

## MANAGEMENT SERVICES AGREEMENT MUSKEGON MARITIME ACADEMY

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**THIS MANAGEMENT SERVICES AGREEMENT** (the “**Agreement**”) is made and entered into on November 1, 2024, by and between **MUSKEGON MARITIME ACADEMY**, a Michigan public school academy (the “**Academy**”) formed under Part 6A of the Revised School Code, being MCL §380.501 to §380.507, as amended (the “**Code**”) and **TEACHERS FIRST**, a Michigan nonprofit corporation (“**TF**”).

**WHEREAS**, the Academy has been issued a charter contract dated July 1, 2022 (the “**Contract**”) by the SAGINAW VALLEY STATE UNIVERSITY BOARD OF CONTROL (the “**Authorizer**”) to organize and operate a public school academy. The Authorizer is the statutory authorizing body. The Code and the Contract permit a public school academy to contract with persons and entities for the operation and management of the public school academy.

**WHEREAS**, TF is organized and operated exclusively for charitable and educational purposes and, in particular, to advance education and lessen the burdens of government by engaging in activities to further such purposes, including the operation and management of public school academies.

**WHEREAS**, the Academy and TF desire to create an enduring educational partnership whereby the Academy and TF shall work together to develop and bring about systems of educational excellence and services to the Academy based on TF’s vision of school design, TF’s management principles, and the Educational Program (defined below).

**THEREFORE**, the parties hereby agree as follows:

### ARTICLE I

#### Relationship of the Parties and Other Matters

1. **Authority.** The Academy represents that (a) it is authorized by law to contract with a private entity for the provision of management and operational services to the Academy, (b) it has been issued the Contract from the Authorizer to organize and operate a public school academy, (c) it is authorized by the Authorizer to supervise and control the Academy, and (d) it is vested with all powers necessary or desirable for carrying out the Educational Program (defined below) contemplated in this Agreement. To the extent permitted by law, the Academy hereby authorizes and grants to TF the necessary authority and power to perform under this Agreement.

2. **Services; Educational Program.** The parties agree that TF, to the extent permitted by and in conformity with the Contract and applicable laws, shall provide all labor, materials, and supervision necessary for the provision of the management and operational services contemplated by this Agreement as specifically set forth on the attached Exhibit A to the Academy (the “**Services**”).

TF shall provide Services to the Academy so the Academy can carry out the educational goals, curriculum, method of pupil assessment, admissions, policy and criteria, school calendar and school day schedule, and age and grade range of pupils to be enrolled, educational goals and methods to be used to monitor compliance with performance of targeted educational outcomes, as adopted by the Academy Board of Directors (“**Board**”) and as incorporated into the Contract (collectively, the “**Educational Program**”).

3. **Compliance with the Academy's Contract.** TF agrees that it shall comply with the requirements of the Contract to the extent TF is performing services on behalf of the Academy. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement.

4. **Compliance with Section 503c.** On an annual basis, TF agrees to provide the Board with the same information that a school district is required to disclose under section 18(2) of the State School Aid Act of 1979, MCL 388.1618, as it relates to the Academy, for the most recent school fiscal year for which the information is available. Within thirty (30) days of receipt of this information, the Board shall make the information available on the Academy's website home page, in a form and manner prescribed by the Michigan Department of Education. The defined terms in section 503c of the Code, MCL 380.503c, shall have the same meaning in this Agreement. Teachers First also agrees to make available to the Authorizer and the public the information required under MCL 380.503.

5. **Compliance with Section 7.4 of Contract Terms and Conditions.** TF shall make information concerning the operation and management of the Academy, available to the Academy as deemed necessary by the Board in order to enable the Academy to fully satisfy its obligations under Section 7.4 of the Contract.

6. **Relationship of the Parties.** TF is not a division or any part of the Academy. The Academy is a corporate and governmental entity authorized under the Code. The Academy is not a division or any part of TF. The relationship between the parties hereto was developed and entered into through arms-length negotiation and is based solely on the terms of this Agreement. In interpreting this Agreement and in the provision of the services required hereunder, TF shall not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights, including cancellation rights, under this Agreement. As required by the Academy's Articles of Incorporation and Bylaws, the Board may not include any director, officer, or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and TF that none of the voting power of the governing body of the Academy will be vested in TF or its directors, members, managers, officers, shareholders, and employees, and the Academy and TF will not be related parties as defined in Treas. Reg. 1.150-1(b).

7. **TF as Independent Contractor; Agents.** The parties to this Agreement intend that the relationship of TF to the Academy is that of an independent contractor, and not an employee of the Academy. No agent or employee of TF shall be determined to be an agent or employee of the Academy, except as expressly acknowledged, in writing, by the Academy. The Academy agrees to define "school official" in the Academy's annual notification of rights under 20 U.S.C. § 1232g, 34 C.F.R. § 99, the Family Educational Rights and Privacy Act ("FERPA") to include a contractor who performs an institutional service or function for which the Academy would otherwise use its own employees, who is under the direct control of the Academy with respect to the use and maintenance of personally-identifiable information from education records, and who is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and redisclosure of personally identifiable information from education records. The Board designates TF and certain of its employees and subcontractors as school officials of the Academy as having a legitimate educational interest such that they are entitled to access to educational records under FERPA. TF and its employees and subcontractors agree to comply with FERPA and corresponding regulations applicable to school officials. Except as set forth in this paragraph or as expressly acknowledged in writing by the Board, no employee of TF shall be deemed to be an agent of the Academy.

During the Term of this Agreement, the Academy may disclose confidential data and information to TF, and its respective officers, directors, employees, and designated agents to the extent permitted by applicable law, including without limitation, the Individuals with Disabilities Education Act ("IDEA"), 20 USC §1401 et seq., 34 CFR 300.610-300.626; Section 504 of the Rehabilitation Act of 1973, 29 USC §794a, 34 CFR 104.36; the Michigan Mandatory Special Education Act, MCL 380.1701 et seq.; the

Americans with Disabilities Act, 42 USC §12101 et seq.; the Health Insurance Portability and Accountability Act (“**HIPAA**”), 42 USC 1320d - 13200d-8; 45 CFR 160, 162 and 164; and social security numbers, as protected by the federal Privacy Act of 1974, 5 USC §552a; and the Michigan Social Security Number Privacy Act, MCL445.84.

TF shall be solely responsible for its acts, and the acts of its agents, employees, and those subcontractors who are contracted through TF.

Except as permitted under the Code, TF shall not sell or otherwise provide to a for-profit business entity any personally identifiable information that is part of an Academy student’s education records. If TF receives information that is part of an Academy student’s education records, TF shall not sell or otherwise provide that information to any other person except as permitted under the Code. For purposes of this section, the terms “education records” and “personally identifiable information” shall have the same meaning as those terms in section 1136 of the Code, MCL 380.1136.

**8. No Related Parties or Common Control.** The parties hereby agree that none of the voting power of the governing body of the Academy or the Board shall be vested in TF or its directors, members, managers, officers, shareholders, or employees. Further, the Academy and TF are not, and shall not become: (a) members of the same controlled group, as that term is defined in the Internal Revenue Code of 1986, as amended (the “**IRS Code**”); or (b) related persons, as that term is defined in the IRS Code.

**9. Security Breach.** If TF becomes aware of a security breach (as defined in any applicable law) or any other event that compromises the security, confidentiality, or integrity of a student’s education record or personally identifiable information (an “**Incident**”), TF will take appropriate action to contain, investigate, mitigate, and rectify the Incident. TF shall notify the Academy of an Incident as soon as reasonably possible but in no event later than three (3) days after TF becomes aware that an Incident has occurred.

**10. School Leader.** TF shall identify and appoint a School Leader to administer the Educational Program at each physical location of the Academy (the “**School Leaders**”). The School Leaders shall hold all required certifications as required by the Code. The School Leaders shall be employees of TF, who may be disciplined and/or terminated by TF in its sole discretion. TF shall notify the Board prior to the termination of either of the School Leaders. TF shall have the authority, consistent with applicable laws, to select and supervise the School Leaders and to hold the School Leaders accountable for the success of the Academy. TF shall empower the School Leaders with the authority to select and hold accountable the teachers in the Academy. TF shall consult with the Board concerning the selection of, hiring, duties, and performance of the School Leaders prior to the placement and/or removal of the School Leaders or at any other time at the request of the Board. However, should TF come to believe that the Academy’s budget cannot support a School Leader at each physical location or a School Leader is not necessary at each physical location, TF and the Board shall discuss alternative arrangements.

