

TEACHERS FIRST, Inc.

EDUCATIONAL SERVICES AGREEMENT

This Educational Services Agreement (the “Agreement”) is made and entered into as of July 1, 2024, by and between **TEACHERS FIRST, INC.** (“TF” or “Teachers First”), whose administrative offices are located at 27655 Middlebelt Road, Farmington Hills, Michigan 48334 and **Muskegon Maritime Academy**, whose place of business is 571 East Apple Avenue, Muskegon, MI 49442 (the “Academy”) a Michigan public school academy formed under Part 6(A) of the Revised School Code (the “Code”), as amended, being MCL §380.501 to §380.507. This Agreement is supplemented by an Addendum attached hereto and made a part hereof and dated as of event date herewith (the “Addendum”). Notwithstanding anything in this Agreement to the contrary, to the extent there is a conflict between the language of this Agreement and the Addendum, the language of the Addendum shall control.

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

Teachers First represents and warrants that it is a duly organized Michigan nonprofit corporation, in good standing, and that Teachers First (its officers, employees and agents) has the educational background, managerial experience, expertise, training, capacity, qualifications, and financial resources to provide the Services contemplated under this Agreement. Through its affiliated network of service providers, Teachers First provides human resource, business and finance, and pupil accounting administrative services and employees to the Academy.

The Academy and Teachers First desire to enter into an independent contracting relationship whereby Teachers First will be engaged to provide school management services as set forth in this Agreement (the “Services”). This Agreement between the Academy and Teachers First sets forth the understandings with respect to the relationship between them, the scope of their relationship and the limitations on the relationship between the parties.

The Academy and Teachers First further state that Teachers First shall have full and unfettered authority to hire and terminate Worksite Employees to fulfill the contractual terms and conditions as set forth herein, provided that, the Academy shall be consulted with respect to certain decisions before implementation as provided for herein.

IN CONSIDERATION OF THE MUTUAL PROMISES AND BENEFITS CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

I. SERVICES

I.1 Human Resources Services and Worksite Employees Solution.

Teachers First agrees to contract to the Academy and the Academy agrees to contract from Teachers First the Worksite Employees on the terms and conditions in this Agreement. "Worksite Employees" means all employees assigned to fill the Academy worksite job positions as determined by the Academy Board of Directors ("Board" or "Academy Board"). Teachers First shall also provide and control and be responsible for all human resources and personnel administrative services, payroll, benefits and related administrative functions for Worksite Employees.

Personnel Issues. The Academy and Teachers First will consult with each other on personnel related issues; however, the Worksite Employees are exclusively Teachers First employees and Teachers First has exclusive and complete control and decision-making authority over these Worksite Employees. Whenever a timely response is requested (or is by its nature required), Teachers First and the Academy agree to respond to any communication from the other as soon as possible but in no event more than forty-eight (48) hours from the origination of any such communication. Further, Teachers First shall designate a contact person who is available to respond to Academy communication within such period.

The Board. The Board is the governing body with oversight responsibilities over the Academy. The Board is responsible for the monitoring of academic outcomes and is accountable through the Contract for the academic outcomes of 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 is 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.

I.2 Business, Finance, and Accounting Solution (Teachers First is responsible for the following):

(1) Financial Operations

- Responsible for the creation and monitoring of the annual general fund operating budget for the Academy.
- Responsible for monitoring budget appropriations on a monthly basis to ensure all operational expenditures are within adopted budget allocations.
- Responsible for all periodic budget amendments in compliance with State of Michigan and charter compliance guidelines.
- Provide fiscal approval for all school related expenditures and allocate funds within the operating budget amounts.
- Maintain an appropriate fund balance per all state and federal requirements.

- Responsible for monitoring and reporting any state aid or revenue adjustments and completing budget amendments to be approved by the Academy Board.

(2) State & Federal Revenue

- Responsible for grant expenditures related to all State, local and federal revenue allocated to the Academy.
- Responsible for tracking and properly allocating all federal program funds to appropriate categories in compliance with applicable State and federal guidelines.
- Responsible for compliance with Title I independent auditor requests as mandated by the Office of Field Services.

(3) School Related Expenditures

- Responsible for tracking expenditures in compliance with Board adopted policies and procedures for purchasing.
- Provide timely feedback to school administration on budget related matters.
- Responsible for ensuring the most cost effective means of allocating resources throughout the school district.
- Ensures compliance with State and federal bid requirements for vendor contracts.
- Responsible for periodic review of all expenditures to prevent negative spending or allocations within all budget line items.
- Will be fiscally prudent to ensure that the Academy maintains a positive fund balance of at least 5%.

(4) Fiscal Operations

- Responsible for monthly cash flow analysis to prepare all recurring, vendor and payment arrangements on behalf of the Academy.
- Responsible for the bi-weekly review/approval of payroll through the review of payroll time reports completed by payroll personnel.
- Responsible for general ledger posting of all payroll related expenditures on a bi-weekly/monthly basis.
- Responsible for general ledger posting of all monthly expenditures related to the Academy. Such transactions include credit card payments, checks, direct payments and reimbursements.
- Responsible for preparing an annual Cash Flow Worksheet for the upcoming fiscal year in estimation of the required borrowing.
- Responsible for preparing and completing annual state aid borrowing agreements with various financial institutions.

