

**MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN
FOCUS AND THE NEWARK PUBLIC SCHOOLS**

THIS AGREEMENT is made and entered into this ___ day of October 2021 (the "Effective Date"), by and between NEWARK BOARD OF EDUCATION (herein after "NBOE" or "District") with offices at 765 Broad Street, Newark, New Jersey 07102 and FOCUS Hispanic Center for Community Development, Inc. (hereinafter "FOCUS") with offices at 441-443 Broad Street, Newark, NJ 07102.

WHEREAS, Focus (i) has the corporate power and authority, and the legal right to conduct the business in which it is currently engaged; (ii) is in compliance with applicable laws and regulations; and (iii) desires to provide services to NBOE; and

WHEREAS, FOCUS desires to provide services to the District for the Nita M. Lowey 21st Century Community Learning Center for 2021-22;

NOW, THEREFORE in consideration of the premises and the mutual promises, covenants and conditions herein, the parties agree as follows:

(1.0) Provision of Services

(1.1) In partnership with NBOE, FOCUS will provide services to the District for the 21st Century Community Learning Center Grant Program of the No Child Left Behind Act for the 2021-22 school year, the provisions of which are hereby incorporated by reference as contained in the attached Program Abstract. These services will commence on September 1, 2021 and will continue through August 31, 2022 for the students attending various schools in the District.

(1.2) FOCUS will provide the following specific services within the contract period:

- The Nita M. Lowey 21st Century Community Learning Center Grant Program under Title IV, Part B, of the ESEA Act, as amended by the No Child Left Behind Act of 2001 as indicated in the attached FOCUS 21st CCLC Program Abstract.

(2.0) Billing and Payment

No payment of monies will be exchanged between the parties for the services rendered or received. It is expressly understood by the NBOE and FOCUS that the cooperation of and participation in the Program does not require monetary payment and that this Agreement is limited to FOCUS' and NBOE' participation in the program

(3.0) Term and Termination

(3.1) The term of this Agreement is from September 1, 2021 to August 31, 2022.

(3.2) This Agreement can be terminated without cause at an earlier date by signed, mutual agreement in writing by both parties or upon thirty (30) days written notice by either party.

(3.3) NPS reserves the right to terminate this Agreement immediately if FOCUS fails to comply with the terms specified in Section 5.0 of this Agreement.

(4.0) Miscellaneous

(4.1) The parties agree that they are not relying upon any promises, understanding, warranties, circumstances, conduct, negotiations, expectations, representations, or agreements, oral or written, express or implied, other than those expressly set forth herein; that this Agreement is a complete integration and constitutes the entire Agreement of the parties with respect to the subject matter hereof; that no amendments or other modifications of this Agreement shall be valid unless in writing and signed by an authorized officer of each party hereto; that this entire Agreement has been bargained for and negotiated; and the parties have read, understood and approved this Agreement in its entirety.

(4.2) This Agreement may be amended only by a written agreement executed by both parties.

(4.3) All notices, copies of notices or other communications required or permitted hereunder shall be written and personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by telecopy accompanied by simultaneous mailing by first-class mail, addressed to the parties at their registered addresses as follows:

Contractual and legal notices should be sent to:

To Focus:

To NBOE:

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| FOCUS Hispanic Center for Comm. Devel., Inc. 441-443 Broad Street Newark, NJ 07102 | Newark Board of Education 765 Broad Street Newark, New Jersey 07102 |
| Attention: Maritza Aráuz Telephone: 973-624-3234 marauz@focus411.org | Attention: Roger León Telephone: 973-733-7333 Rleon@NPS.K12.NJ.US |

All notices shall be effective as of the date of delivery of personal notice or three (3) days after deposit of such notice in the United States mail, whichever is applicable.

(4.4) This Agreement shall be deemed to have been executed in the State of New Jersey and shall be governed by and construed in accordance with the laws of a competent jurisdiction. The parties agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined in a court of competent jurisdiction in the United States.

(4.5) If any provision of this Agreement is held by a court of competent jurisdiction or determined under applicable federal or state law to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect.