**11. School Superintendent.** If TF determines that it is necessary to create the position of Superintendent for the Academy, TF and the Board shall discuss the parameters for employment of the Superintendent, which shall include the following: (a) the Academy Superintendent (the “**Superintendent**”) shall be an employee of TF; (b) the duties of the Superintendent shall be developed by TF, subject to reasonable approval by the Board, but as the Superintendent plays an integral role in overseeing and managing the Academy, TF shall consult with the Board prior to the placement and/or removal of the Superintendent at the Academy or at any other time at the request of the Board; and (d) the Board reserves the right to disapprove TF’s proposed candidate for the Superintendent position, and, by not disapproving a proposed candidate, the Board is in no way acting as an employer of the School Superintendent and TF shall be their sole employer of record.

If TF receives two or more complaints about the Superintendent's performance or conduct, TF shall notify the Board of Directors within three (3) business days, but in any event no later than the next Board meeting. TF shall remove the Superintendent from the position of School Superintendent of the Academy if the Board determines, in its reasonable discretion, that his or her performance is unsatisfactory or the School Superintendent has become disruptive to the work and school environment at the school; provided that, before making such a determination and requesting the removal of the Superintendent: (x) the Board shall notify TF of any reasons why the Board believes the Superintendent may need to be removed; (y) TF and the Board shall discuss the Board's reasons at a meeting held for that purpose, at which TF shall have a reasonable opportunity to present alternatives to address the Board's concerns; and (z) at the end of the meeting, the Board shall provide a formal recommendation for appropriate TF action.

**12. Criminal Background Checks.** TF agrees that it shall not assign any of its employees, agents, or other individuals to perform any services under this Agreement except as permitted under Sections 1230, 1230a, 1230b, and related provisions of the Code pertaining to unprofessional conduct, criminal background and criminal conduct checks. TF shall require that the results of the criminal background check are received, reviewed, and used (subject to a verification process) by the School Leader acting on behalf of the Academy as a local area security officer ("**LASO**") and/or the Board, only as permitted by law to confirm that the individual does not have a criminal history and may be employed at the Academy in compliance with the Code and to evaluate the qualifications of the individual for his/her assignment. The LASO may designate TF to view reports related to criminal history record information to the extent permitted by law. Evidence of such background checks and unprofessional conduct checks required by law shall be stored on site, in a secure location and in physical form, at the Academy or be directly accessible at the Academy facility.

**13. Non-Compete Agreement.** TF agrees that it shall not impose any contractual requirement or contractual obligation on any of its employees assigned to the Academy to enter into a non-compete and/or non-solicitation provision or agreement of any nature.

**14. The Board.** The Board is the governing body with oversight responsibilities over the Academy. The parties acknowledge that throughout this Agreement the term "Board" and the term "Academy" are sometimes used interchangeably in some sections for the sole purpose of readability based on the nature and subject matter of the article/section. This Agreement must be approved by the Board and executed by a duly authorized member of the Board (on behalf of the Academy), and by so executing this Agreement the Board acknowledges and accepts all obligations and responsibilities related to the Board as set forth in this Agreement.

**15. Availability of Funds.** Notwithstanding any other term or provision in this Agreement to the contrary, TF shall not be, directly or indirectly, liable to any third party for any cost or expense incurred by the Academy. Subject to the provisions of the Code and Article VII of this Agreement, TF shall only be required to perform its responsibilities under this Agreement to the extent that TF has received such revenues from the Academy pursuant to the terms of this Agreement. TF shall, however, remain solely liable to the Academy for any cost it commits the Academy to without the Board's approval in the event such cost is beyond the amount anticipated in the Academy's approved budget or any approved amendment thereto.

**16. Lease and Loans.** If the Academy and TF enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationship, then such agreements must be separately documented and separately approved. If the Academy enters into a lease with a third party, TF shall work with such third party to ensure that the Academy facilities are appropriately maintained. In addition, all such agreements must comply with the Contract, as well as any applicable Authorizer policies.

17. **Nondiscrimination.** TF and any and all subcontractors of TF shall not discriminate against an employee or applicant for employment, and in this regard shall comply with all applicable federal and state laws. A breach of this covenant shall be a material breach of this Agreement.

18. **Evaluations.** TF agrees that it will adopt, implement, and maintain a performance evaluation system for all required personnel as required by the Contract and applicable law.

19. **Data Security Breach.** In the event the Academy experiences a data security breach of personally identifiable information from the Academy's education records not suitable for public release, TF shall assist the Academy, in accordance with MCL 445.72, to take appropriate action to assess the risk and notify affected individuals whose personal information may have been compromised.

## ARTICLE II

### Term

1. **Term.** The Term of this Agreement shall be for a three (3) year period, beginning November 1, 2024, and ending June 30, 2027 (the "**Term**"). This Agreement may be terminated pursuant to Article VII below. The maximum term of this Agreement shall not exceed the length of the Contract.

## ARTICLE III

### Obligations of the Academy

1. **Governance.** The Board shall be responsible for the governance and oversight of the Academy.

2. **Good Faith Obligation.** The Board shall exercise good faith in considering TF's recommendations relative to the Educational Program, and other issues including, but not limited to, policies, rules, regulations, procedures, curriculum, and budgets, subject to the constraints of law and requirements of the Contract.

3. **Academy Funds.** The Board shall determine the depository of all funds received by the Academy. All funds received by the Academy shall be deposited in the Academy's depository account. Signatories on the Academy Board accounts shall solely be members of the Board or properly designated Board employees. All interest or investment earnings on Academy accounts shall accrue to the Academy.

4. **Board Policy Authority.** The Board is responsible for determining the fiscal and academic policies that will govern the operation of the Academy, including, but not limited to, policies relative to the conduct of students while in attendance at the Academy or enroute to and from the Academy and regulations governing the procurement of supplies, materials, and equipment.

5. **Legal Counsel.** The Board shall select and retain legal counsel to advise it regarding its rights and responsibilities under the Contract, this Agreement, and applicable law.

6. **Educational Consultants.** The Board may retain an educational consultant or consultants to review the operations of the Academy and the performance of TF under this Agreement, and the cost to employ such consultant or consultants shall be paid by the Board. TF shall cooperate with the educational consultant or consultants and will provide those individuals with reasonable and prompt access to records, facilities, and information as if such requests came from the full Board. Only the Board shall have authority to select, evaluate, assign, supervise, or control any educational consultant employed by the Board.

7. **Academy Employees.** The Board may employ such employees as it deems necessary, and the cost to employ such employees shall be paid by the Board. The Board retains authority to hire its own

employees for the purpose of interfacing and working in conjunction with TF on certain accounting and compliance matters as deemed appropriate by the Board and who may in the future be given responsibility for some tasks given to TF under this Agreement upon mutual agreement of the parties as to the specific tasks and financial effect on this Agreement.

**8. Audit.** The Board shall select and retain an independent auditor to perform the annual financial audit in accordance with the Contract and applicable state law.

**9. Budget.** The Board is responsible for adopting a budget in accordance with the provisions of the Uniform Budgeting and Accounting Act, MCL 141.421 et seq., that has adequate resources to fulfill its obligations under the Contract, including but not limited to its oversight of TF, lease payments, the organization of the Academy, negotiation of the Contract and any amendments, payment of employee costs, insurance required under the Contract and this Agreement, the annual financial audit and retention of the Board's legal counsel and consultants. In addition, the Board is responsible for determining the budget reserve amount included as part of the Academy's annual budget, for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount and for approving necessary amendments to the budget to reflect necessary deviations from the adopted budget. The budget may be amended when deemed necessary by the Board.

**10. Governmental Immunity.** The Board shall determine when to assert, waive, or not waive its governmental immunity. No provision of this Agreement shall predetermine the Academy Board's course of action in choosing to assert or not assert governmental immunity.