(5) Financial Reporting

- Responsible for the preparation of monthly financial statements which include 1) statement of revenues and expenditures and 2)

Budget to Actual Summary to be presented to the Academy Board at each scheduled monthly meeting.

- Responsible for the preparation and completion of all quarterly financial statements including, Balance Sheet, Income Statement, Budget to Actual Summary and Quarterly Cash Flow Worksheet
- Responsible for all financial matters related to charter compliance including the timely submission of quarterly financial statements to the Authorizer.
- Solely responsible for preparation of all schedules and reports for the annual independent audit in compliance with State and federal accounting guidelines.
- Responsible for scheduling and coordination of independent audit site review and related audit activities.
- Responsible for the submission of the independent audit report to local State and federal departments prior to the State deadline through the completion of all audit related reporting in a timely manner.
- Responsible for submission of the Financial Information Database (FID) Report to the State of Michigan on an annual basis within the prescribed State deadline.
- Responsible for submission of State of Michigan Year End reporting for grant revenue and federal spending.
- Additional Reporting as requested by financial institutions.

6) Other Duties Include

- Responsible for maintaining communication and correspondence with legal counsel.
- Responsible for providing a comprehensive weekly report to the management organization relative to school business matters.
- Excellent written and oral skills are essential for the performance of business duties.
- Responsible for the fiduciary review of all short term and long term contractual agreements to align such agreements within appropriate budget allocations.
- Will be proficient in the communicating with bank and financial professionals within business and industry.
- Demonstrate clear, concise, correct communication both written and oral.
- Complete and submit all assignments and tasks on time.
- Report to the Academy at least monthly or as agreed upon.
- Work Environment-The majority of the work will be performed remotely/virtually. The controller will be on-site as he/she determines necessary and will continue duties at a remote location at other times. The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable

accommodations may be made to enable individuals with disabilities to perform the essential functions.

1.3 **Pupil Accounting and Reporting Solution**

During the term of the Agreement, Teachers First shall be responsible to provide Pupil Accounting Services to the Academy in a satisfactory and timely manner and shall devote the time, energy, skills and resources to do so. Such Services shall be as follows:

A. State Reporting

Services will be provided that are necessary for correct and accurate pupil accounting information to be submitted to the state, including the following:

- a) General Student Maintenance, transferring in-district, and students who exit the district. This will be performed through the Michigan School Data System (MSDS). This is completed between each of the student count dates. This information will also be used for the Direct Certification Report through MSDS. .
- b) For each student count period (three per year) Unique Identification Code (UIC) information for incoming students will be completed and input to the student information system.
- c) Before each of the student count periods, a list of students will be provided by the Academy. These lists will include students identified as; homeless, Title 1, Limited English Proficient (LEP), special education, work-based students, part-time scheduled students, and any other student coded as nontraditional.
- d) All errors within the MSDS system will be corrected by Teachers First with the assistance of the pupil accounting assistant. The position of pupil accounting assistant must work at the school location. Contacts by and between the pupil accountant and the pupil accounting assistant are expected and may be frequent at times.
- e) All count day paperwork/electronic information will be sent to Teachers First by the last day of the tracking period. After this information has been received, an audit response will follow. Teachers First will contact the pupil accounting assistant to work collaboratively to correct any errors.
- f) After all paperwork/electronic documentation has been completed, a copy of the non-certified document(s) will be sent to the pupil accounting assistant at the Academy location. After review, the pupil accounting assistant will send the information back to Teachers First with a signature that will indicate the file is correct and ready for certification and submission. After the file is certified, a final membership report will be printed out/electronically generated and sent to the academy designee for a signature. This signature will indicate the file has cleared submission.
- g) All paperwork/electronic files will then be sent to the local ISD for their audit purposes.
- h) Bureau of Assessment and Accountability (BAA) requires at least two submissions in MSDS to preregister the students for State assessments. Teachers First will generate a monthly transfer in/out document from the

student information system and, if needed, will contact the Administrator or designee to confirm enrollment.

- i) Teachers First will assist with the Teacher Student Data Link (TSDL) report for the Academy with the support of documentation sent by the pupil accountant assistant and the Administrator or designee when needed.
- j) Teachers First will gather the information and complete all reporting requirement for the Graduation/Drop-Out Report, Yearly Clock Hours Report, maintain and update Educational Entity Master (EEM), and Great Start Readiness (GSRP) collections.

B. Special Education

Teachers First will work with the special education coordinator or designee in gathering all information via special education reporting. This will give an accurate account of students to be input to the special educational module on the student information system. Teachers First will be required to have access to special education/IEP systems to ensure accurate FTE special education counts. This student information will then be uploaded to the state MSDS site. A report of students will then be sent to the special education coordinator or designee for confirmation before certifying. This student information must also be updated each during student count period and verified using the special education reporting document called the Worksheet B. This information imports into the workbook.

