Annual Grant Requests. ONE Orinda will fulfill each approved Annual Grant Request using available funds from the following sources, in order:
  - 9.2.1. First the funds raised during the Funding Year by the Parents' Club that submitted the Annual Grant Request.
  - 9.2.2. If a deficit remains after using all the funds referenced in Section 9.2.1, then the second source of funds to be used to fulfill a Parents' Club's Annual Grant Request will be the community funds raised by ONE Orinda during the Funding Year.
  - 9.2.3. If a deficit remains after using all the funds referenced in Sections 9.2.1 - 9.2.2, then the third source of funds to be used to fulfill a Parents' Club's Annual Grant Request will FFE and/or ONE Orinda unallocated general operating funds.
  - 9.2.4. If a deficit remains after using all the funds referenced in Sections 9.2.1 - 9.2.3, then the fourth source of funds to be used to fulfill a Parents' Club's Annual Grant Request will be funds from that Parents' Clubs' Reserve Account, unless and until the Reserve Account reaches the Baseline Reserve Requirement.
  - 9.2.5. If a deficit remains after using all the funds referenced in Sections 9.2.1 - 9.2.4, then the final source of funds to be used to fulfill a Parents' Club's Annual Grant Request will be a grant made to the Parents' Club by ONE Orinda using funds drawn equally from every other Parents' Club Reserve Accounts on a pro-rata basis, subject to the requirements of Section 11.5 (an "Emergency Grant"). A Parents' Club receiving an Emergency Grant (i) will refund the Emergency Grant in a reasonable time; (ii) will include the repayments in the Parents' Club's subsequent Operating Budget(s); and (iii) agrees that, until such time as the Emergency Grant has been completely refunded, all funds raised from PC Donations in excess of the amounts needed to meet that Parents' Club's Funding Requirement in subsequent Funding Years will be used to refund the Emergency Grant.

- 9.2.6. On a case by case basis, and subject to Section 9.1, the ONE Board of Directors may change the order of funding sources in Sections 9.2.1 through 9.2.5 by a Supermajority Vote.
- 9.3. Funds Used to Fulfill Approved Special Project Grant Requests. ONE Orinda will fulfill approved Special Project Grant Requests using only restricted funds donated for the Special Project.

## 10. Maintenance and Disbursement of Funds.

- 10.1. Designated Parents' Club Accounts. ONE Orinda will track and record PC Donation funds generated by each Parents' Club in at least three separate numbered bookkeeping account(s) associated with the Parents' Club that raised the funds (each a "**Fundraising Account**"). One account will be designated for the accumulation of funds necessary to make School District Payments on behalf of the Parents' Club (the "**School District Account**"). The second account will be designated for disbursements directly to the Parents' Club (the "**Club Account**"). The third account (the "**Overflow Account**") will be designated to hold any additional funds remaining after the School District Account and the Club Account have been fully funded to the amount required by the approved Annual Grant Request. If a Special Project Grant Request has been approved, ONE Orinda will create a fourth "**Special Project Account.**" ONE Orinda will allocate incoming PC Donation funds to the School District Account and the Club Account based on the percentage of that Parent's Club Operating Budget allocated to each use until such time as both accounts have been fully funded to the amount required by the approved Annual Grant Request. Any PC Donation funds received in excess of the fully funded School District Account and the Club Account will be allocated to the Overflow Account for that Parents' Club. Restricted funds received for a Special Project will be allocated to the applicable Special Project Account.
- 10.2. Bank Accounts. So long as it complies with Section 10.1, ONE Orinda may keep PC Donation and Special Project funds in one or more actual bank account(s) at its sole discretion.
- 10.3. Disbursement of Funds. ONE Orinda will disburse funds to meet approved Annual Grant Requests as follows:
- 10.3.1. *Payments to OUSD and AUHSD.* Each Parents' Club hereby authorizes ONE Orinda (i) to retain PC Donation funds as set forth in Section 10.1 for the purpose of making School District Payments; (ii) to invest such funds in appropriate revenue generating accounts while the funds are held by ONE Orinda; and (iii) to make School District Payments on a payment schedule mutually agreed between the Parents' Club, ONE Orinda and either OUSD or AUHSD, as applicable, each year. The goal of the Parents' Clubs and ONE Orinda is that such payments will be made no more than twice each school year.
- 10.3.2. *Direct Disbursements.* ONE Orinda will disburse the full amount of each Club Account directly to the Parents' Club associated with that account on a schedule agreed to by that Parents' Club and ONE Orinda.
- 10.4. Transfer of Parents' Club Operating Revenue to ONE Orinda. If a Parents' Club's Operating Budget relies on Operating Revenue to fund School District Payments, that Parents' Club will transfer the required amounts of Operating Revenue to ONE Orinda at intervals and in installment amounts to be determined between ONE Orinda and the Parents' Club for disbursement under Section 10.3.1.
- 10.5. Disbursement of Overflow Account Funds. During the Funding Year, a Parents' Club can request disbursement to it of any funds in that Parents' Club's Overflow Account. At the end of the Funding Year, any amount remaining in the Overflow Account will be re-allocated to the Reserve Account for that Parents' Club. At the request of a Parents' Club, and if the Parents' Club's Reserve Account meets its Baseline Reserve Requirement obligation, ONE Orinda may allocate funds from an Overflow Account into a Special Project Account.
- 10.6. Disbursement of Special Project Account Funds. ONE Orinda will disburse Special Project Account funds as requested by the Parents' Club for which the account has been established.
- 10.7. Cash Flow. The Parties acknowledge that ONE Orinda will need to engage in cash flow management based on the differing schedules for receipt of PC Donations and Operating Revenue compared to the timing of School Board Payments and Parents' Club expenses requiring disbursement. The Parties will work

collaboratively to manage cash flow and agree that ONE Orinda can use, but is not limited to, the following tools for cash flow management:

- 10.7.1. Advancing of funds from FFE; or
- 10.7.2. Advancing of funds from a Parents' Club's Reserve Account, subject to the limitations of Section 11.5, to be used for expenses allocable to that Parents' Club;
- 10.7.3. In each case to be replaced by applicable PC Donations or Operating Revenue transferred under Section 10.4.

## 11. FFE and Parents' Club Reserves.

- 11.1. ONE Orinda FFE. Initially, ONE Orinda will maintain its FFE. ONE Orinda will seek to grow revenue and the FFE through the solicitation of donations and through investment of the FFE. ONE Orinda will invest its FFE in compliance with Applicable Law and as determined by investment policies established by the ONE Board. Nothing in this section is intended to limit, proscribe or dictate the establishment of one or more endowment funds by ONE Orinda.
- 11.2. Reserves Contributions. Each Parents' Club will contribute its existing reserves to ONE Orinda, except that each Parents' Club may retain up to \$150,000.00 to manage for cash flow from year to year.
  - 11.2.1. ONE Orinda will track and record the reserve amount contributed by each Parents' Club and additional amounts allocated to that Parents' Clubs reserves under Section 10.4.
- 11.3. Baseline Reserves. Baseline reserves are the amount that a Parents' Club retains in reserve to use only for urgent situations, such as when that club's fundraising revenues in a particular school year are insufficient to cover its operating costs and commitments to the school. The Parties recognize that the it is in their best interests to agree to a Baseline Reserve Requirement that each Parents' Club should meet for the stability of the Parents' Clubs, ONE Orinda and the schools that they serve.
  - 11.3.1. *Determining Baseline Reserve Requirements*. A Parents' Club's "**Baseline Reserve Requirement**" for any school year will equal 50% of the amount of that club's required School District Payment for that year.
- 11.4. Access to Reserve Account Funds. Any Parents' Club may request that ONE Orinda make a distribution of funds to that Parents' Club from its Reserve Account for any reason and at any time. So long as the requested disbursement of such funds does not cause the Reserve Account to fall below the required Baseline Reserve Requirement, ONE Orinda must make the requested distribution. If ONE Orinda could make some, but not all, of the requested distribution without causing the Parents' Club's Reserve Account to fall below the required Baseline Reserve Requirement, then ONE Orinda must distribute whatever amount it can without causing the Reserve Account to fall below the required Baseline Reserve Requirement.
- 11.5. Protection of Baseline Reserves. Neither ONE Orinda nor any Parents' Club can take any action (e.g., make a distribution, withdrawal or transfer of funds) that would result in an immediate reduction of the balance in a Reserve Account to an amount below the Baseline Reserve Requirement unless the ONE Board approves such an action by a Supermajority Vote. At the request of any Parents' Club, the ONE Board will call a special meeting to consider approval of an action otherwise prohibited under this section.
- 11.6. Maximum Reserves. The Parties agree that it would not be in line with the goals of the Parties for ONE Orinda if any Parents' Club accumulates excessive funds in its Reserve Account. The Parties therefore agree that no Reserve Account can exceed a Parents' Club's total Operating Budget for the applicable School Year (the "**Maximum Reserves Amount**"). If a Parents' Club's Reserve Account has reached the Maximum Reserves Amount, any funds remaining in that club's Overflow Account at the end of the Funding Year will become part of the FFE or other ONE Orinda fund.
- 11.7. Allocation of Investment Returns or Losses. All investment returns and losses will be allocated to FFE or ONE Orinda general operating accounts. If losses exceed FFE and ONE Orinda general operating account values then losses will be apportioned across Parents' Clubs Reserve Accounts on a pro-rata basis.

- 11.8. No Investment Company Status. All Parties acknowledge that ONE Orinda is not an investment company registered under the Investment Company Act of 1940 or any other similar law, regardless of whether or not it holds endowment funds or other funds from or for Parents' Clubs.