**11. Rules and Procedures.** The Board shall adopt reasonable rules, regulations, and procedures applicable to the Academy. TF shall assist the Board by recommending reasonable rules, regulations, and procedures, and also by enforcing the rules, regulations, and procedures approved by the Board.

## **ARTICLE IV**

### **Evaluations of TF**

**1. Evaluations.** TF is accountable to the Board for the performance of students in attendance at the Academy and the operation of the Academy in accordance with the Agreement and the Contract. The Board will regularly, and not less than annually by June 30 of each year during the Term, evaluate the performance of TF to provide TF with an understanding of the Board's view of its performance under this Agreement. The Board, in consultation with TF, will determine the format to conduct this evaluation. To assist in the evaluation process, the Board may, in writing, make reasonable requests for TF to provide written reports to the Board on any topic of Academy activity or operations that are consistent with this Agreement. Failure to evaluate TF in any annual period shall give rise to a presumption of the Board's satisfaction with the services TF has provided during such period.

**2. Educational Evaluations.** TF shall be responsible for and accountable to the Academy for the performance of students who attend the Academy, said performance to be measured in accordance with the requirements of state law and the Contract, and such other assessment strategies as may be provided herein and as shown on Exhibit B.

TF shall help the Board measure the success of the Academy based on absolute levels of student achievement measured by student NWEA, Academic Approach, Mastery Connect, and M-STEP scores, as the applicable metrics may be changed from time to time by the state, the Authorizer, or TF in its reasonable discretion and with prior written notice to the Board (provided that TF may not change any measure required by the state or the Authorizer). TF shall compare Academy students' scores to those of

students in the local school district who have backgrounds and achievement levels similar to the Academy's students upon their enrollment at the Academy.

## ARTICLE V

### Compensation and Reimbursement of Costs

1. **Compensation for Services.** During the term of this Agreement, the Board shall pay TF an annual fee (the "Fee") equal to eleven percent (11%) of all funds received by the Academy from the State of Michigan, pursuant to the State School Aid Act of 1979, as amended, including, but not limited to, the foundation allowance and Section 31A funds, and funds received by the Academy for grants that are included within the state revenue and local revenue categories in the Academy's annual budgets. The Fee includes all the services as described in the Services with the exception of any reimbursable costs as described in this Article V or Exhibit A.

2. **Revenue Procedure 2017-13.** The parties intend that this Agreement meet all of the applicable safe harbor conditions as set forth in Sections 5.02 through Sections 5.07 of the Revenue Procedure 2017-13.

a. In this regard, the Academy and TF make the following representations:

i. TF's compensation under this Agreement is reasonable compensation for services to be rendered hereunder and is not based, in whole or in part, on a share of net profits and/or a share of the net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy's property;

ii. This Agreement does not pass onto TF the burden of bearing any share of net losses from the operation of the Academy or upon the disposition, damage, or destruction of the Academy's property;

iii. The term of this Agreement is not greater than 30 years or 80 percent of the useful life of the Academy's school facilities currently financed with tax-exempt debt (if shorter) including all renewal options;

iv. The Academy bears the risk of loss upon the disposition, damage, or destruction of the Academy's property; and

v. TF is not entitled to and will not take any federal tax position that is inconsistent with being a service provider under this Agreement to the Academy.

b. In interpreting this Agreement and in the provision of the services required hereunder, TF shall not have any role or relationship with the Academy that, in effect, substantially limits the Academy's ability to exercise its rights and obligations under state law. As required by the Academy's Articles of Incorporation and Bylaws, the Academy Board may not include any director, officer, or employee of a management company that contracts with the Academy. In furtherance of such restriction, it is agreed between the Academy and TF that none of the voting power of the governing body of the Academy will be vested in TF or its directors, members, managers, officers, shareholders, and employees, and the Academy and TF will not be related parties as defined in Treas. Reg. 1.150-1(b).

3. **Time and Priority of Payment.** The compensation due to TF pursuant to Paragraph 1 of this Article shall be paid in twelve approximately equal monthly installments beginning in July and ending in June of the following academic year. Such installment amounts shall be due and payable no later than the last day of the month. TF will cooperate with the Academy to modify the exact date of any monthly installment payment to coordinate with the time of the funds received by the Academy. The compensation due to TF shall be calculated for each academic year at the same time as the State of Michigan calculates the State School Aid. For each academic year, the installment payments will be based on the approved budget or amended budget until the second Count Day, when adjustments shall be made for the final student count.

4. **Reimbursement of Costs.** In addition to the Fee, the Academy shall reimburse TF for expenses reasonably incurred in providing the Services to the Academy and paid for by TF in accordance with the budget approved by the Board, subject to the following:

a. Subject to Section V.4 (d), reimbursable costs include all employment costs of TF employees assigned to the Academy. These costs include all salary, benefits, and other costs associated with TF's employment of such personnel, including, but not limited to, gross wages, FICA, Medicare, FUTA, SUTA, Workers' Compensation Insurance, employer portions of health, dental, vision, and life insurance, and employer retirement plan contributions. TF shall provide the Academy with an invoice for all such employment costs, which, if any such employment costs have been advanced by the Academy in accordance with Section V.4 (f), shall be used by the parties to reconcile the amounts advanced and the amounts reimbursable. In addition, and subject to Section V.4 (d), TF's employees shall be reimbursable so long as they are (1) providing services directly to the Academy, or (2) providing services directly to Academy students, either at the Academy or elsewhere. The Academy shall only be required to reimburse a TF employee (1) to the extent that such services are included and in accordance with the Board-approved budget and (2) based on a pro-rata amount of services provided directly to or for the benefit of the Academy.

b. Reimbursable costs shall also include, but are not limited to, payments by TF for (i) equipment, software, and supplies provided for the Academy's operations, (ii) food service, transportation, special education, psychological services, medical services, and other educational services provided to the Academy's students, whether provided by TF employees or pursuant to an independent contractor arrangement, and (iii) any items designated as subject to reimbursement elsewhere in this Agreement or Exhibit A. TF shall invoice the Academy for reimbursement of all other costs with a detailed receipt of goods or services, as provided in Section V.4 (f).

c. Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program and shall not include costs for general marketing and development of TF.

d. Corporate costs including costs or expenses of the management and operation of TF, including its rent and insurance costs, shall not be charged to or reimbursed by, the Academy. The Academy shall not reimburse TF the costs for the time of TF's Chief Executive Officer or President, financial services provided to the Academy by TF, human resources services, and compliance-related services. TF shall also not receive reimbursement for its costs and/or any damages associated with employee litigation against TF, unless such litigation arises due to actions taken by or at the direction of the Academy or in any situation in which the Academy is obligated to indemnify TF.

e. Reimbursable costs shall be incorporated in the budgets approved by the Board. Each budget shall contain reasonable estimates of the anticipated Fee and reimbursable costs, including, but not limited to, those associated with employment of TF personnel at the Academy.



Any costs reimbursed to TF that are determined by the independent audit not to be reasonably incurred on behalf of the Academy for Services specially related to the Academy shall be promptly returned to the Academy by TF.

f. The Board shall advance funds to TF for any reimbursable costs before payment is due (rather than reimburse TF after the expense is incurred); provided, however, that TF may elect-but is not obligated to-pay such costs before funds are advanced and obtain prompt reimbursement from the Academy. TF shall provide to the Academy or the Board proper documentation and accounting of all advanced funds or reimbursements, and such accounting shall be provided to the Board for ratification at its next regularly scheduled meeting. All items acquired with Academy funds, including, but not limited to, instructional materials, equipment, supplies, furniture, computers, and other technology, shall be owned by and remain the property of the Academy.

g. Within ten (10) days after a request is made by either party, designated representatives of the parties shall review and discuss any costs or expenses that either (i) TF reasonably believes to be necessary or convenient for the operation of the Academy but that have not been included in the most recent approved budget or (ii) that either party, in its reasonable discretion, believes requires clarification as to whether such cost or expense is reimbursable. TF shall not be obligated to incur any such cost or expense before the parties resolve the appropriate treatment of such cost or expense and, if necessary, obtains appropriate approval from the Academy or its designated representatives that such cost or expense shall be reimbursed by the Academy. The initial designated representative of TF shall be its Chief Executive Officer, and the initial designated representatives of the Academy shall be its President and Treasurer.