- (4.6)** Except as otherwise provided in this Agreement, the parties hereto may not assign their rights, duties or obligations under this Agreement, either in whole or in part, without receiving the prior written consent of the other party. Any assignment made without consent of the other party shall be void and the non-assigning party shall not recognize any such assignment.
- (4.7)** Both parties agree to maintain all client and student information confidentially in accordance with all New Jersey State and federal laws and regulations, including but not limited to the federal Children's Online Privacy Protection Act of 1998 ("COPPA")(15 U.S.C. Sec, 6501 et seq.), the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Family Educational Rights and Privacy Act ("FERPA"), Federal Regulations (42 CFR-Part 2 and 42 CFR-Parts 160 & 164), and the N.J. Children of Substance Abusers Legislation of 1999 (N.J.S.A. 18A:40A-7.1).
- (4.8)** None of the provisions of this Agreement is intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this Agreement. Neither of the parties, hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.
- (4.9)** Focus agrees to indemnify, hold harmless and defend NBOE, its officers, directors, employees, agent and independent contractors from and against any and all liabilities, governmental assessments, fines, interest or penalties, losses, damages, claims, causes of action, and expenses (including reasonable attorney's fees and disbursements), whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of actions or failures to act by FOCUS.
- (4.10)** Focus warrants that it has at the time of execution of this Agreement adequate and appropriate professionally and/or general liability insurance as well as worker's compensation insurance for all Focus employees.
- (4.11)** Neither party to this Agreement will discriminate under federal and New Jersey state law based on race, color, religion, sex, sexual orientation, national origin or physical or mental handicap.
- (4.12)** Both parties represent that no fee, commission, compensation, gifts or gratuity was paid or received regarding the solicitation of this Agreement, in contravention to N.J.S.A. 52:13D-13 et seq.
- (4.13)** The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:5-1 dealing with discrimination in employment in public agreements, and the rules and regulations promulgated pursuant thereunto, as the same may be amended or modified, are hereby made a part of this Agreement and are binding upon them.

(4.14) Focus shall defend, indemnify and hold harmless the Newark Board of Education from any and all claims, costs, damages, or injuries to persons or property of whatever kind of nature arising out of or in connection with the performance of this agreement, including the actions of any consultants or subcontractors it may hire. FOCUS shall provide the Newark Board of Education with a Certificate of Insurance issued by a New Jersey licensed insurance carrier prior to the start of this contract listing the Newark Public Schools as an additional insured. The insurance certificate shall provide general liability insurance for the operation of the program in the amount of \$1,000,000 combined single limit coverage for bodily injury and property damage for each occurrence, or in an amount acceptable to the Newark Public Schools as an additional named insured.

FOCUS shall provide adequate proof of Worker's Compensation Insurance Coverage for the period of this contract prior to its inception. Focus shall also provide Fidelity, Dishonesty or Commercial bonding in the amount of the contract or in an amount acceptable to the Newark Board of Education. This Agreement shall be contingent upon proof of insurance coverage for the entire contract period, notwithstanding that the Newark Public Schools may accept any in place coverage at the time of the execution of this agreement which may be due to expire prior to the completion date of this agreement. Focus shall submit proof automobile liability and uninsured/underinsured motorist insurance in the amount of at least \$3,000,000 combined single limit coverage for bodily injury and property damage, or in an amount acceptable to the Newark Board of Education, prior to the use/rental of any vehicles/buses for student transportation. This automobile liability insurance must cover the "Newark Board of Education" as an additional insured.

5.0 Background Checks

(5.1) Focus shall provide proof to the District that each worker that may be assigned to a project involving contact with children or that may be assigned to a contract school location has had a criminal history background check, and that said background check indicates that no criminal history record information exists on file in either the Identification Division of the Federal Bureau of Investigation or the State Bureau of Investigation which would disqualify said employee from employment pursuant to N.J.S.A. 18A:6-7.1 et seq. FOCUS must provide said proof to the District no later than thirty (30) days after execution of this agreement. The services under this agreement shall not begin or proceed until FOCUS complies with the requirements of this section. Failure to provide proof of a criminal history background check(s) within said time limitation shall be deemed a material breach of this agreement by Focus, and as such, serves as a basis for the District to immediately terminate the agreement.

(5.2) If it is discovered during the course of the agreement that either: (i) an employee with disqualifying criminal history record information on file, or (ii) an employee who has not had a criminal background check, is assigned to a project involving contact with children or is working at a contract school location, said employee is to be removed immediately by FOCUS. Failure to immediately remove said employee either upon notification by the District or by discovery by Focus shall be deemed a material breach of the agreement by FOCUS, and as such, serves as a basis for the District to immediately terminate the agreement.

(5.3) FOCUS must immediately notify the District in writing regarding any employee(s) that is hired after the execution of this agreement that may, or will, be assigned to a project involving contact with children or otherwise work at a contract school location. Said employee(s) may not be assigned to a project involving contact with children or work at a contract school location until FOCUS provides the District with proof that said individual(s) has had a criminal history background check, and that said background check indicates that no criminal history record information exists on file in either the Identification Division of the Federal Bureau of Investigation or the State Bureau of Investigation which would disqualify said employee from employment pursuant to N.J.S.A. 18A:6-7.1 et seq.

(5.4) Proof of clearance by the Department of Education or a temporary waiver pending receipt of qualification to work from the Department of Education shall be provided to the District by Focus prior to the assignment and commencement of work of each employee.

6.0 Independent Entities

(6.1) None of the provisions of this MOU are intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this MOU. Neither of the parties, hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.

7.0 Survivability

(7.1) If any provision of this MOU is held by a court of competent jurisdiction or determined under applicable federal or state law to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect.

Agreed and accepted by:

Newark Board of Education

FOCUS Hispanic Center for Community Development, Inc.

Date
Title: _____

Maritza Aráuz
Executive Director, FOCUS
Date