## 12. Accounting; Audit and Reconciliation of Accounts.

- 12.1. GAAP. ONE Orinda will maintain complete and accurate accounting records in accordance with U.S. Generally Accepted Accounting Principles.
- 12.2. Audit. ONE Orinda financial statements will be audited yearly by an independent external auditor selected by the ONE Board. In addition, any Parents' Club, or a certified public accountant or auditor on behalf of any Parent's Club, may, upon reasonable notice and during normal business hours, inspect the records of ONE Orinda for any purpose.
- 12.3. Year End Reconciliation of Accounts. At the end of each Funding Year, ONE Orinda and each Parents' Club will engage in account reconciliation to encompass at least the following:
- 12.3.1. An accounting of all PC Donations received into and all disbursements made from the Parents' Club's School District Account, Club Account or Overflow Account;
- 12.3.2. An accounting of all amounts, if any, remaining to be paid from such accounts for obligations accrued during the Funding Year;
- 12.3.3. Allocation of any funds remaining in a Parents' Club's School District Account, Club Account or Overflow Account to that Parents' Club's Reserve Account; and
- 12.3.4. An accounting of all debits and credits to the Parents' Club's Reserve Account.

## 13. ONE Orinda Operating Expenses

- 13.1. General. ONE Orinda will use (i) funds generated by the investment of FFE and Reserve Account funds and (ii) unrestricted funds raised directly by ONE Orinda to pay for ONE Orinda operating expenses. If such funds are insufficient to pay ONE Orinda operating expenses, ONE Orinda may use FFE to pay such expenses.

## 14. Term and Termination.

- 14.1. Term. Unless terminated earlier under its terms, this Agreement will commence on the Effective Date and continue through June 30, 2024 (the "**Initial Term**"). At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal terms of one year each (each a "**Renewal Term**"). Any Parents' Club may elect to withdraw from the Agreement at the end of the Initial Term or any Renewal Term or any other time under Section 14.2. The Initial Term and each Renewal Term are referred to as the "**Term**."
- 14.2. Parents' Club Withdrawal from Agreement. Any Parents' Club may withdraw from this Agreement at any time by providing each other Party with written notice (email is acceptable) at least 60 days prior to the intended date of withdrawal.
- 14.2.1. *Effect of Parents' Club Withdrawal on the Agreement.* The withdrawal of any number fewer than all of the Parents' Clubs will not terminate this Agreement, and the Agreement will remain binding on ONE Orinda and all remaining Parents' Clubs. The withdrawal of all Parents' Clubs will terminate this Agreement and trigger the application of Section 14.6.
- 14.2.2. *Agreement to Resign from Board.* If a Parents' Club withdraws from this Agreement, it agrees that its representative on the ONE Board will submit a resignation from the board to be effective as of the date of the withdrawal.
- 14.2.3. *Entitlements.* Upon providing written notice of withdrawal, and to the extent permitted by applicable law, a withdrawing Parents' Club will be entitled to:
- (i) a final accounting of all undisbursed PC Donation funds and Reserve Account funds associated with that Parents' Club;

- (ii) a disbursement to the Parents' Club of all such PC Donation funds and Reserve Account funds on the date of withdrawal; and
  - (iii) an opportunity to receive donor history data for donations associated with every student having at least one more year of enrollment at the Orinda School associated with the Parents' Club in a format reasonably acceptable to both parties or, if no agreement can be reached, a .csv file.
- 14.2.4. *Obligations.* Any Parents' Club that withdraws from this Agreement will be solely responsible for making that club's School District Payments due following the date of final withdrawal.
- 14.2.5. *No Further Benefits or Obligations.* As of the date of final withdrawal, and except as set forth in Sections 14.2.3 and 14.2.4, (i) a withdrawing Parents' Club will no longer be entitled to any of the benefits or be subject to any further obligations of this Agreement; and (ii) none of the Parties remaining in this Agreement will have any obligations under this Agreement to the withdrawn Parents' Club.
- 14.2.6. *Survival.* Notwithstanding the withdrawal of a Parents' Club from this Agreement, the Parties agree that the sections identified in Section 14.9 as surviving the termination of this Agreement will continue to apply to the withdrawing Parents' Club.
- 14.3. ONE Orinda Withdrawal from Agreement. ONE Orinda may withdraw from this Agreement at any time by providing each other Party with written notice (email is acceptable) at least 180 days prior to the intended date of withdrawal. If ONE Orinda withdraws from this Agreement this Agreement will terminate on the date of withdrawal and Section 14.6 will apply.
- 14.4. Automatic Withdrawal Based on Failure to Maintain Non-Profit Status. The loss by any Party of its status as a tax-exempt non-profit entity under 26 U.S.C. §501(c)(3) will result in the immediate withdrawal of that Party from this Agreement under either Section 14.2 or 14.3, as applicable, except that (i) the withdrawal will be automatic and immediate, with no notice period required; and (ii) the Party may be reinstated as a Party to this Agreement if all members of the ONE Board, excluding any director associated with the withdrawn Party, agrees and votes unanimously that the loss of non-profit status under 26 U.S.C. §501(c)(3) by that Party will not endanger the 26 U.S.C. §501(c)(3) status of ONE Orinda or any Parents' Club (other than the Party) should the Party remain a party to this Agreement.
- 14.5. Termination by Agreement. The Parties to this Agreement may agree to terminate this Agreement at any time (a "**Termination by Agreement**"). A Termination by Agreement must be agreed to by all parties to this Agreement as of the date of the Termination by Agreement in a writing approved by the board of directors of each such party and signed by each such party. Section 14.6 will not apply to Termination by Agreement unless the parties agreeing to such termination agree in writing that it will.
- 14.6. Result of Termination. If this Agreement is terminated for any reason other than Termination by Agreement, then each Parents' Club will be entitled to receive, on or before the date of Termination:
  - 14.6.1. a final accounting of all undisbursed PC Donation funds and Reserve Account funds associated with that Parents' Club;
  - 14.6.2. a disbursement to the Parents' Club of all such PC Donation funds and Reserve Account funds on the date of withdrawal; and
  - 14.6.3. an opportunity to receive donor history data for donations associated with every student having at least one more year of enrollment at the Orinda School associated with the Parents' Club in a format reasonably acceptable to both parties or, if no agreement can be reached, a .csv file.
- 14.7. Collaboration. If this Agreement terminates for any reason, the parties to the Agreement at the time of termination agree to meet, confer and work together to create a plan for termination that meets the requirements and the intent of this Agreement.
- 14.8. Not an Exclusive Remedy. Termination is not an exclusive remedy and the exercise by any Party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement or otherwise.

14.9. Survival. Sections 2 (Definitions), 4.1 (Independent Contractors), 7.1 and 7.5 - 7.8 (Database; Access; Personal Data and Data Security), 14.5 - 14.7 (Term and Termination), 15 (Confidential Information), 19 (Limitation of Remedies and Damages), and 20 (General) will survive any termination or expiration of this Agreement.

**15. Modifications and Amendments of this Agreement**

15.1. Modifications. The Parties recognize that the idea of collective fundraising, having one fundraising ask and working collaboratively with ONE Orinda in the manner described in this Agreement is new to Orinda Schools. While the terms of this Agreement are intended to be binding, the Parties also recognize that flexibility will be required as the Parties agree that any Parents' Club and ONE Orinda may modify this Agreement as between them if (a) the modification would not have an effect on any other Parents' Club; (b) the modification is agreed to by both in a writing acknowledged by both (email is acceptable); (c) a description of the modification is shared with all other Parents' Clubs; and (d) no Parents' Club objects to the modification within five business days of receiving that description. If one or more Parents' Clubs objects to the proposed modification, then the modification can only be approved and made effective by a Supermajority Vote approving the modification.

15.2. Amendments. The Agreement may be amended for all Parties at any time in a writing executed by a duly authorized representative of every Party to this Agreement.

**16. Confidential Information.**

Any Recipient of Confidential Information will hold that Confidential Information in confidence and not disclose any Confidential Information. A Recipient may only use Confidential Information to perform its obligations, receive services and raise funds in accord with the requirements of this Agreement. If Recipient is requested or required by law, government action, subpoena or other court order to disclose any Confidential Information, Recipient may disclose such information without liability under this Agreement, provided that (i) Recipient has given Discloser a reasonable opportunity to (a) intervene in any proceeding to try to protect the Confidential Information and (b) review the text or contents of such disclosure before it is made; and (ii) the disclosure is limited to only the Confidential Information specifically required to be disclosed. The Recipient acknowledges that remedies at law may be inadequate to protect the Discloser against any actual or threatened disclosure of Confidential Information by the Recipient or its representatives and, without prejudice to any other rights and remedies otherwise available to the Discloser, Recipient agrees to the granting of injunctive or other equitable relief in the Discloser's favor preventing disclosure, without proof of actual damages or the requirement of posting a bond or other security.

**17. Warranties.**

Each Party represents and warrants to the others that: (1) it has all rights and authority necessary to enter into this Agreement and to carry out its terms and conditions; (2) entering this Agreement will not conflict with or cause violation of any agreement between that Party and any Third Party; (3) it will comply with all Applicable Laws.

**18. Special Warranty Regarding Non-Profit Status.**

Each Party represents and warrants to the others that: (1) it is a non-profit entity exempt from federal income tax under section 26 U.S.C. §501(c)(3); (2) it will maintain its status as a non-profit entity under 26 U.S.C. §501(c)(3) during the Term of this Agreement; (3) it will take no action that would cause it or any other Party to lose its status under 26 U.S.C. §501(c)(3) during the Term; and (4) it will not fail to take any action required in order to maintain its status under 26 U.S.C. §501(c)(3) during the Term.