**5. Other Institutions.** The Academy acknowledges that TF may enter into agreements similar to this Agreement with other public or private educational schools or institutions (the “**Institutions**”). TF shall maintain separate accounts for reimbursable expenses incurred on behalf of the Academy and for reimbursable expenses incurred on behalf of the Institutions. TF shall only charge the Academy for expenses incurred on behalf of the Academy.

If TF incurs reimbursable expenses on behalf of the Academy and the Institutions which are incapable of precise allocation between the Academy and the Institutions, then TF shall allocate such expenses among the Institutions and the Academy, on a pro-rata basis, based on the number of students enrolled at the Academy and the Institutions, or upon such other equitable basis as agreed by the parties. Such expenses shall be presented to the Board upon occurrence.

Should TF enter into any subsequent agreement for the provision of full-service management with any other public school academy, TF shall ensure that the “maintenance of effort” (as defined by the Muskegon Intermediate School District) for Muskegon Maritime Academy is not diminished. TF agrees that the Chief Executive Officer and/or President of TF shall continue to consistently provide services to Muskegon Maritime Academy as well as continue to be the main point of contact to the Academy Board of Directors. Should there be a change in personnel in the positions of Chief Executive Officer and/or President of TF, the Academy shall have the option to terminate this Agreement without penalty, but only in the event that TF does not provide a replacement reasonably satisfactory to the Academy within 90 days, and only during the 15 day period following that replacement period or until the next regular Board meeting, whichever is later.

**6. Review of Budget.** TF shall prepare and propose an annual budget for the Academy, and any necessary amendments to the budget. The Board shall review, revise, and timely approve the annual budget and consider any required amendments as more fully described in Exhibit A.

**7. Procurement Policies.** The Board hereby retains the obligation, as provided in Section 1274 of the Code, to adopt written policies governing the procurement of supplies, materials, and equipment to the

Academy. Unless otherwise prohibited by law, TF shall directly procure all supplies, materials, and equipment provided that TF complies with the Code including, but not limited to, sections 1267 and 1274 of the Code, MCL 380.1267 and MCL 380.1274 as if the Academy were making these purchases directly from a third party supplier or vendor and the Board's written policies promulgated thereunder related to such items. In paying for supplies, materials, and equipment on behalf of the Academy, TF shall not charge an added fee or mark up. All supplies, materials, and equipment procured for the Academy by TF shall be inventoried by an acceptable method of inventory and further that an inventory of Academy equipment shall be maintained so that it can be clearly established which property belongs to the Academy.

## **ARTICLE VI**

### **Proprietary Information**

1. **Academy's Rights to Curriculum and Educational Materials.** The Academy shall own, without restriction, all proprietary rights to curriculum and educational materials that: (a) are or were directly developed by the Academy and paid for with Academy funds; or (b) are or were developed by TF at the direction of the Board with Academy funds. However, the Academy shall not obtain proprietary rights in any proprietary or licensed education models which the Academy has been granted a license to use by third parties.

2. **TF's Rights to Curriculum and Educational Materials.** TF shall own, without restriction, all curriculum and educational materials, and all other proprietary information owned by, developed by or otherwise in the possession of TF, except as set forth in this Article, and provided, that the Academy shall have a right to use any such materials during the term of this Agreement without payment of any additional fee.

3. **Non-Disclosure of Proprietary Information; Remedy for Breach.** Except as required by applicable law, this Agreement, or the Contract, during the Term of this Agreement and continuing after the expiration or earlier termination of this Agreement, each party hereby agrees that it shall not use or disclose to any third party, directly or indirectly, for any purpose whatsoever, any proprietary information or materials of the other party without the prior written consent of the other party. TF acknowledges that TF's educational materials and teaching techniques used by the Academy are subject to disclosure under the Code and the Freedom of Information Act.

If a party uses or discloses such proprietary information in violation of this Section 3, the disclosing party shall (a) be liable to the other party for all damages, including, but not limited to, lost profits resulting from the breach, and (b) be obligated to reimburse the non-disclosing party for its legal costs and reasonable attorney fees related to the enforcement of this Section 3.

## **ARTICLE VII**

### **Termination**

1. **Termination by TF.**

a. TF may terminate this Agreement prior to the end of the Term in the event the Academy fails to remedy a material breach within the required time frames below. A "material breach" in this context includes, but is not limited to, (a) the Academy's failure to timely remit the Fee or any reimbursement due to TF, and/or (b) the Academy's action or decision-making that is reasonably deemed by TF to be substantially inconsistent with the recommendations of TF relative to the Educational Program or the Services. In the event of a breach that involves the failure by the Academy to advance all funds required for payroll, the Academy shall have ten (10) days after notice from TF to either (i) remit the funds, or (ii) reach a mutually acceptable agreement with TF

related to the payment of the funds. The Academy shall have thirty (30) days after notice from TF to remedy all other material breaches.

b. Failure by TF to (a) declare a breach, (b) place the Academy on notice thereof, or (c) exercise or exert any remedy available to TF under this Agreement or applicable laws, shall not be deemed a waiver of TF's right and remedies whatsoever.

## **2. Termination by the Academy.**

a. The Academy may terminate this Agreement prior to the end of the Term in the event that TF fails to remedy a material breach within the required time frames below. A "material breach" in this context includes, but is not limited to: (a) failure by TF to reasonably account for its expenditures; (b) failure by TF to pay (using either Academy funds or funds that have been advanced to TF) the Academy's operating expenses as required under this Agreement (provided funds are available); (c) failure by TF to substantially follow policies, procedures, rules, regulations, or curriculum duly adopted by the Board which are not in violation of the Contract, applicable laws or this Agreement; (d) failure by TF to provide the Services as required by this Agreement; (e) failure to meet the performance goals as specified in Exhibit B ; and/or (f) any action or inaction by TF that is not cured within 60 days of notice thereof which causes the Contract to be revoked, terminated, suspended, or that is reasonably anticipated to cause the Contract to be put in jeopardy of revocation, suspension or termination, by the Authorizer.

b. Provided that the Academy has advanced such funds under Section V.4.f, TF's failure to pay all funds required for payroll shall be a material breach of this Agreement. TF shall have ten (10) days after notice from the Academy to either (i) pay such funds, or (ii) reach a mutually acceptable agreement with the Academy related to the payment of such funds. TF shall have thirty (30) days after notice from the Academy to remedy all other material breaches, other than a breach under Section VII.2.a(f), for which TF shall have sixty (60) days to remedy such material breach.

c. Upon expiration or termination of this Agreement, all advances or billable costs incurred consistent with this Agreement and the Contract, if any, paid by TF shall be repaid by the Academy, unless otherwise agreed in writing by TF and the Academy. The Academy shall make payment within 10 days to the extent cash is available, and shall pay towards the balance, if any, immediately as and when additional cash is available.

d. Failure by the Academy to (a) declare a breach, (b) place TF on notice thereof, or (c) exercise or exert any remedy available to the Academy under this Agreement or applicable laws, shall not be deemed a waiver of the Academy's rights and remedies whatsoever.

e. In addition to the foregoing, the Academy may terminate this agreement as set forth in Section V.5.

f. Notwithstanding the foregoing, the Academy may, without penalty, transition the financial management services portion of the Services (the "**Financial Services**") provided by TF hereunder to a third-party provider of such services, to be effective upon completion of the then-current academic year, provided that the Academy delivers written notice of its intent to transition the Financial Services at least ninety (90) days before the end of that academic year. If the Board exercises this option, the parties shall clearly delineate which Financial Services are being transitioned and determine a reduction in fees bearing reasonable proportion to that reduction in Financial Services provided by TF.

3. **Revocation or Termination of Contract.** If the Academy's Charter Contract issued by the Authorizer is suspended, revoked, terminated, or a new charter contract is not issued to the Academy after expiration of the Academy's Contract, this Agreement shall automatically be suspended or terminated, as the case may be, on the same date as the Academy's Contract is suspended, revoked, or terminated, or expires without further action of the parties.