C. Section 25 Reporting

Teachers First will generate the state reports for the Academy related to Section 25e of the State School Aid Act (for pupils who transfer after the Fall Pupil Membership Count Day. This will be done on a monthly basis to report all entering students and all exiting students.

Additional Services

Teachers First and its employees and agents will not be required to perform any services other than those services described in this Agreement. If Teachers First or its employees/agents are required to perform any services not described herein

(“Non-Contractual Services”), the Academy agrees to pay Teachers First for such Non-Contractual Services at a rate of \$75 per hour per person conducting the work. This may include technology support, site and facilities support, pupil transportation support, etc. Leadership and Instructional Coaching will be billed at a rate pf \$800.00 per 7 hour workday. Any demand by the Academy for the performance of Non-Contractual Services without additional payment per this provision, or failure by the Academy to pay for Non-Contractual Services, will be deemed a material breach. The Academy has the option to request Teachers First to complete the Civil Rights Data Collection (CRDC) for an additional fee of \$3000 in total.

Academy Responsibilities. The Academy agrees to:

- a. Provide Teachers First with information in a timely manner that is necessary and required for Teachers First to perform its duties and obligations under this Agreement.
- b. Consult with Teachers First when scheduling meetings which representatives from Teachers First are to attend.
- c. Accept responsibility for maintaining all original records in compliance with Michigan's record retention policies or other applicable local, state, and federal requirements.
- d. Process timely payments for services under this Agreement. Payments are due no later than the last day of the month for the month when services were rendered.
- e. Assign/designate pupil accounting assistant(s) as the site to assist by gathering, completing, and communicating records, documentation, and information to the pupil accountant as needed.
- f. Allow for an on-site person to assist with required segregation of duties and to be funded within the Academy's budget.

The number of days and hours allocated for pupil accounting is determined by the needs of the Academy. The pupil accountant assigned by Teachers First will conduct work mostly remotely. The pupil accountant will determine if onsite work is required, and the pupil accountant will notify the Academy when and if onsite work is required.

I.3 Academy Operations. Teachers First can provide additional management services to the Academy for additional fees. Subject to the terms and conditions of this Agreement, and as permitted by applicable law, the Academy may choose to add services to the partnership with Teachers First for the provision of educational, business, administrative, facilities, professional development, management services concerning the Academy's business operations, pupil accounting, compliance reporting, instructional activities and all other matters, including but not limited to: the curriculum, books, equipment and educational supplies; State funding; finances and budgeting; parent relations; student achievement and guidance; student discipline; food; building and property management; transportation; sports and extracurricular activities, public relations; and the day-to-day working conditions of the Worksite Employees. Teachers First shall have all authority to hire, direct, supervise, evaluate, discipline, or terminate Worksite Employees.

II. TERM OF AGREEMENT

II.1 Effective Date. Teachers First shall provide services commencing on July 1, 2024 ("Effective Date"). This Agreement shall remain in full force and effect through and including June 30, 2027 ("Term"), subject to a continued Contract from the Academy Board, continued state per pupil funding and the termination provisions contained in this Section II, including but not limited to Section 2.2 below. The maximum term of this Agreement shall not exceed the length of the Contract.

II.2 Termination. This Agreement shall remain in full force and effect until one of the following occurs:

- (a) In the event one (1) party shall be in Default under Section 6.6, the other party may immediately terminate this Agreement subject to Section 2.6 below.
- (b) During the Term of this Agreement and subject to Section 2.6 below, either party may terminate this Agreement upon thirty (30) days' written notice of intent to terminate and this Agreement shall be terminated at the end of the thirty (30) day written notice of termination period.
- (c) If the Academy's Contract issued by the Saginaw Valley State University Board of Control is suspended, revoked, terminated or a new charter contract is not issued to the Academy after expiration of the 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, terminated or expires without further action of the parties.
- (d) This Agreement shall automatically terminate in the event of a State-mandated shut down of the Academy with no cost or penalty to the Academy and Teachers First shall have no recourse against the Academy or the Authorizer for implementing the closure.

II.3 **Dissolution / Bankruptcy.** This Agreement shall terminate, subject to Section 2.6 below, if a petition in Bankruptcy Court is filed by or against the Academy, shall have been voluntarily or involuntarily adjudicated bankrupt by any Court of competent jurisdiction, or if a petition is filed for reorganization of the Academy, or if a receiver shall have been appointed for all or a substantial part of the Academy's business. Teachers First shall notify the Academy Board if any principal or officer of Teachers First, or Teachers First (including any related organizations or organizations in which a principal or officer of Teachers First 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.

II.4 **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 Michigan Department of Education 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 Teachers First (including any person or entity subcontracted by Teachers First) 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.