**19. Limitations of Remedies and Damages.**

NO PARTY TO THIS AGREEMENT WILL BE LIABLE TO ANY OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUE), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

EXCEPT IN CASES OF INTENTIONAL BREACH OR GROSS NEGLIGENCE, THE LIABILITY OF ANY PARENTS' CLUB TO ANOTHER PARTY ARISING FROM OR RELATING TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF THAT PARENTS' CLUB'S RESERVE ACCOUNT.

EXCEPT IN CASES OF INTENTIONAL BREACH OR GROSS NEGLIGENCE, THE LIABILITY OF ONE ORINDA TO ANY PARENTS' CLUB UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF THAT PARENTS' CLUB'S RESERVE ACCOUNT PLUS THE FUNDS RAISED BY THAT PARENTS' CLUB AND HELD BY ONE ORINDA, LESS ALL FUNDS PAID TO OR ON BEHALF OF THAT PARENTS' CLUB AS OF THE DATE OF PAYMENT FOR SUCH LIABILITY.

THE PRECEDING LIMITATIONS OF LIABILITY DO NOT APPLY TO LIABILITIES THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAWS.

## 20. General.

- 20.1. Assignment. This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns. No Party may assign this Agreement (or any part thereof) without the advance written consent of the other Parties, which consent will not be unreasonably withheld. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 20.1 will be null and void.
- 20.2. Severability. If any court of competent jurisdiction adjudges any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.
- 20.3. Governing Law; Dispute Resolution. This Agreement is governed by the laws of the State of California and the United States without regard to their conflicts of laws provisions.
  - 20.3.1. Before any Party may take another Party to litigation, arbitration or any other adjudicatory proceeding to address a dispute or controversy that may arise between them (a "**Dispute**"), the Parties must first meet and confer in good faith to attempt to resolve the Dispute. To begin the meet and confer process, a Party shall serve on the other Party(ies) involved in the Dispute (a) written notice of the claim, specifying the exact nature of the Dispute, including any amount claimed to be owed under this Agreement, and the provision of the Agreement or other authority for the claim; and (b) a copy of all supporting documents. Within 10 business days after receiving notice of a Dispute, the responding Party(ies) and the initiating Party will meet to discuss resolution of the Dispute. Each Party must bring at least one person to the negotiation with full authority to resolve the dispute on any terms. The written claim notice and any documents produced by any Party, but not the subsequent discussion, shall be admissible in any subsequent proceeding.
  - 20.3.2. If the Parties are unable to resolve a Dispute through the process described in Section 20.3.1, the Parties must submit the Dispute to mediation before proceeding to adjudication. The administrative costs of the mediation, including the mediator's fee, shall be borne by the Parties equally. Otherwise, each Party shall be responsible for its own costs and expenses relating to the mediation, including any attorneys' fees. Disclosures made by any Party during the mediation will be treated as confidential and may not be offered as evidence in any subsequent proceeding unless the proceeding is initiated to enforce the terms of an agreement arising from the mediation.
  - 20.3.3. If the dispute resolution mechanisms set forth above fail to resolve the Dispute, any Party involved in the dispute may commence an action in court or in arbitration. If a responding Party refuses to participate in the meet and confer and/or mediation processes described above, then initiating Party may immediately commence an action in court or in arbitration.
  - 20.3.4. Notwithstanding the foregoing, each Party shall have the right to seek an immediate injunction, specific performance, or other equitable relief in any court of competent jurisdiction without completing the dispute resolution process set forth above to prevent imminent harm.
  - 20.3.5. Jurisdiction and venue for all court actions related to this Agreement are the State of California courts located in and the United States federal courts for Contra Costa County, California, and all Parties hereby submit to the exclusive personal jurisdiction of such courts.

20.4. Notices and Reports. Any notice which may be or is required to be given under this Agreement will be in writing, and will be deemed to have been received: (a) when delivered personally; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after having been sent by a commercial overnight carrier with written verification of receipt. Either Party may change its notice address by written notice to the other.

All notices related to or arising under this Agreement will be addressed (i) to Parents' Clubs at address of the school with which the Parents' Club is affiliated, and (ii) to ONE Orinda c/o Orinda Union School District, 8 Altarinda Rd, Orinda, CA 94563.

20.5. Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding unless it meets the applicable requirements of Section 15. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived.

20.6. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. This Agreement supersedes and terminates the Memorandum of Understanding between the Parties signed in 2019.

20.7. Force Majeure. Neither Party will be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to events which are beyond the reasonable control of such Party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

20.8. Electronic Acceptance; Counterparts. The Parties have consented to the use of electronic signatures for purposes of signing this Agreement, intending to become legally bound. This Agreement may be executed in any number of counterparts, each of which will be considered an original and all of which when taken together will constitute a single fully signed original. Facsimile and other electronic means of signatures on this Agreement are binding.

Acknowledged and Agreed:

**Del Rey Parents' Club**

DocuSigned by:  
*Michelle Jun*  
By: \_\_\_\_\_  
CB1FB4F572BE400...

Its: Co-President

Printed Name: Michelle Jun

Date: 3/5/2020

**Glorietta Parents' Club**

DocuSigned by:  
*Kevin Friedman*  
By: \_\_\_\_\_  
979E84F8905E410...

Its: co-president

Printed Name: Kevin Friedman

Date: 3/4/2020

**Orinda Intermediate School Parents' Club**

DocuSigned by:  
By: Sonya Grover  
A22EB19F55194DA...

Its: PC chair

Printed Name: Sonya Grover

Date: 3/4/2020

**Miramonte High School Parents' Club**

DocuSigned by:  
By: Tricia Young  
C285BE16C8B249B...

Its: PC Chair

Printed Name: Tricia Young

Date: 3/4/2020

**Sleepy Hollow Parents' Club**

DocuSigned by:  
By: Dana Wentworth  
0FBF104051B242D...

Its: Co-President

Printed Name: Dana wentworth

Date: 3/5/2020

**Wagner Ranch Parents' Club**

DocuSigned by:  
By: Jill Gibson  
F873AA4E068D49F...

Its: Co-President

Printed Name: Jill Gibson

Date: 3/4/2020

**Educational Foundation of Orinda**

DocuSigned by:  
By: Ellen Zapalac  
D97B26EA6649487...

Its: Co-President

Printed Name: Ellen Zapalac

Date: 3/4/2020

**Educational Foundation of Orinda**

DocuSigned by:  
By: Laura Andrews  
2D29709E81A04D2...

Its: Co-President

Printed Name: Laura Andrews

Date: 3/4/2020

**ONE Orinda Operating Agreement  
Appendix 1**

**ONE Orinda Articles of Incorporation**

## **SECOND RESTATED ARTICLES OF INCORPORATION OF EDUCATIONAL FOUNDATION OF ORINDA**

The undersigned certify that:

1. They are the President and Secretary, respectively, of the Educational Foundation of Orinda, a California corporation.
2. The Restated Articles of Incorporation of this corporation are amended and restated to read as follows:

### **I.**

The name of this corporation shall be ORINDA NETWORK FOR EDUCATION.

### **II.**

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. This corporation has elected to be governed by all the provisions of the Nonprofit Corporation Law of 1980 not otherwise applicable to it under Part 5.

B. The specific and primary purposes for which this corporation is formed are to operate for the advancement, support and promotion of education in all schools in the Orinda Union School District and Miramonte High School in the Acalanes Union High School District, each located in Orinda, California, and for other charitable purposes, including by the distribution of funds for such purposes.

C. The general purposes for which this corporation is formed include without limitation the following:

- i. To provide a continuing organization, outside the public school system, which will work to provide new and improved educational opportunities, including for such things as improved facilities, new or improved educational programs, permanent collections, scholarships, and any other suitable and worthwhile purposes.
- ii. To interact with and promote coordinated fundraising among organizations supporting education in Orinda.
- iii. To accept donations, solicit, raise and disburse money for the foregoing purposes; provided, that such funds must be used only for legal and worthwhile projects and without regard to race, color, creed or sex.

D. This corporation shall have and exercise all rights and powers conferred on nonprofit public benefit corporations under the laws of the State of California; provided, however, that this corporation shall not, except to an unsubstantial degree, engage in any activity or exercise any powers that are not furtherance of the primary purposes of this corporation.

### III.

No part of the net earnings, properties or assets of this corporation, on dissolution or otherwise, shall ever inure to the benefit of any private person or individual or any member or director of this corporation. On the dissolution and winding up of this corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation that is organized and operated exclusively for the same purposes as this foundation and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

If the corporation holds any assets in trust, or the corporation is formed for charitable purposes, such assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the corporation has its principal office, upon petition therefor by the Attorney General, or by any personal concerned in the liquidation, in a proceeding to which the Attorney General is a party.

IV.

This corporation shall not, as a substantial part of its activities, carry on propaganda, or otherwise attempt to influence legislation. This corporation shall not participate in, or intervene in any political campaign (including the publishing or distributing of statements) on behalf of any candidate for public office.

V.

When and if this corporation makes plans that involve the Orinda Union School District or Miramonte High School, such plans must be submitted to and approved by the Board of Trustees of the Orinda Union School District or the Acalanes Union High School District, as the case may be, before being implemented.

VI.

To the fullest extent permitted under California law, neither the directors nor the members (if any) of this corporation should be personally liable for the debts, liabilities or obligations of this corporation.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors.