4. **Change in Law.** If any federal, state or local law or regulation, or court or administrative decision, or attorney general's opinion (collectively referred to in this Agreement as the "**applicable laws**") has a substantial and material adverse impact (as reasonably determined by the party suffering the impact)

on the ability of the impacted party to carry out its obligations under this Agreement, then the impacted party, upon written notice, may request a renegotiation of this Agreement. If the parties are unable or unwilling to successfully renegotiate the terms of this Agreement within ninety (90) days after the notice, and after making good faith efforts which shall include, but not be limited to, the use of a third-party arbitrator and/or alternative dispute resolution process, the impacted party may terminate this Agreement as of the end of the then-current academic year.

5. **Transition.** The Academy and TF shall make all efforts necessary to remedy a breach of this Agreement in order to continue school operations until completion of the then-current school fiscal year. If a breach cannot be remedied, the Board and TF agree to work cooperatively to transition management and operations of the school without disrupting the school's operations. Upon expiration or termination of this Agreement, or if this Agreement is terminated due to a Contract revocation, reconstitution, termination or non-renewal, TF shall, without additional charge:

a. close the financial records on the then-current school fiscal year which includes, but is not limited to, the completion and submission of the annual financial audit, state and federal grant reporting and all other associated reporting within required timelines established by the appropriate local, state, or federal authority;

b. organize and prepare student records for transition to the new ESP, self-management or in the case of a school closure, transfer to a student's new school as designated by the student's parent/legal guardian or to a person or entity authorized to hold such records;

c. provide for the orderly transition of employee compensation and benefits to the new ESP or self-management without disruption to staffing, or in the case of school closure, final payment of all employee compensation, benefit and tax obligations related to services provided by the ESP to the Academy;

d. organize and prepare the Academy's records, both electronic and hard-copy, for transition to the new ESP, self-management or dissolution; Complete and organize all Academy documents, including, without limitation, Board minutes, third party contracts, correspondence relating to Academy business, notices, and so forth, by facilitating the depositing of the same in the Academy's designated central depository location in a timely manner; and

e. provide for the orderly transition to the new ESP, self-management or dissolution of all Academy-owned assets including, but not limited to, furniture, fixtures, equipment, and real estate. This includes any keys, log-in information and passwords related to any Academy asset.

The parties may agree upon other transition or wind-up services to be provided by TF after the Term of this Agreement, at mutually agreed upon fee and documented in a separate contract for services.

6. **Personal Property upon Termination or Expiration.** Upon any termination or the

expiration of this Agreement, the Academy may elect (a) to purchase any personal property permanently located at the Academy's site(s) which has been purchased or leased from a third party solely with TF funds, provided such purchase or lease is permitted under the purchase or lease documents relating thereto, at the fair market, depreciated value of such personal property or (b) to return same to TF. All personal property purchased or leased by TF using the Academy funds is and shall remain the personal property of the Academy.

7. **Obligations upon Termination or Expiration.** Upon the expiration or termination of this Agreement, the parties shall remain obligated for all financial or other obligations due at the time of the expiration or termination; once all such obligations are satisfied, the parties shall have no further obligations to each other under this Agreement whatsoever except for the continuing obligations under Article VI and Article VIII.

8. **Effective Date of Termination.** Any termination of this Agreement for cause or without cause shall not take effect until the earlier of: (i) an approved agreement by the Academy with another Educational Service Provider ("ESP") (or self-management) is in effect; or (ii) the end of the current school year in which the termination is invoked. If a breach cannot be remedied, the Academy Board and TF agree to work cooperatively to transition management and operations of the school without disrupting the school's operations. TF shall perform this transition as described in Article VII, Section 5 of this Agreement.

9. **Amendment Caused by Academy Site Closure or Reconstitution.** In the event that the Academy is required (i) to close an Academy site pursuant to a notice issued by the State School Reform/Redesign Officer under Section 507 of the Code, MCL 380.507; or (ii) to undergo a reconstitution pursuant to Section 507 of the Code, MCL 380.507, and the Contract, and such closure of an Academy site or reconstitution causes an amendment to or termination of this Agreement, the parties agree that this Agreement shall be amended or terminated to implement the Academy site closure or reconstitution, with no cost or penalty to the Academy, and TF (including any person or entity subcontracted by TF) shall have no recourse against the Academy or the Authorizer, or any third party affiliated with or engaged by the Authorizer, for implementing such site closure or reconstitution.

## ARTICLE VIII

### Indemnification and Cooperation

1. **Indemnification of TF.** To the extent permitted by law and subject to Section 3 of this Article VIII, during the Term and continuing after any termination or the expiration of this Agreement, the Academy shall indemnify and save and hold TF and all of its employees, officers, directors, subcontractors and agents, harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of: (a) any non-compliance by the Academy with any agreements, covenants, warranties or undertakings of the Academy contained in or made pursuant to this Agreement; (b) any misrepresentation or any breach of the representations and warranties of the Academy contained in or made pursuant to this Agreement; (c) the Academy's breach of the Agreement; and/or (d) the negligence or intentionally wrongful acts of the Academy's directors, officers, employees, agents or representatives.

In addition, to the extent permitted by law, the Academy shall indemnify and reimburse TF for all legal costs and reasonable attorney fees associated with the defense of any such claim, demand, or suit. If desired, all or part of the indemnification obligations set forth in this Section VIII.1 may be met by the purchase of insurance by the Academy. TF shall have the right to collect from the Academy any losses, judgments, or settlement amounts for which the Academy is responsible. The indemnification in this Section shall also specifically apply, without limitation, to any current claims or litigation at the time this Agreement is executed, as well as any future or additional claims or litigation regarding any prior activities of the Academy.

**2. Indemnification of the Academy.** To the extent permitted by law, during the Term and continuing after any termination or expiration of this Agreement, TF shall indemnify and save and hold the Academy and all of its employees, officers, directors, subcontractors and agents harmless against any and all claims, demands, suits or other forms of liability that may arise out of, or by reason of: (a) non-compliance by TF with any agreements, covenants, warranties or undertakings of TF contained in or made pursuant to this Agreement; (b) TF's breach of the Agreement; and/or (c) the negligence or intentionally wrongful acts of TF's directors, officers, employees, agents or representatives.

In addition, TF shall reimburse the Academy for all legal costs and reasonable attorney fees associated with the defense of any such claim, demand, or suit. If desired, all or part of the indemnification obligations set forth in this section may be met by the purchase of insurance by TF. The indemnification in this Section shall also specifically apply, without limitation, to any current claims or litigation at the time this Agreement is executed, as well as any future or additional claims or litigation regarding any prior activities of TF.

**3. Immunities and Limitations.** The Academy may assert all applicable immunities and statutory limitations of liability in connection with any claims arising under this Agreement.

**4. Responsibility of the Academy.** The Academy shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of the Academy's agents and employees (if any) in connection with the performance of the Academy's responsibilities under this Agreement; provided, however, that nothing in this Agreement is intended, nor shall be construed, as a waiver of the governmental immunity provided to the Academy and its incorporators, board members, officers, employees, and volunteers under section 7 of 1964 PA 170, MCL 691.1407. If TF is made a party to any litigation involving claims arising out of or relating in any way to any alleged acts and/or omissions of the Academy or its directors, agents, or employees, the Academy shall provide any reasonable assistance requested by TF in the defense against such claims.

**5. Responsibility of TF.** TF shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of TF's agents and employees in connection with the performance of TF's responsibilities under this Agreement. If the Academy is made a party to any litigation involving claims arising out of or relating in any way to any alleged acts and/or omissions of TF or its directors, agents, or employees, TF shall provide any reasonable assistance requested by the Academy in the defense against such claims.

**6. Mutual Duty to Cooperate.** The parties acknowledge that each party has a duty and obligation to cooperate with the other party, and further that such duty to cooperate is a material part of this Agreement. The purpose of the duty to cooperate is to enable each party to perform its obligations as efficiently as possible. The duty to cooperate shall include all areas of the business of the Academy and the Services, including but not limited to potential and actual issues related to employees or teachers as they arise. The duty to cooperate also includes reasonable assistance in the event of litigation or a dispute involving a party related to the Academy or the Services, such as provision of testimony, records and/or documents reasonably related to the litigation or dispute (that are not otherwise protected from disclosure).