II.5 **Obligation upon Termination.** On the termination of this Agreement by any party for any reason:

- (a) Teachers First shall immediately notify in writing each Worksite Employee that his/her employment relationship with Teachers First has been terminated, and

- (b) The Academy shall immediately notify in writing each Worksite Employee that this Agreement has been terminated. The Academy shall reimburse Teachers First for all Worksite Employee compensation and reimbursements pursuant to Section 3, if any, due through the date of termination of this Agreement.
- (c) Upon termination or expiration of this Agreement, or this Agreement is terminated due to a Contract revocation, reconstitution, termination or non-renewal, Teachers First shall, to the extent applicable to the services being provided under this Agreement, without charge: (i) close the books on the then-current school fiscal year; (ii) organize and prepare the Academy's records for transition to the new ESP, self-management or dissolution; (iii) provide the Academy with an updated fixed asset schedule showing all property owned by the Academy; (iv) provide an updated list of outstanding vendor invoices with total amount owed (including the total outstanding owed by the Academy to Teachers First, if any; (v) the amount owed by Teachers First to the Academy, if any; (vi) organize and prepare student records for transition to the new ESP, self-management or in the cause 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; (vii) ensure the closeout of existing grants and the transfer of grant funded property to Academy, if applicable; and (viii) 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 Teachers First to the Academy. This includes any keys, login information and passwords related to any Academy asset.

II.6 **Timing of Termination.** The Academy Board and Teachers First agree to make all efforts necessary to remedy a breach of this Agreement to continue school operations until completion of the then-current school year. 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 Teachers First agree to work cooperatively to transition management and operations of the school without disrupting the school's operations. Teachers First shall perform this transition as described in Section 2.5(c) of this Agreement.

III. PAYMENTS & FEES

III.1 **Initial Fee.** Teachers First has agreed to waive the Initial Fees.

III.2 **Educational Service Provider/HR Solution Fees is 3.5% of gross payroll. Business, Finance and Accounting Solutions Fees are \$4000 monthly, and the Pupil Accounting/Compliance/Reporting Solution is \$1300 monthly.**

(July 1, 2024 - June 30, 2027):

The Academy shall pay an Educational Service Provider Fee equal to 3.5% of gross payroll (to be paid at each payroll period) and the fees (i.e., pass through costs and reimbursements, fixed worker compensation costs and fixed fees) set forth in Schedule A for the Services rendered by Teachers First pursuant to this Agreement (the "Fees"). All other fees that may be subject to this Agreement are also set forth by Schedule A. For new employees hired after execution of this Agreement (as opposed to the Effective Date), the Academy agrees to pay Teachers First an Employee Processing Fee of twenty (\$20.00) dollars per Worksite Employee as set forth in Schedule A.

- (a) The Academy's payment obligation shall continue during normal periods of Worksite Employee absence for vacation, sick leave, legal holidays and emergency situations.
- (b) The Fees shall be payable during the entire Term of this Agreement and any unpaid fee shall be immediately due upon termination of this Agreement.

III.3 **Payment.** Payment shall be processed by wire transfer or by Automated Clearing House debit at dates and times chosen by Teachers First and communicated to the Board. The payment for all payrolls must be delivered to Teachers First not less than three business days prior to the payroll check date. Teachers First shall charge a 1% fee if the entire payroll amounts cannot be available at least three days prior to the payroll check date.

III.4 **Reimbursements.** In addition to the Fees detailed in Schedule A, the Academy shall amend its budget and reimburse Teachers First for all additional costs and expenses requested and approved by the Board in writing in advance and increases in Pass-Through Costs/Reimbursements (see Schedule A) mandated by state law or regulation. Any increases in Fixed Costs as set forth in Schedule A shall be borne and paid for by Teachers First without reimbursement from the Academy. The Academy acknowledges that Teachers First is the employer of record and in addition to the fees received by Teachers First pursuant to this Agreement, Teachers First shall retain all federal and state tax benefits, credits or deductions in consideration of services rendered to the Academy pursuant to this Agreement, including but not limited to IRS Sec 125 Plan benefits and savings. Further, the Academy shall reimburse Teachers First for any benefits premium unnecessarily incurred by Teachers First because a Worksite Employee is laid off or terminated during a benefit month (i.e., the prepaid cost of the premium for the remainder of the month following termination). In the event this Agreement is terminated by Teachers First, and the Academy has not fully paid all Fees and payments owing as of the date of termination, the Academy shall immediately pay Teachers First for any Fees owing, payroll, benefit payments or other costs incurred with respect to Worksite Employees owing as of the date of termination.

III.5 **Late Payments.** All payments for the Business Solution Services and for the Pupil Accounting Solution Services, and any additional agreed upon services not made by the Academy on or before the Due Date shall be subject to a late charge of three (3%) percent of the amount due. Due dates for these services are the first of each month for work performed for the immediate prior month. The 3% fee will be charged again for each 30 day period for which the payment is not made in full. Checks returned from the

Academy's bank will be subject to the late payment charge of fifty (\$50.00) dollars plus any additional costs incurred by Teachers First.