4. This corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[Name], President

\_\_\_\_\_  
[Name], Secretary

**ONE Orinda Operating Agreement  
Appendix 2**

**ONE Orinda Bylaws**

Bylaws of

**Orinda Network for Education**

A California Nonprofit Public Benefit Corporation  
(As Amended and Restated on March \_\_\_\_, 2020)

## TABLE OF CONTENTS

	Page
ARTICLE 1 NAME.....	1
Section 1.1    Corporate Name .....	1
ARTICLE 2 OFFICES.....	1
Section 2.1    Principal Office.....	1
Section 2.2    Other Offices.....	1
ARTICLE 3 PURPOSES.....	1
Section 3.1    General Purpose.....	1
Section 3.2    Specific Purpose.....	1
ARTICLE 4 LIMITATIONS.....	1
Section 4.1    Political Activities.....	1
Section 4.2    Prohibited Activities .....	1
ARTICLE 5 DEDICATION OF ASSETS .....	2
Section 5.1    Property Dedicated to Nonprofit Purposes .....	2
Section 5.2    Distribution of Assets Upon Dissolution .....	2
ARTICLE 6 MEMBERSHIPS .....	2
Section 6.1    Members .....	2
Section 6.2    Non-Voting Members .....	2
ARTICLE 7 DIRECTORS .....	2
Section 7.1    Number .....	2
Section 7.2    Corporate Powers Exercised by Board .....	2
Section 7.3    Board Composition; Terms; Election of Successors .....	2
7.3.1        Board Composition .....	3
7.3.2        Classes of Directors .....	4
7.3.3        Term; Election of Successors.....	4
Section 7.4    Vacancies.....	5
7.4.1        Events Causing Vacancy.....	5
7.4.2        Failure to Designate a Club Director .....	5
7.4.3        Removal .....	5
7.4.4        No Removal on Reduction of Number of Directors .....	5
7.4.5        Resignations.....	5
7.4.6        Election to Fill Vacancies .....	5
Section 7.5    Regular Meetings .....	6
Section 7.6    Special Meetings.....	6
Section 7.7    Notice of Meetings.....	6
7.7.1        Manner of Giving.....	6
7.7.2        Time Requirements.....	6
7.7.3        Notice Contents.....	7
Section 7.8    Place of Board Meetings.....	7
7.8.1        Meetings by Telephone or Similar Communication Equipment .....	7
Section 7.9    Quorum and Action of the Board.....	7

## TABLE OF CONTENTS, Cont'd.

	Page
7.9.1 Quorum .....	7
7.9.2 Minimum Vote Requirements for Valid Board Action .....	7
7.9.3 When a Greater Vote Is Required for Valid Board Action.....	7
Section 7.10 Waiver of Notice.....	8
Section 7.11 Adjournment .....	8
Section 7.12 Notice of Adjournment .....	8
Section 7.13 Conduct of Meetings.....	8
Section 7.14 Action without Meeting .....	9
Section 7.15 Fees and Compensation of Directors .....	9
Section 7.16 Non-Liability of Directors .....	9
ARTICLE 8 COMMITTEES.....	9
Section 8.1 Committees of Directors .....	9
Section 8.2 Meetings and Action of Board Committees.....	10
Section 8.3 Quorum Rules for Board Committees .....	10
Section 8.4 Revocation of Delegated Authority .....	11
Section 8.5 Nonprofit Integrity Act/Audit Committee .....	11
Section 8.6 Investment Committee .....	11
Section 8.7 Community Advisory Board.....	12
Section 8.8 Other Advisory Committees .....	12
ARTICLE 9 OFFICERS.....	12
Section 9.1 Officers .....	12
Section 9.2 Election of Officers.....	12
Section 9.3 Removal of Officers.....	12
Section 9.4 Resignation of Officers .....	12
Section 9.5 Vacancies in Offices .....	12
Section 9.6 Responsibilities of Officers.....	13
9.6.1 President or Co-Presidents .....	13
9.6.2 Executive Director .....	13
9.6.3 Vice President .....	13
9.6.4 Secretary .....	13
9.6.5 Treasurer .....	13
9.6.6 Additional Officers .....	14
Section 9.7 Fees and Compensation of Officers.....	14
ARTICLE 10 TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS.....	15
Section 10.1 Transactions with Directors and Officers. ....	15
10.1.1 Interested Party Transactions.....	15
10.1.2 Requirements to Authorize Interested Party Transactions.....	15
10.1.3 Material Financial Interest .....	15
Section 10.2 Loans to Directors and Officers.....	16
Section 10.3 Interlocking Directorates .....	16
Section 10.4 Duty of Loyalty; Construction with Article 11.....	16

## TABLE OF CONTENTS, Cont'd.

	Page
ARTICLE 11 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS .....	16
Section 11.1 Definitions.....	16
11.1.1 “Agent.” .....	16
11.1.2 “Proceeding.” .....	17
11.1.3 “Expenses.” .....	17
Section 11.2 Applicability of Indemnification Provisions.....	17
11.2.1 Successful Defense by Agent.....	17
11.2.2 Settlement or Unsuccessful Defense by Agent.....	17
Section 11.3 Actions Brought by Persons Other than the Corporation .....	17
11.3.1 Scope of Indemnification in Third Party Proceedings.....	17
11.3.2 Required Standard of Conduct for Indemnification in Third Party Proceedings.....	17
Section 11.4 Action Brought by or on Behalf of the Corporation .....	17
11.4.1 Scope of Indemnification in Proceeding by or on Behalf of the Corporation .....	18
11.4.2 Required Standard of Conduct for Indemnification in Proceeding by or on Behalf of the Corporation .....	18
11.4.3 Claims Settled Out of Court.....	18
11.4.4 Claims and Suits Awarded Against Agent.....	18
Section 11.5 Determination of Agent’s Good Faith Conduct.....	19
Section 11.6 Limitations .....	19
Section 11.7 Advance of Expenses.....	19
Section 11.8 Contractual Rights of Non-Directors and Non-Officers.....	19
Section 11.9 Insurance.....	19
ARTICLE 12 CORPORATE RECORDS, REPORTS AND SEAL .....	19
Section 12.1 Minute Book .....	19
Section 12.2 Books and Records of Account.....	20
Section 12.3 Articles of Incorporation and Bylaws .....	20
Section 12.4 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns.....	20
Section 12.5 Annual Report; Statement of Certain Transactions .....	20
Section 12.6 Directors’ Rights of Inspection.....	21
Section 12.7 Corporate Seal.....	21
ARTICLE 13 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS .....	21
Section 13.1 Execution of Instruments .....	21
Section 13.2 Checks and Notes.....	21
Section 13.3 Deposits.....	21
Section 13.4 Gifts.....	22
ARTICLE 14 CONSTRUCTION AND DEFINITIONS .....	22
ARTICLE 15 AMENDMENTS; EFFECTIVE TIME .....	22

TABLE OF CONTENTS, Cont'd.

	Page
Section 15.1 Amendment by Directors.....	22
Section 15.2 Effective Time of March 2020 Amendment.....	22
Defined Terms Used in This Document	
“annual meeting” – Section 7.5	
“Articles of Incorporation” – Section 7.2	
“Attorney General” – Section 7.4.4	
“Board” – Section 7.2	
“California Nonprofit Corporation Law” – Section 3.1	
“Code” – Section 4.2	
“Committees” – Section 8.1	
“Corporation” – Section 1.1	
“Directors” – Section 7.1	
“e-mail” – Section 7.7.1	
“Officers” – Section 9.1	
“President” – Section 9.6.1	
“Secretary” – Section 9.6.3	
“Treasurer” – Section 9.6.4	
“Vice President” – Section 9.6.2	

## ARTICLE 1 NAME

Section 1.1 Corporate Name. The name of this corporation is **Orinda Network for Education** (the “Corporation”). The business of the corporation may be conducted, in compliance with applicable laws, under such other name or names as the Board may determine, including “ONE Orinda.”

## ARTICLE 2 OFFICES

Section 2.1 Principal Office. The principal office for the transaction of the business of the Corporation may be established at any place or places within or without the State of California by resolution of the Corporation’s Board of Directors (“Board”).

Section 2.2 Other Offices. The Board may at any time establish branch or subordinate offices at any place or places where the Corporation is qualified to transact business.

## ARTICLE 3 PURPOSES

Section 3.1 General Purpose. The Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Corporation Law of California (“California Nonprofit Corporation Law”) for public and charitable purposes.

Section 3.2 Specific Purpose. The specific and primary purposes for which the Corporation is formed are to operate for the advancement, support and promotion of education in all schools in the Orinda Union School District and Miramonte High School in the Acalanes Union High School District, each located in Orinda, California, and for other charitable purposes, including by the distribution of funds for such purposes.

## ARTICLE 4 LIMITATIONS

Section 4.1 Political Activities. The Corporation has been formed under California Nonprofit Corporation Law for the charitable purposes described in Article 3, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

Section 4.2 Prohibited Activities. The Corporation shall not, except in any insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in Article 3. The Corporation may not carry on any activity for the profit of its Officers, Directors or other persons or distribute any gains, profits or dividends to its Officers, Directors or other persons as such. Furthermore, nothing in Article 3 shall be construed as allowing the Corporation to engage in any activity not permitted to be carried on (i) by a

corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) or (ii) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code.

**ARTICLE 5  
DEDICATION OF ASSETS**

Section 5.1 Property Dedicated to Nonprofit Purposes. The property of the Corporation is irrevocably dedicated to public and charitable purposes. No part of the net income or assets of the Corporation shall ever inure to the benefit of any of its Directors or Officers, or to the benefit of any private person, except that the Corporation is authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

Section 5.2 Distribution of Assets Upon Dissolution. Upon the dissolution or winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to one or more nonprofit funds, foundations or corporations which are organized and operated exclusively for public and charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Code.