**7. Indemnification of Saginaw Valley State University.** The parties acknowledge and agree that the Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives are deemed to be third party beneficiaries for purposes of this Agreement. As third party beneficiaries, the parties hereby promise to indemnify and hold harmless Saginaw Valley State University Board of Control, Saginaw Valley State University and its members, officers, employees, agents or representatives from all claims, demands, or liability, including attorney fees, and related expenses, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other losses of any kind whatsoever and not caused by the sole negligence of Saginaw Valley State

University, which arise out of or are in any manner connected with Saginaw Valley State University Board's approval of the Public School Academy application, the University Board's consideration of or issuance of a Contract, the Academy's preparation for and operation of a public school, or which are incurred as a result of the reliance by Saginaw Valley State University and its Board of Control members, officers, employees, agents or representatives upon information supplied by the Academy or TF, or which arise out of the failure of the Academy to perform its obligations under the Contract issued to the Academy by Saginaw Valley State University Board of Control. The parties expressly acknowledge and agree that Saginaw Valley State University and its Board of Trustee members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

University may commence legal action against TF to enforce its rights as set forth in this section of the Agreement.

## **ARTICLE IX**

### **Insurance**

1. **Academy Insurance.** The Academy shall maintain such policies of insurance coverage in the amounts as required by the Contract. TF shall comply with any reasonable information or recording requirements under the Academy's policies of insurance.

2. **TF Insurance.** TF shall maintain separate policies of insurance including separate general liability and umbrella insurance coverage at levels satisfactory to the University President, with the Academy listed as an additional insured on all policies. TF shall maintain such policies of insurance in the amounts as required by the Contract and the Michigan Universities Self-Insurance Corporation ("M.U.S.I.C."). In the event the Authorizer or M.U.S.I.C. requests any change in coverage by TF, TF agrees to comply with any change in the type or amount of coverage, as requested, within thirty (30) days after notice of the insurance coverage change. The insurance coverage required of TF shall not be in lieu of the insurance coverage requirements applicable to the Academy. Any policy of insurance maintained by TF must include coverage for sexual molestation or abuse, must name the University as an additional, named insured, and shall not be changed, revoked or modified absent thirty (30) days' notice to the University President. In the event the University President modifies the level, type, scope or other aspects of such coverage, then TF shall undertake like and similar modifications within 30 days of being notified of such change.

3. **Evidence and Notices.** Each party shall, upon request, present evidence to the other that it maintains the requisite insurance as required in this Article IX. The policies of insurance of each party shall also provide that the other party receive from the insurer(s) a minimum thirty (30) day written notice of any termination of said policies.

4. **Worker's Compensation Coverage.** Additionally, each party shall maintain workers' compensation insurance, as required by state law, covering their respective employees.

## **ARTICLE X**

### **Warranties and Representations**

1. **Warranties and Representations of the Academy.** The Academy represents to TF that (a) it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (b) its actions have been duly and validly authorized, and (c) it has adopted the necessary resolutions or expenditure approvals required for execution of this Agreement.

2. **Warranties and Representations of TF.** TF represents and warrants to the Academy that (a) TF is a Michigan nonprofit corporation in good standing and duly authorized to conduct business in the State of Michigan, (b) TF has the authority under applicable laws to execute, deliver, and perform this Agreement and to incur the obligations provided for under this Agreement, (c) the actions of TF have been duly and validly authorized, and (d) TF has adopted any and all resolutions required for execution of this Agreement.

3. **Mutual Representations and Warranties.** Each party represents and warrants to the other party that except as disclosed in writing to the other party, to its knowledge, there are no pending actions, claims, suits, or proceedings, whether threatened or reasonably anticipated, against or affecting it, which if adversely determined would have a material adverse effect (as might be reasonably determined by the non-affected party if disclosed) on its ability to perform its obligations under this Agreement.

## ARTICLE XI

### Alternative Dispute Resolution

1. **Mediation.** Any and all disputes between the parties concerning any alleged breach of this Agreement or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement shall first be submitted to mediation for resolution in Wayne County. Both parties must mutually agree upon the mediator selected and shall participate in all meetings in good faith. The mediation shall be conducted in accordance with the rules of the American Arbitration Association seated in Wayne County, Michigan, with such variations as the parties and arbitrators unanimously accept. The parties shall share equally in the costs of the mediation including forum fees, expenses, and charges of the mediator. A summary of the mediation settlement signed by both parties, including the amount of the settlement, shall be required. The Authorizer shall be notified of said decision and the summary shall be made available upon request.

2. **Arbitration.** If the mediation does not result in a mutually satisfactory compromise, then the matter shall be resolved by arbitration, and such procedure shall be the sole and exclusive remedy for such matters. Unless the parties agree upon a single arbitrator, the arbitration panel shall consist of three (3) persons. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association seated in Wayne County, Michigan, with such variations as the parties and arbitrators unanimously accept. The arbitrators' award, which shall include a written explanation as to the final decision and award, shall be final and binding. The Authorizer shall be notified of final decision and the arbitrator's written explanation shall be made available to the Authorizer. A judgment on the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction, by any party, without the consent of the other party. The parties shall share equally in the costs of the arbitration including forum fees, expenses, and charges of the arbitrator(s). It shall be within the discretion and purview of the arbitrator or arbitration panel to award reasonable attorney fees to the prevailing party.

## ARTICLE XII

### Pupil Performance Standards

1. **Pupil Performance Standards.** TF is responsible for and accountable to the Board for the performance of students who attend the Academy. In providing the Educational Program, TF shall implement pupil performance evaluations that permit evaluation of the educational progress of each Academy student, using measures of student and school performance required by the Contract and such additional measures as shall be mutually agreed between the Board and TF and that are consistent with the Contract. TF shall be responsible for achieving educational goals and related measures as outlined in the Charter Contract, Schedule 7.B., and Exhibit B to this Agreement.



## **ARTICLE XIII**

### **Miscellaneous**

1. **Entire Agreement.** This Agreement supersedes and replaces any and all prior written or oral agreements and understandings between the Academy and TF regarding the subject matter hereof. This Agreement, including the Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof.

2. **Force Majeure.** Notwithstanding any other sections of this Agreement, neither party shall be liable for any delay in performance or inability to perform due to acts of God or due to war, riot, embargo, fire, explosion, sabotage, accident, labor strike, flood, terrorism, or other acts beyond its reasonable control.

3. **Governing Law; Jurisdiction.** This Agreement and the rights of the parties hereto shall be interpreted according to the laws of the State of Michigan, and the parties consent to the jurisdiction of the courts of record of the State of Michigan for all proceedings in connection with this Agreement.

4. **Official Notices.** All notices or other communications required by the terms of this Agreement shall be in writing and sent to the parties at the addresses set forth below. Notice may be given by certified or registered mail, postage prepaid, return receipt requested, traceable carrier or personal delivery. Notices shall be deemed to have been given on the date of personal delivery, or, if given by mail, the postmark date. Unless amended or updated in writing, the addresses of the parties hereto for the purposes of this Agreement shall be:

**If to the Academy:**

Muskegon Maritime Academy  
Attention: Board President  
571 East Apple Avenue  
Muskegon, MI 49442

**With a copy to:**

Miller Canfield  
James M. Crowley, Principal  
150 West Jefferson, Suite 2500  
Detroit, Michigan 48226

**If to Teachers First:**

Teachers First  
Attention: Executive Director  
27655 Middlebelt Rd., Suite 170  
Farmington Hills, MI 48334

**With a copy to:**

David Steinberg  
550 W. Merrill  
Birmingham, MI 48009

5. **Assignment.** This Agreement may not be assigned and is not assignable to any third party.

6. **Amendment; Effect of Headings.** None of the terms and provisions of this Agreement may be modified or amended except by an instrument in writing executed by an authorized officer of each party. Any modification or assignment of this Agreement must be done in a manner consistent with the Contract and the Authorizer's Educational Service Provider Guidelines. No amendment shall be contrary to the Contract and shall be accompanied by a legal opinion. Whether or not substantial, the Academy shall submit to the Saginaw Valley State University School/University Partnership Office all amendments to the Agreement within 10 days after such amendment. This Agreement and any amendment to this Agreement shall not be effective until and unless the Director of the Saginaw Valley State University School/University Partnership Office notifies the Academy in writing that it does not disapprove of the Agreement or amendment. The underlined headings are included for convenience of the reader, and if the underlined headings are inconsistent with the other text the underlined text shall be disregarded.