- III.6 **Modification.** Any required adjustment to Federal, State or local taxes shall be effective on the date of such adjustment or change. In the event Teachers First fails to include the additional cost on the next invoice when due the same shall be due retroactive to the date of change, as mandated, and shall be due by the Academy upon receipt of the next invoice.
- III.7 **Verification by the Academy.** Upon execution of this Agreement, the Academy will provide Teachers First a true, correct and complete list of the Academy's most recent payroll. Thereafter, Teachers First will verify all time submissions of Worksite Employees. If the Academy believes that there is an error in the Worksite Employees submitted time or payment, it shall be the responsibility of the Academy to communicate and provide written notice of the error. Until corrected by the Academy, the Academy shall not deduct any amount from payment of its current invoice as a credit or setoff. Errors, upon verification, shall be corrected by an adjustment on the next invoice.
- III.8 **Workers' Disability Compensation Injury Reporting.** In order for Teachers First to pro-actively manage workers' disability compensation claims for the benefit of Teachers First and the Academy, all work related injuries must be reported by the Academy to Teachers First on a First Report of Occupational Injury form (the "Injury Report Form," supplied by Teachers First) within twenty-four (24) hours of injury.

IV. WORK ENVIRONMENT & RELATED MATTERS

- IV.1 **Worksite Employees.** With Teachers Firsts' guidance, the Academy shall comply with all safety, health and work laws, regulations and rules at its own expense. With Teachers Firsts' guidance, the Academy shall also comply with all safe work practices and use of protective equipment required by federal, state or local law at the worksite locations. Accordingly, Teachers First shall consult with the Academy, and the Academy shall have certain risks and responsibilities including, but not limited to, premises liability, safety risks attendant to the ownership of premises and equipment (which are traditionally assigned to the owner of a business, location, or equipment).
- IV.2 **The Academy Responsibilities.** The Academy (i) shall, at its expense, comply with all applicable health and safety laws, regulations, ordinances, directives, and rules of controlling Federal, State and local government and (ii) will immediately report all employee accidents and injuries to Teachers First by completing an Injury Report Form provided by Teachers First within twenty-four (24) hours after the accident or injury. The Academy shall provide or ensure use of all personal protective equipment, as required by Federal, State or Local law, regulation, ordinance, directive, or rule or as deemed necessary by Teachers First. Teachers Firsts' workers compensation carrier and Teachers Firsts' liability insurance carrier shall have the right to inspect the Academy's place of business at all times to insure compliance with this Section and with the terms of this Agreement. Teachers First shall be responsible for providing records of hours

worked by the Worksite Employees. The Academy shall reimburse Teachers First for any overtime pay that is or becomes due to or owed to any Worksite Employee.

- IV.3 **Annual Budget Preparation.** The Board will cause to be prepared an 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 satisfactory to the Board and in compliance with the Contract. The budget shall contain reasonable details as requested by the Board and as necessary to comply with the General Accepted Accounting Practices (GAAP) standards. The budget shall include anticipated revenues and projected expenses and costs reasonably associated with operating the Academy including, but not limited to, the projected cost of all services and programs provided by 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 Academy Board shall be responsible for determining the budget reserve amount included as part of the Academy's annual budget. In addition, the Academy Board is responsible for implementing fiscal policies that will assist the Academy in attaining the stated budget reserve amount. Upon approval by the Academy Board, copies of the budget will be given to Teachers First.
- IV.4 **Records.** All financial, educational and student records and related documents prepared by Teachers First or otherwise created in connection with the rendering of services at the Academy's offices are the property of the Academy and shall be prepared in accordance with practices and procedures determined by Teachers First and the Academy and applicable law. The Academy may make copies of records necessary for it to perform its duties and obligations under this Agreement. Teachers First shall make any and all reports with regard to its Worksite Employees required by applicable law and shall assist the Academy in timely complying with any and all compliance and reporting obligations it may have to the Michigan and United States Departments of Education, the Authorizer or as otherwise mandated by applicable laws, rules and regulations.
- IV.5 **Working Facilities.** Worksite Employees and administrative staff of Teachers First may utilize the premises and facilities of the Academy in rendering services pursuant to this Agreement, including existing Academy infrastructure, such as office space, internal mail service, copiers, computers, internet access and email addresses. The Academy shall also bear the cost of providing a workplace that is in compliance with the requirements of the ADA of 2008, the Federal Rehabilitation Act or similar Federal, State or local laws, rules and regulations.

V. REPRESENTATIONS & WARRANTIES OF THE ACADEMY

The representations and warranties made by the Academy shall survive the termination of this Agreement. The representations and warranties in this Section are deemed to be material and Teachers First is entering into this Agreement relying on such representations and warranties. The Academy represents and warrants to Teachers First as follows:

- V.1 **Authorization.** The Academy has been duly authorized to execute and deliver this Agreement. The Academy's execution and performance of this Agreement will not, to

the best of the Academy's knowledge, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any law, rule or regulation applicable to the Academy; (b) violate any judgment, decree, order or award of any court, governmental body or arbitrator; or (c) violate the provisions of any separate contract, agreement or arrangement to which the Academy is bound.