**ARTICLE 6  
MEMBERSHIPS**

Section 6.1 Members. The Corporation shall have no members within the meaning of section 5056 of the California Nonprofit Corporation Law.

Section 6.2 Non-Voting Members. The Board may adopt policies and procedures for the admission of associate members or other designated members who shall have no voting rights in the Corporation. Such associate or other members are not “members” of the Corporation as defined in section 5056 of the California Nonprofit Corporation Law.

**ARTICLE 7  
DIRECTORS**

Section 7.1 Number. The authorized number of directors of the Corporation (“Directors”) shall be not less than 6 or more than 12 the exact authorized number to be fixed, within these limits, by resolution of the Board.

Section 7.2 Corporate Powers Exercised by Board. Subject to the provisions of the Articles of Incorporation of the Corporation (the “Articles of Incorporation”), California Nonprofit Corporation Law and any other applicable laws, the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors (the “Board”). The Board may delegate the management of the activities of the Corporation to any person or persons, management company or committee however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Section 7.3 Board Composition; Terms; Election of Successors.

7.3.1 Board Composition. The Directors shall consist of:

7.3.1.1 One (1) individual designated by the Glorietta Parents' Club (the "GPC") (such Director, the "GPC Director"), for so long as the Designation Conditions (defined below) are satisfied;

7.3.1.2 One (1) individual designated by the Sleepy Hollow Parents' Club (the "SHPC") (such Director, the "SHPC Director"), for so long as the Designation Conditions are satisfied;

7.3.1.3 One (1) individual designated by the Del Rey School Parents Club (the "DRSPC") (such Director, the "DRSDC Director"), for so long as the Designation Conditions are satisfied;

7.3.1.4 One (1) individual designated by the Wagner Ranch Parents' Club (the "WRPC") (such Director, the "WRPC Director"), for so long as the Designation Conditions are satisfied;

7.3.1.5 One (1) individual designated by the Orinda Intermediate School Parents' Club (the "OISPC") (such Director, the "OISPC Director"), for so long as the Designation Conditions are satisfied;

7.3.1.6 One (1) individual designated by the Miramonte High School Parents' Club (the "MHSPC", and together with GPC, SHPC, DRSPC, WRPC and OISPC, the "Clubs") (such Director, the "MHSPC Director", and together with GPC Director, SHPC Director, DRSDC Director, WRPC Director and OISPC Director, the "Club Directors"), for so long as the Designation Conditions are satisfied; and

7.3.1.7 The remainder of the Directors (the "Community Directors") shall be elected by the Board. In selecting the Community Directors, the Board may consider any criteria it believes relevant to broadly represent the Orinda community and other sources of support for the activities of the Corporation.

The term "Designation Conditions" shall mean the following with respect to a Club:

(a) Such Club shall be duly organized and validly existing under the California Non-Profit Public Benefit law and shall be recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(b) Such Club shall be a party to Orinda Network for Education Operating Agreement among the Corporation and the Clubs as in effect from time to time (the "Operating Agreement"), such Club shall not have notified the Corporation that such agreement will not be renewed with respect to such Club, and such Club shall be in substantial compliance with the terms of such agreement as determined by the Board from time to time;

(c) Such Club shall have participated in the annual fundraising campaign of the Corporation in accordance with the Operating Agreement and any rules duly set by the Board, as determined by the Board from time to time; and

(d) The individual designated by the Club, at the time of the individual's initial designation, holds or held within the past year (unless such condition is waived by the Board) any office within the Club substantially equivalent to that of Chair, President, Vice President, Treasurer, or chief fundraising officer.

7.3.2 Classes of Directors. For the purpose of creating staggered terms for Directors, the Board shall be and is divided into five classes, designated: Club Class I, Club Class II, Community Class I, Community Class II and Community Class III. Unless otherwise provided in these Bylaws, there shall be no distinction between classes of Directors. Each of Club Class I and II shall consist of three Club Directors and each of Community Class I, II and III shall, as nearly as may be possible, consist of one-third of the total number of Community Directors. The Board is authorized to assign Club Directors to Club Class I or II, and Community Directors to Community Class I, II or III at the time such classifications become effective. If the number of Community Directors is changed, any increase or decrease shall be apportioned among the Community Classes so as to maintain the number of Community Directors in each class as nearly equal as possible, and any such additional Community Director of any class elected to fill a newly created directorship resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent Community Director.

7.3.3 Term; Election of Successors. Directors in Club Class I or II shall serve for the shorter of (a) two years or (b) until such time as the Club by which they were designated ceases to meet the Designation Conditions in Section 7.3.1.7 (a) – (c), and Directors in Community Class I, II or III shall serve three year terms, provided that the Board shall provide that the first directors elected after the effectiveness of these bylaws be designated to classes as provided in Section 7.3.2, that those in Club Class I or Community Class I shall serve for one year, and those elected to Club Class II or Community Class II shall serve for two years, and those in Community Class III for three years, subject in each case for a Club Director, to such Director's Club continuing to meet the Designation Conditions in Section 7.3.1.7 (a)-(c). The Board shall provide that Directors for each class where a term is expiring shall, to the extent practicable, be elected or designated so as to take office (and their predecessors terms shall end) at the close of the Board's last regular (or, if provided by the Board, special) meeting occurring prior to June 1 of each calendar year. The term of each Director shall continue until the election and qualification of his or her successor, subject to his or her earlier death, disability, disqualification, resignation, removal (or, in the case of a Club Director, the failure of the designating Club to continue to meet the Designation Conditions in Section 7.3.1.7 (a)- (c)), in accordance with these Bylaws and California Nonprofit Corporation Law. All Director terms pursuant to this Section 7.3.3 shall expire on June 30 of the

applicable year; provided, however, that any Director elected or designated as of the Effective Time (or after the Effective Time and before June 30, 2020) shall not have their term end (other than, in the case of a Club Director, for failure to meet the “Designation Conditions”) before the later of (i) June 30, 2021 and (ii) such date that their term would otherwise expire in accordance with the first sentence of this Section 7.3.3.

Section 7.4 Vacancies.

7.4.1 Events Causing Vacancy. A vacancy or vacancies on the Board shall be deemed to exist on the occurrence of the following: (i) the death, resignation or removal of any Director; (ii) whenever the number of authorized Directors is increased; or (iii) the failure of the Board, at any meeting at which any Director or Directors are to be elected, to elect the full authorized number of Directors.

7.4.2 Failure to Designate a Club Director. In the absence of any designation by a Club with the right to designate a Club Director as specified in Section 7.3.1, the Club Director previously designated by such Club and then serving shall continue to serve if (a) still eligible and willing to serve as provided herein and (b) the Designation Conditions in Section 7.3.1 continue to be met. Otherwise, such seat shall be vacant until a designation is made.

7.4.3 Removal. The Board may by resolution declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony or found by final order or judgment of any court to have breached a duty under California Nonprofit Corporation Law. Directors may be removed without cause by a majority of Directors then in office.

7.4.4 No Removal on Reduction of Number of Directors. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director’s term of office expires unless the reduction also provides for the removal of that specified Director in accordance with these Bylaws and California Nonprofit Corporation Law.

7.4.5 Resignations. Except as provided in this Section 7.4.4, any Director may resign by giving written notice to the President, the Secretary or the Board. Such a written resignation will be effective on the later of (i) the date it is delivered or (ii) the time specified in the written notice that the resignation is to become effective. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the California Attorney General (the “Attorney General”).

7.4.6 Election to Fill Vacancies. If there is a vacancy on the Board, including a vacancy created by the removal of a Director, the Board may fill such vacancy by electing an additional director as soon as practicable after the vacancy occurs; provided, however, that Club Directors must be designated by the Clubs in accordance with Section 7.3.1. If the number of Directors then in office is less than a quorum, additional directors may be elected to fill such vacancies by (i) the unanimous written consent of the

Directors then in office, (ii) the affirmative vote of a majority of the Directors in office at a meeting held according to notice or waivers complying with section 5211 of the California Nonprofit Corporation Law, or (iii) a sole remaining Director.

Section 7.5 Regular Meetings. Each year, the Board shall hold at least one meeting, at a time and place fixed by the Board, for the purposes of election of Directors, appointment of Officers, review and approval of the corporate budget and transaction of other business. This meeting is sometimes referred to in these Bylaws as the “annual meeting.” While the Board shall fix its meeting schedule for each year, it is expected that the Board should meet at least four times per year. Unless otherwise designated, the last regular meeting prior to June 30 of each year, where Directors are elected, shall be the annual meeting. Other regular meetings of the Board may be held at such time and place as the Board may fix from time to time by resolution.

Section 7.6 Special Meetings. Special meetings of the Board for any purpose may be called at any time by the President, or a Vice President, or the Secretary, or any two Directors.

Section 7.7 Notice of Meetings.

7.7.1 Manner of Giving. Except when the time and place of a regular meeting is set by the Board in advance (as permitted by Section 7.5), notice of the time and place of all regular and special meetings shall be given to each Director by one of the following methods:

- (a) Personal delivery of oral or written notice;
- (b) First-class mail, postage paid;
- (c) Telephone, including a voice messaging system or other system or technology designed to record and communicate messages; or
- (d) Facsimile, electronic mail (“e-mail”) or other means of electronic transmission if the recipient has consented to accept notices in this manner.

All such notices shall be given or sent to the Director’s address, phone number, facsimile number or e-mail address as shown on the records of the Corporation. Any oral notice given personally or by telephone may be communicated directly to the Director or to a person who would reasonably be expected to promptly communicate such notice to the Director. Notice of regular meetings may be given in the form of a calendar or schedule that sets forth the date, time and place of more than one regular meeting.