7. **Waiver.** No waiver of any portion of this Agreement shall be deemed or shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver unless otherwise expressly stated in writing.

8. **Severability.** The invalidity of any portion or term of this Agreement shall not affect the remaining portions or terms of this Agreement. In the event a portion or a term of this Agreement is deemed invalid, the parties shall cooperatively work together to modify the invalid portion or term as minimally as possible to cure the invalidity, while at all times preserving the spirit and purpose of the applicable portion or term.

9. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

10. **No Third Party Rights.** This Agreement is made for the sole benefit of the Academy and TF. Except as otherwise expressly provided herein, nothing in this Agreement shall create or be deemed to create a relationship between the parties, or either of them individually with any third person, third party beneficiary, fiduciary, or the Authorizer.

11. **Survival of Termination.** All representations, warranties, indemnities, and non-disclosures/confidentiality obligations made in this Agreement shall survive any termination or expiration of this Agreement without limitation.

12. **Delegation of Authority; Compliance with Laws.** Nothing in this Agreement shall be construed as delegating to TF any of the powers or authority of the Board that are not subject to delegation by the Board in accordance with the Contract and all applicable laws. The parties agree to comply with all applicable laws. No provision of this Agreement shall interfere with the Board's exercise of its statutory, contractual, and fiduciary responsibilities governing the operation of the Academy. No provision of this Agreement shall interfere with the Academy Board's duties under the Contract, and the Academy's duties under the Contract shall not be limited or rendered impossible by action or inaction of TF. Further, no provision of this Agreement shall prohibit the Board from acting as an independent, self-governing public body, or allow public decisions to be made other than in compliance with the Open Meetings Act.

13. **Execution.** The parties may execute this Agreement by facsimile or in counterparts. A facsimile, photographic copy, or an electronic version of this Agreement may be relied upon by either party, or any third party, as if it were an original signature copy. If this Agreement is executed in counterparts, the separate counterpart signature pages shall be combined and treated by the parties, or any third party, as if the separate counterpart signature pages were part of one original signature copy.

**14. Review by Independent Counsel.** The parties agree that each has reviewed, or had the opportunity to review, this Agreement with its own independent legal counsel prior to the execution of this Agreement.

**15. Chief Administrative Officer.** Pursuant to the Uniform Budget and Accounting Act, MCL 141.422b, the Academy Board is responsible for designating the Chief Administrative Officer for the Academy. If the Academy employs a superintendent, then the Academy Board may designate the superintendent as the Chief Administrative Officer of the Academy. If the Academy contracts with a superintendent, then the Academy Board shall designate an Academy Board member as the Chief Administrative Officer of the Academy. Neither TF nor any owner, officer, director, employee or agent of TF shall be designated as the Chief Administrative Officer of the Academy, but a TF employee may assist an Academy Board member who is the Chief Administrative Officer for certain purposes enumerated by the Academy Board through Board action.

**16. Bankruptcy Notification.** TF shall notify the Academy Board if any principal or officer of TF, or TF (including any related organizations or organizations in which a principal or officer of TF served as a principal or officer) as a corporate entity, files for bankruptcy protection or, at the time this Agreement is executed, has filed for bankruptcy protection within the last six (6) months or within any applicable preference period, whichever is longer.

[SIGNATURES ON FOLLOWING PAGE]

The undersigned hereby execute this Agreement as of the date set forth first above.

**MUSKEGON MARITIME ACADEMY**, a  
Michigan public school academy

By: \_\_\_\_\_  
Its: Board President

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

**TEACHERS FIRST**, a Michigan nonprofit  
corporation

By: \_\_\_\_\_  
Its: Executive Director

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

## **EXHIBIT A**

The purpose of this Exhibit A is to set forth and define the Services to be provided by TF pursuant to the Agreement. The Academy shall pay for the Services in accordance with **Article V** of the Agreement.

### **PART ONE**

#### **EDUCATIONAL MANAGEMENT SERVICES**

Except as otherwise provided in this Agreement, TF shall be responsible for all of the management, operation, administration, and education at the Academy, which includes, but is not limited to, all of the following obligations:

1. TF shall implement and administer the Educational Program (**defined in Article I, Section 2 of the Agreement**), including administration of any and all extra-curricular and co-curricular activities and programs, and shall be responsible for recommending and acquiring instructional materials approved by the Board, equipment, and supplies. Modification of the Educational Program may only occur with the prior written consent of the Board and, if required, an amendment to the Contract that requires Authorizer approval.

2. TF may perform functions other than instruction, including but not limited to purchasing, professional development, management of Academy facilities, and administrative functions off-site (i.e., not on the Academy property), unless prohibited by the Contract or applicable laws. Student records, which are the property of the Academy, and the books and records of the Academy shall be maintained by TF at the Academy's site. All financial, educational, and student records pertaining to the Academy are Academy property and all such records are subject to the provisions of the Michigan Freedom of Information Act. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. All records shall be kept in accordance with requirements of applicable law. All records pertaining to teacher and administrator certification, as well as a copy of the employee handbook shall be maintained physically on site or directly accessible at the Academy facility. Except as permitted under the Contract and applicable law, this Agreement shall not restrict the Authorizer's or the public's access to Academy records.

3. The Board shall be responsible for establishing and implementing recruitment and admission policies in accordance with the Educational Program and the Contract. TF shall enroll students for the Academy in accordance with such policies, provided that said policies are in compliance with the Contract and applicable laws.

4. TF shall provide student due process hearings in compliance with all applicable laws, to an extent consistent with the Academy's own obligations as to students only (and not as to faculty). The Board hereby retains the right to provide student due process hearings or other processes regarding students, as required by law.

5. TF shall administer and provide the Educational Program in a manner that shall meet the requirements imposed under the Contract and applicable law.

6. TF shall implement pupil performance evaluations consistent with the Educational Program and the Contract. At a minimum, TF shall utilize assessment strategies required by the Contract. The Academy and TF shall cooperate in good faith to identify other measures of and goals for students and school performance. TF shall be responsible for and accountable to the Board for the performance of students who attend the Academy.

7. TF shall plan and supervise the provision of special education services to students who attend the Academy. TF may subcontract these services if it determines that it is necessary and appropriate for the provision of services to students with special needs, in which case the costs associated with such subcontracted services shall be passed through to the Academy. Such services shall be provided in a manner that complies with the Contract and all applicable laws.

8. TF shall perform any function necessary or expedient for the administration of the Academy consistent with the Educational Program, the Contract, and Authorizer policies regarding Educational Service Providers.

9. TF may subcontract any and all aspects of the Services it agrees to provide to the Academy. However, TF shall not subcontract the management or oversight of the Educational Program, except as specifically permitted in this Agreement and the Contract. Any services to be provided by TF that are included in the Fee but are performed by a subcontractor shall not be charged to, reimbursed by, or passed through as an additional cost to the Academy.

10. TF shall not act in a manner that shall cause the Academy to be in breach of its Contract with the Authorizer.

11. TF shall provide information to the Board on a regular basis, or upon the Board's reasonable request, to enable the Board to monitor TF's performance under this Agreement.

## **PART TWO**

### **BUSINESS/FINANCE SERVICES**

1. TF shall be directly accountable to the Board for the administration, operation, and performance of the Academy in accordance with the Contract. TF's obligation to provide the Services is expressly limited by the budget approved by the Board pursuant to the terms of this Agreement. The Services shall be funded by the Academy budget, and neither TF nor the Academy shall be permitted to expend Academy funds on the Services in excess of the amount set forth in the Board-approved Academy budget.

2. In order to supplement and enhance the school aid payments received from the State of Michigan, and improve the quality of education at the Academy, TF shall assist the Academy's endeavors to obtain revenue from other sources (the "**Funding Sources**"), and in this regard:

a. The Academy and/or TF, with prior Board approval, may solicit and receive grants and donations in the name of the Academy from various Funding Sources consistent with the mission of the Academy;

b. The Academy and/or TF, with prior Board approval, may apply for and receive grant money in the name of the Academy from various Funding Sources;

c. To the extent permitted under the Code and Contract, TF or the Academy may charge fees to students for extra services, such as summer and after-school programs, athletics, etc., and charge non-Academy students who participate in such programs.