V.2 **The Academy Employee Plans.** Except as communicated to Teachers First in writing prior to the execution of this Agreement:

- (a) **List of the Academy Employee Plans.** The Academy has supplied Teachers First with a true and complete list of all pensions, 401(k) benefit, profit-sharing, retirement, deferred compensation, welfare, insurance disability, bonus, vacation pay, or severance pay and other similar plans, programs and agreements ("Academy Employee Plan") relating to the Worksite Employee(s). The Academy has delivered to Teachers First true and complete copies of all the Academy Employee Plans which have been reduced to writing, and all modifications for each Academy Employee Plan.
- (b) **Retiree Benefits.** No Academy Employee Plan provides health or life insurance benefits for retirees.
- (c) **Claims.** To the best of Academy's knowledge, there are no threatened or pending claims, suits or other proceedings by any of the Academy's former employees, plan participants, beneficiaries or spouses of any of the above, the IRS, the Pension Benefit Guaranty Corporation, or any other person or entity involving any Academy Employee Plan, including claims against the assets of any trust, involving any Academy Employee Plan or any right or benefits thereunder, other than ordinary pursuant to domestic orders.
- (d) **Controlled Group.** The Academy is not a member of a "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code of 1986, as amended.

V.3 **Government Investigations.** The Academy has fully disclosed to Teachers First all government investigations, lawsuits or other adversary proceeding involving the Academy for five (5) years preceding the execution of this Agreement.

V.4 **Contracts and Commitments.** Prior to the execution of this Agreement, the Academy has provided Teachers First a true and correct copy of each of the following with respect to the Academy's former employees: all collective bargaining, trust, non-competition, employment and consulting agreements, executive compensation, employee stock option and stock purchase, and group life, health and accident insurance and other similar plans, agreements, memoranda of understanding or arrangements regarding Academy employees to which the Academy is a party or by which the Academy is bound.

V.5 **Workers' Disability Compensation Information.** The Academy has provided Teachers First with (a) insurance policies covering the Academy's employees for a period of not less than one (1) entire calendar year immediately preceding the execution of this Agreement and all renewal letters regarding such policies, whether or not such policies

were, in fact, renewed; and (b) audits regarding such policies for the same time, whether or not such audit was conducted or requested during or after the effective dates of such coverage(s). With respect to such information, the Academy represents that, to the best of its knowledge, the audit information, classification codes and experience modification information provided is complete and accurate and that no information is omitted that would, by its omission, cause such information to be misleading. The Academy acknowledges that, if not provided, there is no known audit or request for audit currently pending or outstanding. In the event Teachers First incurs any charges or surcharges on behalf of the Academy following an audit of Teachers First relating to the Academy's business after the date of this Agreement, whether or not such charges or surcharges relate to claims experience, employees' classification code changes or otherwise, the Academy shall be fully responsible and shall indemnify Teachers First for such charges and/or surcharges attributable to the Academy's business and/or Worksite Employees.

V.6 **Employer Relations.**

- (a) **Compliance.** The Academy is in compliance with all Federal, State and local laws respecting employment practices, terms and conditions of employment, wages and hours, and is not engaged in any discriminatory employment or unfair labor practice. There are no arrearages in the payment of wages, taxes or workers' disability compensation assessment or penalties.
- (b) **Labor Practices.** Except as the Academy has disclosed in writing prior to the execution of this Agreement:
 - (i) There are no unfair labor practice complaints against the Academy, by former employees, represented by a labor union, pending before the National Labor Relations Board or any State or local agency.
 - (ii) There is no pending labor strike or other material labor strike or other material labor trouble affecting the Academy and there is no material labor grievance pending against or affecting the Academy.
 - (iii) There are no pending arbitration proceedings arising out of or under any collective bargaining agreement to which the Academy is a party, or to the best of the Academy's knowledge, any basis for which a claim may be made under any collective bargaining agreement to which the Academy is a party affecting the Academy's former employees; and
 - (iv) There is no pending litigation or other proceeding or basis for an unasserted claim against the Academy by any of the Academy's former employees or group of former employees which is based on claims arising out of any of the Academy's former employee's employment relationship with the Academy, including, but not limited to, claims for breach of contract, tort, discrimination, employee benefits, wrongful termination or any common law or statutory claims.