7.7.2 Time Requirements. Notices sent by first-class mail shall be deposited into a United States mail box at least four days before the time set for the meeting. Notices given by personal delivery, telephone, voice messaging system or other system or technology designed to record and communicate messages, facsimile, e-mail or other electronic transmission shall be delivered at least 48 hours before the time set for the meeting.

7.7.3 Notice Contents. The notice shall state the time and place for the meeting, except that if the meeting is scheduled to be held at the principal office of the Corporation, the notice shall be valid even if no place is specified. The notice need not specify the purpose of the meeting unless required to elsewhere in these Bylaws.

Section 7.8 Place of Board Meetings. Regular and special meetings of the Board may be held at any place within or outside the state that has been designated in the notice of the meeting, or, if not stated in the notice or, if there is no notice, designated by resolution of the Board. If the place of a regular or special meeting is not designated in the notice or fixed by a resolution of the Board, it shall be held at the principal office of the Corporation.

7.8.1 Meetings by Telephone or Similar Communication Equipment. Any meeting may be held by conference telephone or other communications equipment permitted by California Nonprofit Corporation Law, as long as all Directors participating in the meeting can communicate with one another and all other requirements of California Nonprofit Corporation Law are satisfied. All such Directors shall be deemed to be present in person at such meeting.

Section 7.9 Quorum and Action of the Board

7.9.1 Quorum. A Quorum for the transaction of business shall consist of a majority of the Directors currently in office (but at least two), except to adjourn as provided in Section 7.11.

7.9.2 Minimum Vote Requirements for Valid Board Action. Every act taken or decision made by a vote of the majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board; unless a greater number is expressly required by California Nonprofit Corporation Law, the Articles of Incorporation or these Bylaws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors from the meeting, if any action taken is approved by at least a majority of the required quorum for that meeting.

7.9.3 When a Greater Vote Is Required for Valid Board Action.

7.9.3.1 Board Protective Provisions. The following actions shall require a vote by a majority of all Directors then in office in order to be effective:

- (a) Approval of contracts or transactions in which a Director has a direct or indirect material financial interest as described in Section 10.1 (provided that the vote of any interested Director(s) is not counted);
- (b) Creation of, and appointment to, Committees (but not advisory committees) as described in Section 8.1;
- (c) Removal of a Director without cause as described in Section 7.4.2;
- (d) Indemnification of Directors as described in Article 11; and

(e) Subject to Section 15.1, Amendment of the Articles or Bylaws of the Corporation.

7.9.3.2 Club Protective Provisions. The Corporation shall not, either directly or indirectly, do any of the following without (in addition to any other vote required by law or these Bylaws) the written consent or affirmative vote noted below:

(a) Any determination that the Operating Agreement as in effect from time to time requires be made by a “Supermajority Vote” shall require (a) a majority of the Club Directors which majority must include at least one Director designated by OISPC or MHSPC, and (b) a majority of all of the Directors then in office; and

(b) Any reallocation of funds collected by and allocated to one Club under the Operating Agreement to the benefit of students at other schools that is not authorized as provided in applicable provisions of the Operating Agreement as in force from time to time shall require (in addition to Board approval) the vote of the Club Director designated by such school.

Section 7.10 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors who is not present at the meeting signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent does not need to specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Also, notice of a meeting is not required to be given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice. Directors can protest the lack of notice only by presenting a written protest to the Secretary either in person, by first-class mail addressed to the Secretary at the principal office of the Corporation as contained on the records of the Corporation as of the date of the protest or by facsimile addressed to the facsimile number of the Corporation as contained on the records of the Corporation as of the date of the protest.

Section 7.11 Adjournment. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 7.12 Notice of Adjournment. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than 24 hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 7.13 Conduct of Meetings. Meetings of the Board shall be presided over by the President or, if the President is absent, by a Vice President or, in the absence of each of these persons, by a chairperson of the meeting, chosen by a majority of the Directors present at the meeting. The Secretary shall act as secretary of all meetings of the Board, provided that, if the Secretary is absent, the presiding officer shall appoint another person to act as secretary of the

meeting. Meetings shall be governed by rules of procedure as may be determined by the Board from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles, or with any provisions of law applicable to the Corporation.

Section 7.14 Action without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to the action. For the purposes of this Section 7.14 only, “all members of the Board” shall not include any “interested Director” as defined in section 5233 of the California Nonprofit Corporation Law. Such written consent shall have the same force and effect as a unanimous vote of the Board taken at a meeting. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Written consent may be transmitted by first-class mail, messenger, courier, facsimile, e-mail or any other reasonable method satisfactory to the President or the Board.

Section 7.15 Fees and Compensation of Directors. The Corporation shall not pay any compensation to Directors for services rendered to the Corporation as Directors, except that Directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board.

Also, Directors may not be compensated for rendering services to the Corporation in a capacity other than as Director, unless such compensation is reasonable and further provided that not more than 49% of the persons serving as Directors may be “interested persons” which, for purposes of this Section 7.15 only, means:

- (a) any person currently being compensated by the Corporation for services rendered to it within the previous 12 months, whether as a full or part-time Officer or other employee, independent contractor or otherwise, excluding any reasonable compensation paid to a Director as Director; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

Section 7.16 Non-Liability of Directors. The Directors shall not be personally liable for the debts, liabilities or other obligations of the Corporation.

## **ARTICLE 8 COMMITTEES**

Section 8.1 Committees of Directors. The Board may, by resolution adopted by a majority of the Directors then in office, create one or more Board Committees (“Committees”), including an executive committee, each consisting of two or more Directors, to serve at the discretion of the Board. Any Committee, to the extent provided in the resolution of the Board, may be given the authority of the Board except that no Committee may:

- (a) approve any action for which the California Nonprofit Corporation Law also requires approval of the members or approval of a majority of all members;
- (b) fill vacancies on the Board or in any Committee which has the authority of the Board;
- (c) fix compensation of the Directors for serving on the Board or on any Committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board which by its express terms is not so amendable or repealable;
- (f) appoint any other Committees or the members of these Committees;
- (g) expend corporate funds to support a nominee for Director after more persons have been nominated than can be elected;
- (h) take any action that would, if taken by the Board, require the vote required by Section 7.9.3; or
- (i) Approve any transaction (i) between the Corporation and one or more of its Directors or (ii) between the Corporation and any entity in which one or more of its Directors have a material financial interest.

Section 8.2 Meetings and Action of Board Committees. Meetings and action of Committees shall be governed by, and held and taken in accordance with, the provisions of Article 7 concerning meetings of Directors, with such changes in the context of Article 7 as are necessary to substitute the Committee and its members for the Board and its members, except that the time for regular meetings of Committees may be determined by resolution of the Board, and special meetings of Committees may also be called by resolution of the Board. Minutes shall be kept of each meeting of any Committee and shall be filed with the corporate records. The Committee shall report to the Board from time to time as the Board may require. The Board may adopt rules for the governance of any Committee not inconsistent with the provisions by these Bylaws. In the absence of rules adopted by the Board, the Committee may adopt such rules.

Section 8.3 Quorum Rules for Board Committees. A majority of the Committee members shall constitute a quorum for the transaction of Committee business, except to adjourn. A majority of the Committee members present, whether or not constituting a quorum, may adjourn any meeting to another time and place. Every act taken or decision made by a majority of the Committee members present at a meeting duly held at which a quorum is present shall be regarded as an act of the Committee, subject to the provisions of the California Nonprofit Corporation Law relating to actions that require a majority vote of the entire Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the

withdrawal of Committee members, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 8.4 Revocation of Delegated Authority. The Board may, at any time, revoke or modify any or all of the authority that the Board has delegated to a Committee, increase or decrease (but not below two) the number of members of a Committee and fill vacancies in a Committee from the members of the Board.

Section 8.5 Nonprofit Integrity Act/Audit Committee. In any fiscal year in which the Corporation receives or accrues gross revenues of two million dollars or more (excluding grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received), the Board shall (i) prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant (“CPA”) in conformity with generally accepted auditing standards; (ii) make the audit available to the Attorney General and to the public on the same basis that the Internal Revenue Service Form 990 is required to be made available; and (iii) appoint an Audit Committee.

The Audit Committee shall not include paid or unpaid staff or employees of the Corporation, including, its staff members or employees, the President or chief executive officer or the Treasurer or chief financial officer (if any). If there is a finance committee, members of the finance committee shall constitute less than 50% of the membership of the Audit Committee and the chairperson of the Audit Committee shall not be a member of the finance committee. Subject to the supervision of the Board, the Audit Committee shall:

- (a) Make recommendations to the Board on the hiring and firing of the CPA;
- (b) Confer with the CPA to satisfy Audit Committee members that the financial affairs of the Corporation are in order;
- (c) Approve non-audit services by the CPA and ensure such services conform to standards in the Yellow Book issued by the United States Comptroller General; and
- (d) If requested by the Board, negotiate the CPA’s compensation on behalf of the Board.

Section 8.6 Investment Committee. The Board shall create an Investment Committee consisting of two or more Directors and unless such Committee will exercise Board powers, such other qualified individuals as the Board may determine. The Investment Committee shall perform such duties in managing the Corporation’s investments as the Board may designate from time to time, which may include (a) setting policies and procedures for investment and reinvestment of funds, (b) selecting investments, (c) determining the allocation of assets among investments, (d) recommending to the Board the selection and compensation of outside investment advisors; (e) evaluating investment performance, and (f) otherwise seeking to maximize investment performance consistent with prudence and applicable legal requirements,

in all cases consistent with any requirements of the Master OA and any other obligations of the Corporation, including without limitation any gift conditions.