3. TF shall provide the Board with:

a. A proposed annual budget that shall conform to the state accounting manual and the Uniform Budgeting and Accounting Act, MCL 141.421 et seq. and in a form reasonably satisfactory to the Board and to the Authorizer. The budget shall comply with public accounting

standards applicable to public schools and public school academies in Michigan. The budget shall include anticipated revenues and projected expenses and costs reasonably associated with operating the Academy and the Educational Program including, but not limited to, the projected cost of all services and educational programs provided to the Academy, rent and lease payments, debt service, maintenance and repairs to Academy facilities, supplies and furnishings necessary to operate the Academy, taxes, insurance premiums, utilities, professional fees, and other costs and expenses connected to the operation of the Academy. The proposed budget shall be submitted to the Board for consideration not later than 30 days prior to the date of the scheduled hearing on the budget, and TF will continue to assist the Board through the approval process. TF shall also provide the Board with proposed budget amendments following the fall count day and prior to the end of each fiscal year.

b. Detailed monthly statements (or as requested by the Board) provided at least five (5) days before any regular-scheduled Board meetings (**“Regular Meeting”**), not more than forty-five (45) days in arrears, unless no Regular Meeting is scheduled for any particular month or a Regular Meeting is cancelled or delayed, in which case TF shall present such financials at least five (5) days before the next Regular Meeting or special Board meeting (**“Special Meeting”**). Financial statements shall include a balance sheet, an object-level detailed statement of revenues, cash flow statement, and statement of revenue, expenditures and changes in fund balance, detailing the status of the budget to actual revenues and a detailed schedule of expenditures for review and approval by the Board, invoices as specified in Article V (in a format agreed upon between TF and the Board Treasurer), and if requested by the Board, an aged report of accounts payable, the check ledger and bank reconciliations. The Board must be presented with a balance sheet and statement of revenues, expenditures, and changes in fund balance at each regularly scheduled meeting, together with a cash flow projection for the next full calendar month. If at any time the cash flow projection indicates that there will be insufficient funds to pay vendors, as and when due, TF shall notify the Board Treasurer as soon as reasonably possible. This report shall explain any variances from the approved budget and shall contain recommendations for necessary budget corrections and shall be prepared at least five (5) days in advance of the Board meeting to be included in the Board packets sent to Board members, and its designees, in preparation for Board meetings. TF shall provide special reports as necessary to keep the Board informed of materially changing conditions. The Board shall also receive a report of past due vendor accounts on a monthly basis at least five (5) days before each Regular Meeting, unless no Regular Meeting is scheduled for any particular month or a Regular Meeting is cancelled or delayed, in which case TF shall present such report at least five (5) days before the next Regular Meeting or re-scheduled Special Meeting. Any inaccuracies in any reports provided pursuant to this section, as may be noted by either TF or the Board Treasurer, shall be corrected and such corrected report shall be sent to the Board Treasurer within five (5) business days after notification. Failure to provide this information as provided in this Section 3 of Part Two and failure to pay vendors in accordance with applicable due dates of payment shall be considered a breach of this Agreement unless otherwise waived by the Board in writing; provided, however, that TF shall not be held responsible nor deemed to have breached this Agreement if TF’s failure to provide such information or make such payments is due to any action or inaction on the part of the Board, any of its members, or any third party beyond the reasonable control of TF; and provided further that TF’s responsibility to pay vendors shall be subject to the other terms and conditions of this Agreement, and TF shall not be held responsible nor deemed to have breached this Agreement if it is otherwise in compliance with the applicable terms and conditions of this Agreement, including, but not limited to, that TF shall not be held responsible for either (1) any failure to pay a vendor if the Academy has insufficient funds to make such payment, or (2) exercising its reasonable discretion in determining which vendors to pay when there are insufficient funds to pay all;

c. Assistance in facilitating the annual audit in compliance with applicable laws showing the manner in which funds are spent at the Academy; however, it is acknowledged that only the Board shall select and retain independent auditors and the Board shall contract directly

with any auditor of its choice, and TF shall cooperate with the production of any and all documents necessary for the audit, and any such audit shall be the property of the Academy. All finance and other records of TF related to the Academy necessary for conducting the audit will be made available to the Academy, the Academy's independent auditor and the Authorizer upon request;

d. Assistance with other aspects of the business administration (as determined and as generally understood in the industry) of the Academy as agreed between TF and the Board.

### **PART THREE**

#### **HUMAN RESOURCES SERVICES**

1. TF shall be responsible for all personnel functions, including professional development for all instructional personnel and the personnel functions outlined in the Agreement.

2. TF shall recommend staffing levels to the Board, and select, evaluate, assign, discipline, and transfer personnel, consistent with applicable laws, and consistent with the parameters adopted and included within the Academy's budget and the Educational Program.

3. As set forth in the Agreement, TF shall identify and appoint School Leaders to administer the Educational Program at the Academy. The School Leaders shall be employees of TF.

4. TF shall provide the Academy with teachers, certified in the applicable grade levels and subjects approved by the Board and consistent with the Contract and applicable law. TF shall ensure that the curriculum taught by the Academy's teachers is the curriculum set forth in the Contract. Such teachers may also provide instruction at the Academy on a full or part time basis. If assigned to the Academy on a part-time basis, such teachers may also provide instruction at another institution, or other locations approved by TF. Each teacher assigned or retained to the Academy shall hold a valid teaching certificate issued by the State Board of Education under the Code, to the extent required under the Code and all other requirements as established by the Michigan Department of Education, the Authorizer, and state and federal law.

5. TF shall provide the Academy with qualified and necessary support staff as required. The parties anticipate that such support staff may include clerical staff, administrative assistants and director, bookkeeping staff, maintenance personnel, and the like. Such support staff may, in the discretion of TF, provide services at the Academy on a full or part time basis. If assigned to the Academy on a part-time basis, said support staff may also provide services at another institution, or other locations approved by TF.

6. Since, except as specified in this Agreement, all teaching, support staff and other non-teaching personnel performing functions on behalf of the Academy, shall be employees of TF, compensation of all employees of TF shall be paid by TF. For purposes of the Agreement and this Exhibit, "compensation" shall include salary and benefits. Evaluation and compensation systems administered by TF shall comply with all applicable laws, including Sections 1249 and 1250 of the Code. TF shall pay its portion of social security, unemployment, and any other taxes required by law to be paid on behalf of its employees assigned to the Academy. Unless required by applicable laws, TF shall not make payments to the Michigan Public School Employees' Retirement System or any other public retirement system on behalf of its employees. TF accepts full liability and is responsible for paying all salaries, benefits, payroll taxes, worker's compensation, unemployment compensation and liability insurance for its employees leased to the Academy or working on Academy operations irrespective of whether TF receives an advancement of its costs or the payment of services from the Academy; the Academy remains obligated to advance such funds in accordance with Article V of the Agreement, and failure to do so shall be considered a material breach of the Agreement.



7. TF agrees that it shall not assign any of its employees, agents, or other individuals to perform any services except as provided for under Article 1, Paragraph 11. TF shall require that the results of the criminal background check are received, reviewed, and used by the School Leader acting on behalf of the Academy and/or Board, only as permitted by law to confirm that the individual does not have a criminal history and to and to evaluate the qualifications of the individual for his/her assignment. Evidence of such background checks and unprofessional conduct checks required by law shall be stored on site, in a secure location and in physical form, at the Academy or be directly accessible at the Academy facility.

## **PART FOUR**

### **COMPLIANCE SERVICES**

1. TF shall, within the scope of its delegated authority and power, complete all compliance requirements of the Authorizer, including making all necessary compliance submissions to Epicenter. However, TF shall not be responsible for the Academy's failure to meet compliance requirements due to the actions or inactions of the Board or any third party hired by the Board, including other contractors, agents, or employees.

2. TF shall provide services for preparation of the monthly and special Board meetings, such as preparing agendas and meeting notices, providing necessary staff to record and distribute the meeting minutes of the Board's meetings, and posting and archiving all relevant Board meeting materials.

3. TF will manage activities associated with the schools' food service programs and pupil accounting including Count Day and student enrollment.