VI. COVENANTS OF PARTIES

- VI.1 **Criminal Background Checks.** Teachers First and the Academy acknowledge that all Worksite Employees, or any other personnel provided by Teachers First to the Academy must be in compliance with all the Academy policy, procedures, rules and regulations. The Board or their representative (the “CHRI Representative”), shall conduct criminal background checks on all staff and subcontractors assigned to regularly and continuously work under contract at the Academy, as required by law. Teachers First shall conduct unprofessional conduct checks on all its Worksite Employees that are assigned to the Academy. Teachers First 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 criminal background checks and criminal conduct. Teachers First shall require that the results of the unprofessional conduct check are received, reviewed and used (subject to a verification process), only as permitted by law to confirm that the individual does not have a criminal history and to evaluate the qualifications of the individual for his/her assignment. Teachers First shall follow all applicable laws as it relates to this Section 6.1.
- VI.2 **Liability Insurance.** The Academy shall furnish upon signing this Agreement and keep in full force and effect at all times during the Term of this Agreement general liability insurance in an amount not less than one million (\$1,000,000) dollars. The Academy shall issue a Certificate of Insurance providing for not less than thirty (30) days advance notice of cancellation or material changes. Teachers First and the Academy shall maintain such policies of insurance as required by the Michigan Universities Self-Insurance Corporation (“M.U.S.I.C.”), the Contract, and applicable law. Insurance required of Teachers First shall not be in lieu of the insurance coverage requirements applicable to the Academy. In the event that the Authorizer or M.U.S.I.C. requests any change in coverage by Teachers First, Teachers First agrees to comply with any change in the level, type, scope, amount, or other aspect of such coverage, as requested, within thirty (30) days after notice of the insurance coverage change. The cost of procuring insurance coverage under this Agreement is a corporate cost to be paid by Teachers First. Any policy of insurance maintained by Teachers First under this Section 6.2 or Section 6.3 herein must include coverage for sexual molestation or abuse, must name Saginaw Valley State University as an additional, named insured, and shall not be changed, revoked or modified absent thirty (30) days’ notice to the University President.
- VI.3 **Sexual Molestation/Abuse Coverage.** The Academy, Teachers First and any subcontractor of the Academy or Teachers First shall obtain and maintain a sexual molestation/sexual abuse policy of insurance relative to students as required by M.U.S.I.C. and the Contract.
- VI.4 **Motorist Insurance.** In the event that a Teachers First employee is assigned to fill a job function requiring the employee to operate a vehicle for the Academy, the Academy shall furnish liability insurance. The policy shall insure against public liability for injury and property with a minimum combined single limit of five hundred thousand (\$500,000) dollars. The policy shall include uninsured motorist coverage with limits of no less than one hundred thousand (\$100,000) dollars. In states where “no-fault” laws apply, equivalent personal injury and property damage coverage shall be included. The Academy shall issue a Certificate of Insurance providing for not less than thirty (30) days

advance notice of cancellation or material changes. This coverage period shall survive this Agreement.

VI.5 **Indemnification.**

- (a) **The Academy.** To the extent permitted by law, the Academy agrees to defend, indemnify and hold harmless Teachers First, its officers, directors, shareholders, agents and employees from any claims made by Worksite Employees for any claims, demands, losses, costs, fees, penalties, fines or damages arising from any actions, conduct or omissions of the Academy or its officers, directors, shareholders, agents or employees. Such claims shall include, but are not limited to, charges of discrimination brought through the State Department of Labor, the Equal Opportunity Commission, the Workers' Compensation Bureau (or such similar department, commission or board other than State), fees and lawsuits alleging failure to comply with Federal and State wage and hour laws, wrongful termination, discrimination, denial of due process or other employment-related causes of actions resulting from employee discipline or termination. This indemnification shall also include failure by the Academy to accrue all payroll obligations to Worksite Employees. The Academy shall defend and indemnify Teachers First its officers, directors, shareholders, agents and employees from employee claims of sexual harassment by the Academy. The Academy shall be entitled to select its counsel and counsel for this indemnification provision. The duty to defend includes the right to pay actual attorney's fees incurred in defending such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or settlement against Teachers First.
- (b) **Teachers First.** Teachers First agrees to defend, indemnify and hold harmless the Academy, its officers, directors, shareholders, agents and employees for any claims, demands, losses, costs, fees, penalties, fines or damages arising from any actions, conduct or omissions of Teachers First or its officers, directors, shareholders, agents or employees. Such claims shall include, but are not limited to, charges of discrimination brought through the State Department of Labor, the Equal Opportunity Commission, the Workers' Compensation Bureau (or such similar department, commission or board other than State), fees and lawsuits alleging failure to comply with Federal and State wage and hour laws, wrongful termination, discrimination, denial of due process or other employment-related causes of action. Teachers First shall defend and indemnify the Academy, its officers, directors, shareholders, agents and employees from employee claims of sexual harassment by Teachers First. Teachers First shall be entitled to select its counsel and counsel for this indemnification provision. The duty to defend includes the right to pay actual attorney's fees incurred in defending such claims, and the duty to indemnify includes the duty to pay any award imposed by an administrative agency, judgment or settlement against Academy.
- (c) **SVSU.** 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 Teachers First, 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 Control members, officers, employees, agents or representatives may commence legal action against either party to enforce its rights as set forth in this Agreement.

VI.6 **Default.** Either party shall be in "Default" under this Agreement if following ten (10) days written notice from the other (provided, however, such period shall be extended for an additional reasonable period if the default is of a non-monetary nature and is such that it cannot be cured within ten (10) days and the party has diligently commenced the curing of such default and is diligently pursuing the same to completion) the party has failed to cure a material breach of this Agreement or any bankruptcy, receivership or insolvency proceeding is instituted by or against the party. Any action or inaction by Teachers First that is not cured within sixty (60) days of notice thereof which causes the Contract to be revoked, terminated, suspended or which causes the Contract to be put in jeopardy of revocation, termination or suspension by the Authorizer is a material breach.