Section 8.7 Community Advisory Board. The Board shall create a Community Advisory Board to advise the Board on community relations, assist the Board with community outreach and events, and identifying new sources of funding and support for the Corporation.

Section 8.8 Other Advisory Committees. The Board may create one or more other advisory committees to serve at the pleasure of the Board. Appointments to such advisory committees need not, but may, be Directors. The Board shall appoint and discharge advisory committee members. All actions and recommendations of an advisory committee shall require ratification by the Board before being given effect.

## **ARTICLE 9 OFFICERS**

Section 9.1 Officers. The officers of the Corporation (“Officers”) shall include a President, or two or more Co-Presidents, a Secretary, and a Treasurer or chief financial officer, or both. These persons may but shall not be required to be Directors. The Board shall have the power to designate additional Officers, including Vice Presidents, with such duties, powers, titles and privileges as the Board may fix, including such Officers as may be appointed in accordance with Section 9.6.6. Any number of offices may be held by the same person, except that the Secretary, the Treasurer and the chief financial officer (if any) may not serve concurrently as the President. To the extent that the President is not a Director, the Board shall elect a Chairperson to carry out the duties related to Board meetings contemplated in Section 9.6.1.

Section 9.2 Election of Officers. The Officers, except those appointed in accordance with Section 9.6.6, shall be elected by the Board at the annual meeting of the Corporation for a term of one year, and each shall serve at the discretion of the Board until his or her successor shall be elected, or his or her earlier resignation or removal. Officers may be elected for consecutive terms.

Section 9.3 Removal of Officers. Any Officer may be removed, with or without cause, (i) by the Board, at any regular or special meeting of the Board, or at the annual meeting of the Corporation, or (ii) by an Officer on whom such power of removal may be conferred by the Board.

Section 9.4 Resignation of Officers. Any Officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any of the Corporation under any contract to which the Officer is a party.

Section 9.5 Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than

the President or one appointed in accordance with Section 9.6.6, such vacancy shall be filled temporarily by appointment by the President, and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.

Section 9.6 Responsibilities of Officers.

9.6.1 President or Co-Presidents. The President or Co-Presidents of the Corporation (the “President”) shall (unless the Board has vested such authority in the Executive Director) be the chief executive officer(s) of the Corporation, and shall have such authority as is assigned from time to time by the Board. If the President is a Director, he or she shall preside at meetings of the Board.

9.6.2 Executive Director. The Board may from time to time appoint an Executive Director (who may have such titles as the Board may determine) to supervise the day to day management of the Corporation and to have such other duties as the Board may from time to time assign.

9.6.3 Vice President. The vice presidents of the Corporation (the “Vice Presidents”) shall, in the absence or disability of the President, perform all the duties of the President and, when so acting, have all the powers of and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as may be prescribed by the Board.

9.6.4 Secretary. The secretary of the Corporation (the “Secretary”) shall attend to the following:

9.6.4.1 Bylaws. The Secretary shall certify and keep or cause to be kept at the principal office of the Corporation the original or a copy of these Bylaws as amended to date.

9.6.4.2 Minute Book. The Secretary shall keep or cause to be kept a minute book as described in Section 12.1.

9.6.4.3 Notices. The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.

9.6.4.4 Corporate Records. Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.

9.6.4.5 Corporate Seal and Other Duties. The Secretary shall keep or cause to be kept the seal of the Corporation, if any, in safe custody, and shall have such other powers and perform such other duties incident to the office of Secretary as may be prescribed by the Board or these Bylaws.

9.6.5 Treasurer. The treasurer of the Corporation (the “Treasurer”) shall attend to the following:

9.6.5.1 Books of Account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.

9.6.5.2 Financial Reports. The Treasurer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

9.6.5.3 Deposit and Disbursement of Money and Valuables. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board; shall render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation; and shall have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

9.6.5.4 Bond. If required by the Board, the Treasurer shall give the Corporation a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the Corporation of all its books, papers, vouchers, money and other property of every kind in his possession or under his control on his death, resignation, retirement or removal from office.

9.6.6 Additional Officers. The Board may empower the President to appoint or remove such other Officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine.

Section 9.7 Fees and Compensation of Officers. Officers of the Corporation may or may not be volunteers. The Board shall have the power to compensate any Officer for services if the Board so determines. In addition, Officers may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by the Board. Nothing in these Bylaws shall limit the authority of the Board to hire (or authorize any Officer to hire) employees, or to give such employees such titles and duties (including as Officers) as the Board (or such authorized Officer) may determine.

Notwithstanding the foregoing authorization, Officers may not be compensated for rendering services to the Corporation in a capacity other than as Officers, unless such compensation is reasonable and further provided that not more than 49% of the persons serving as Officers may be "interested persons" as defined by Section 7.15.

**ARTICLE 10**  
**TRANSACTIONS BETWEEN CORPORATION AND DIRECTORS OR OFFICERS**

Section 10.1 Transactions with Directors and Officers.

10.1.1 Interested Party Transactions. Except as described in Section 10.1.2, the Corporation shall not be a party to any transaction:

- (a) in which one or more of its Directors or Officers has a material financial interest, or
- (b) with any corporation, firm, association or other entity in which one or more Directors or Officers has a material financial interest.

10.1.2 Requirements to Authorize Interested Party Transactions. The Corporation shall not be a party to any transaction described in 10.1.1 unless:

- (a) the Corporation enters into the transaction for its own benefit;
- (b) the transaction is fair and reasonable to the Corporation at the time the transaction is entered into;
- (c) prior to consummating the transaction or any part thereof, the Board authorizes or approves the transaction in good faith, by a vote of a majority of Directors then in office (without counting the vote of the interested Directors), and with knowledge of the material facts concerning the transaction and the interested Director's or Officer's financial interest in the transaction;
- (d) prior to authorizing or approving the transaction, the Board considers and in good faith determines after reasonable investigation that the Corporation could not obtain a more advantageous arrangement with reasonable effort under the circumstances; and
- (e) the minutes of the Board meeting at which such action was taken reflect that the Board considered and made the findings described in paragraphs (a) through (d) of this Section 10.1.2.

10.1.3 Material Financial Interest. A Director or Officer shall not be deemed to have a "material financial interest" in a transaction:

- (a) that fixes the compensation of a Director as a Director or Officer;
- (b) if the contract or transaction is part of a public or charitable program of the Corporation and it (1) is approved or authorized by the Corporation in good faith and without unjustified favoritism, and (2) results in a benefit to one or more Directors or their families only because they are in the class of persons intended to be benefited by the program; or

(c) where the interested Director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the corporation for the preceding year or \$100,000.

Section 10.2 Loans to Directors and Officers. The Corporation shall not make any loan of money or property to or guarantee the obligation of any Director or Officer, unless approved by the Attorney General; except that, however, the Corporation may advance money to a Director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such Director or Officer, if in the absence of such advance, such Director or Officer would be entitled to be reimbursed for such expenses by the Corporation.

The limitation above does not apply if (i) the loan is necessary, in the judgment of the Board, to provide financing for the purchase of the principal residence of an Officer in order secure the services of (or continued services of) the Officer and the loan is secured by real property located in California; or (ii) the loan is for the payment of premiums on a life insurance policy on the life of a Director or Officer and repayment to the Corporation of the amount paid by it is secured by the proceeds of the policy and its cash surrender value.

Section 10.3 Interlocking Directorates. No contract or other transaction between the Corporation and any corporation, firm or association of which one or more Directors are directors is either void or voidable because such Director(s) are present at the Board or Committee meeting that authorizes, approves or ratifies the contract or transaction, if (i) the material facts as to the transaction and as to such the Board or Committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common Director(s) (subject to the quorum provisions of Article 7); or if (ii) the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved or ratified.

Section 10.4 Duty of Loyalty; Construction with Article 11. Nothing in this in Article 10 shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Corporation. Furthermore, nothing in this Article 10 shall be construed to override or amend the provisions of Article 11. All conflicts between the two articles shall be resolved in favor of Article 11.

## ARTICLE 11

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 11.1 Definitions. For purpose of this Article 11,

11.1.1 "Agent." Agent means any person who is or was a Director, Officer, employee or other agent of the Corporation, or is or was serving at the request of the Corporation as a Director, Officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise or was a Director, Officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the Corporation or of another enterprise at the request of the predecessor corporation;

11.1.2 “Proceeding.” Proceeding means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and

11.1.3 “Expenses.” Expenses include, without limitation, all attorneys’ fees, costs and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys’ fees, costs and other expenses reasonably incurred in establishing a right to indemnification under this Article 11.

Section 11.2 Applicability of Indemnification Provisions.

11.2.1 Successful Defense by Agent. To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 11, or in the defense of any claim, issue or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim.

11.2.2 Settlement or Unsuccessful Defense by Agent. If an Agent either settles any proceeding referred to in this Article 11, or any claim, issue or matter therein, or sustains a judgment rendered against him, then the provisions of Section 11.3 through Section 11.6 shall determine whether the Agent is entitled to indemnification.

Section 11.3 Actions Brought by Persons Other than the Corporation. This Section 11.3 applies to any proceeding other than an action “by or on behalf of the corporation” as defined in Section 11.4. Such proceedings that are not brought by or on behalf of the Corporation are referred to in this Section 11.3 as “Third Party proceedings.”

11.3.1 Scope of Indemnification in Third Party Proceedings. Subject to the required findings to be made pursuant to Section 11.3.2, the Corporation shall, to the fullest extent permitted by California law, indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding.

11.3.2 Required Standard of Conduct for Indemnification in Third Party Proceedings. Any indemnification granted to an Agent in Section 11.3.1 above is conditioned on the following. The Board must determine, in the manner provided in Section 11.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Corporation, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 11.4 Action Brought by or on Behalf of the Corporation. This Section 11.4 applies to any proceeding brought (i) by or in the right of the Corporation, or (ii) by an Officer,

Director or person granted relator status by the Attorney General, or by the Attorney General, on the ground that the defendant Director was or is engaging in self-dealing within the meaning of section 5233 of the California Nonprofit Corporation Law, or (iii) by the Attorney General or person granted relator status by the Attorney General for any breach of duty relating to assets held in charitable trust (any such proceeding is referred to in these Bylaws as a proceeding “by or on behalf of the Corporation”).

11.4.1 Scope of Indemnification in Proceeding by or on Behalf of the Corporation. Subject to the required findings to be made pursuant to Section 11.4.2, and except as provided in Sections 11.4.3 and 11.4.4, the Corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Corporation, by reason of the fact that such person is or was an Agent, for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

11.4.2 Required Standard of Conduct for Indemnification in Proceeding by or on Behalf of the Corporation. Any indemnification granted to an Agent in Section 11.4.1 is conditioned on the following. The Board must determine, in the manner provided in Section 11.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

11.4.3 Claims Settled Out of Court. If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Corporation, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding, unless the proceeding is settled with the approval of the Attorney General.

11.4.4 Claims and Suits Awarded Against Agent. If any Agent is adjudged to be liable to the Corporation in the performance of the Agent’s duty to the Corporation, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Section 11.4.1 for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

(a) The determination of good faith conduct required by Section 11.4.2 must be made in the manner provided for in Section 11.5; and

(b) Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.

Section 11.5 Determination of Agent's Good Faith Conduct. The indemnification granted to an Agent in Section 11.3 and Section 11.4 is conditioned on the findings required by those Sections being made by:

(a) the Board by a majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

(b) the court in which the proceeding is or was pending. Such determination may be made on application brought by the Corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney or other person is opposed by the Corporation.

Section 11.6 Limitations. No indemnification or advance shall be made under this Article 11, except as provided in Section 11.2.1 or Section 11.5(b), in any circumstances when it appears:

(a) that the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Section 11.7 Advance of Expenses. Expenses incurred in defending any proceeding may be advanced by the Corporation before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article 11.

Section 11.8 Contractual Rights of Non-Directors and Non-Officers. Nothing contained in this Article 11 shall affect any right to indemnification to which persons other than Directors and Officers of the Corporation, or any of its subsidiaries, may be entitled by contract otherwise.

Section 11.9 Insurance. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 11, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent's status as such, whether or not the Corporation would have the power to indemnify the Agent against the liability under the provisions of this Article 11.

## **ARTICLE 12 CORPORATE RECORDS, REPORTS AND SEAL**

Section 12.1 Minute Book. The Corporation shall keep a minute book in written form which shall contain a record of all actions by the Board or any committee including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how

called; (iii) the manner of giving notice of each meeting and a copy thereof; (iv) the names of those present at each meeting of the Board or any Committee thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting or approvals of the minutes thereof; (vii) all written consents for action without a meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

Section 12.2 Books and Records of Account. The Corporation shall keep adequate and correct books and records of account. "Correct books and records" includes, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains and losses.

Section 12.3 Articles of Incorporation and Bylaws. The Corporation shall keep at its principal office the original or a copy of the Articles of Incorporation and Bylaws as amended to date.

Section 12.4 Maintenance and Inspection of Federal Tax Exemption Application and Annual Information Returns. The Corporation shall at all times keep at its principal office a copy of its federal tax exemption application and, for three years from their date of filing, its annual information returns. These documents shall be open to public inspection and copying to the extent required by the Code.

Section 12.5 Annual Report; Statement of Certain Transactions. The Board shall cause an annual report to be sent to each Director and each Club within 120 days after the close of the Corporation's fiscal year containing the following information:

- (a) The assets and liabilities of the Corporation as of the end of the fiscal year;
- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for this fiscal year;
- (d) The expenses or disbursements of the Corporation for both general and restricted purposes during the fiscal year;
- (e) A statement of any transaction (i) to which the Corporation, its parent, or its subsidiary was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000, and (iii) in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a financial interest);
  - (1) Any Director or Officer of the Corporation, its parent or its subsidiary;

(2) Any holder of more than 10% of the voting power of the Corporation, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Corporation; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

(f) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 10 or Article 11.

Section 12.6 Directors' Rights of Inspection. Every Director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind and physical properties the Corporation and each of its subsidiaries. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 12.7 Corporate Seal. The corporate seal, if any, shall be in such form as may be approved from time to time by the Board. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

### **ARTICLE 13 EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

Section 13.1 Execution of Instruments. The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 13.2 Checks and Notes. Except as otherwise determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money and other evidence of indebtedness of the Corporation shall be signed by two Officers of the Corporation. Checks that are less than \$500 may be signed by the bookkeeper of the Corporation or the Treasurer alone without a second signature.

Section 13.3 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select. The Corporation shall maintain such accounts and records as are necessary to account for funds as contemplated by the Operating Agreement and to otherwise ensure accountability to the Board. Funds shall be managed as provided by the Board, subject to any requirements relating to funds allocable to individual Clubs as provided in the Operating Agreement.

Section 13.4 Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest or devise for the charitable or public purposes of the Corporation.

#### **ARTICLE 14 CONSTRUCTION AND DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction and definitions of California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular and the term “person” includes both the Corporation and a natural person. All references to statutes, regulations and laws shall include any future statutes, regulations and laws that replace those referenced.

#### **ARTICLE 15 AMENDMENTS; EFFECTIVE TIME**

Section 15.1 Amendment by Directors. The Board may adopt, amend or repeal these Bylaws. Such power is subject to the following limitations:

- (a) Where any provision of these Bylaws requires the vote of a larger proportion of the Directors than otherwise is required by law, such provision may not be altered, amended or repealed except by the vote of such greater number.
- (b) No amendment may extend the term of a Director beyond that for which such Director was elected.
- (c) If these Bylaws are adopted, amended or repealed at a meeting of the Board, such action is authorized only at a duly called and held meeting for which written notice of such meeting, setting forth the proposed bylaw revisions with explanations therefor, is given in accordance with these Bylaws, unless such notice is waived in accordance with these Bylaws.

Section 15.2 Effective Time of March 2020 Amendment. The amendment and restatement of these bylaws in March 2020 shall be effective on the last to occur of (a) the adjournment of meeting at which the Board adopted these bylaws and (b) the date the Corporation executed the initial version of the Operating Agreement (such time, the “Effective Time”).

[Remainder of Page Left Intentionally Blank]

### CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting Secretary of **The Orinda Network for Education**, a California nonprofit public benefit corporation; that these Bylaws, consisting of [ ] pages, are the Bylaws of this Corporation as adopted by the Board of Directors on [ ]; and that these Bylaws have not been amended or modified since that date.

Executed on [ ], 2020, at Orinda, California.

---

[ ]  
Secretary

**ONE Orinda Operating Agreement**

**Appendix 3**

**Template ONE Orinda Funding Agreement**

This Funding Agreement is entered into by and between \_\_\_\_\_ Parents' Club ("**Parents' Club**"), a non-profit corporation under 26 U.S.C. §501(c)(3), and Orinda Network for Education ("**ONE Orinda**"), a non-profit corporation under 26 U.S.C. §501(c)(3), effective as of July 1, 20\_\_\_. The Parents' Club and ONE Orinda are each a "**Party**" and collectively the "**Parties**" to this Funding Agreement.

1. This Funding Agreement is made pursuant to and is governed by the Orinda Network for Education Operating Agreement (the "**Operating Agreement**") entered into between the Parties (among others) with an effective date of \_\_\_\_\_. Any capitalized term not defined in this Funding Agreement will have the meaning given to that term in the Operating Agreement. In the event of any conflict between this Funding Agreement and the Operating Agreement, the Operating Agreement will control.
2. The term of this Funding Agreement will begin on July 1, 20\_\_ and will end on June 30, 20\_\_ (the "**Fiscal School Year**").
3. Subject to the terms and conditions of the Operating Agreement, ONE Orinda agrees as follows:
  - a. To collect PC Donations solicited by the Parents' Club during the Fiscal School Year; and
  - b. To maintain and disburse funds to or on behalf of the Parents' Club in the total amount of \$\_\_\_\_\_ (the "**Funding Amount**"), subject to Operating Agreement Sections 8.6, 8.7, and/or 8.11, and in accord with Operating Agreement Section 10, during the Fiscal School Year.
4. Subject to the terms and conditions of the Operating Agreement, the Parents' Club agrees as follows:
  - a. To use good faith, best efforts to raise at least the Funding Amount during the Fiscal School Year through donations from the families with students attending the Orinda School affiliated with the Parents' Club; and
  - b. That the Parents' Club hereby authorizes ONE Orinda to (i) retain PC Donation funds as set forth in Operating Agreement Section 10.1 for the purpose of making School District Payments; (ii) to invest such funds in appropriate revenue generating accounts while the funds are held by ONE Orinda; and (iii) to make School District Payments on a payment schedule mutually agreed between the Parents' Club, ONE Orinda and [OUSD or AUHSD].
5. The Parties agree that the Funding Amount is based upon the Parents' Club's Operating Budget for the Fiscal School Year attached as Exhibit A.
6. This Funding Agreement is not intended to modify or amend any terms or provisions of the Operating Agreement or its appendices, all of which shall continue and remain in full force and effect according to their terms.

Acknowledged and agreed by:

\_\_\_\_\_ **Parents' Club**

**Orinda Network for Education**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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