VI.7 **Compliance with Employment Related Laws.** The Academy and Teachers First shall comply with all state and federal Employment Related laws, including but not limited to the following:

- (a) All local, state and Federal laws relating to equal employment opportunity and nondiscrimination in employment. Teachers First shall not be responsible for any action taken by the Academy with respect to the Worksite Employees, unless the Academy secures prior written authorization from Teachers First.
- (b) The Academy shall, upon request by Teachers First, make available comparable employment opportunities to Worksite Employees eligible for reinstatement following leave as required by the Family & Medical Leave Act ("FMLA") or any comparable law. The Academy shall bear the sole cost of compliance for any Worksite Employee eligible for reinstatement under the FMLA unless such noncompliance is caused by Teachers First.

- (c) The Academy shall, upon request by Teachers First, make available a reasonable accommodation to any Worksite Employee entitled to such as required by the Americans with Disabilities Act (“ADA”), the Federal Rehabilitation Act or any comparable law. The Academy shall bear the sole cost of providing a reasonable accommodation for any Worksite Employee. The Academy shall bear the sole cost of providing a workplace that is in compliance with any applicable architectural requirements of the ADA, the Federal Rehabilitation Act or similar local, state or Federal law.
- (d) The Academy shall give Teachers First not less than thirty (30) days advance written notice of: (i) any temporary or permanent shutdown of any facility, site of employment or employment unit; or (ii) any reduction in force resulting in the layoff of one-third or more of the persons (counting the Academy employees, Worksite Employees or both) working at any single facility, site of employment or employment unit of the Academy. The Academy shall give equivalent notice to Teachers First with respect to the Federal Worker Adjustment Retraining and Notification Act and any comparable law.
- (e) The Academy shall immediately notify Teachers First of any personnel action involving or affecting a Worksite Employee that would qualify as a qualifying event under the continuation coverage of the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). The Academy shall immediately notify Teachers First of any qualifying event affecting any plan beneficiary that would qualify as a qualifying event under COBRA.
- (f) No individual shall be considered to be engaged as a Worksite Employee until Teachers First has received and reviewed, to its sole satisfaction, sufficient pre-employment documentation submitted to Teachers First within 48 hours of acceptance of employment, including but not limited to Form INS-9 and IRC W-4.

VI.8 **Property Rights.** With exception of curriculum or educational materials developed or copyrighted by Teachers First, the Academy owns all proprietary rights to curriculum or educational materials that (i) are both directly developed and paid for by the Academy; or (ii) were developed by Teachers First at the direction of the Academy Board with Academy funds. Teachers First recognizes that educational materials and teaching techniques used by the Academy are subject to disclosure under the Revised School Code and the Freedom of Information Act (“FOIA”).

VII. REPRESENTATIONS & WARRANTIES OF TEACHERS FIRST

The representation and warranties made by Teachers First shall survive the termination of this Agreement. The representations and warranties in this Section are deemed to be material and the Academy is entering into this Agreement relying on such representations and warranties. Teachers First represents and warrants to the Academy as follows:

VII.1 **Authorization.** Teachers First has been duly authorized to execute and deliver this Agreement. Teachers First’s execution and performance of this Agreement will not, to

the best of its knowledge, with or without the giving for the passage of time or both, violate the provisions of any law, rule or regulation applicable to Teachers First.

- VII.2 **Government Investigations.** Teachers First has fully disclosed to the Academy all government investigations, lawsuits or other adversary proceeding involving Teachers First for five (5) years preceding the execution of this Agreement.
- VII.3 **Compliance.** Teachers First is in compliance with all Federal, State and local laws respecting employment practices, terms and conditions of employment, wages and hours, and is not engaged in any discriminatory employment or unfair labor practice. There are no arrearages in the payment of wages, taxes or workers compensation assessment or penalties.
- VII.4 **Student Confidentiality.** Except as permitted under the Code, Teachers First 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 Teachers First receives information that is part of an Academy student's education records, Teachers First shall not sell or otherwise provide the information to any other person except as provided 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.
- VII.5 **Breach of Personally Identifiable Information.** The parties agree that in the event either party becomes aware of a data breach of personally identifiable information or education records as defined in Section 1136 of the Code, MCL 380.1136 ("PII") with respect to information not suitable for public release, the other party shall be immediately notified in writing. The parties then shall mutually meet and confer with respective legal counsel to determine appropriate steps to be taken as required by state or federal law.
- VII.6 **Employee Non-Compete Agreement.** Teachers First agrees that no contract with employees assigned to the Academy worksite shall contain a non-compete or non-solicitation clauses of any nature prohibiting or restricting employment with the Academy, other educational institutions, or employee leasing companies.
- VII.7 **Payment Obligations of Teachers First.** Teachers First acknowledges that until this Agreement is terminated or expires, it shall fulfill its responsibility to pay salaries, benefits, payroll taxes, workers' disability compensation, unemployment compensation and liability insurance for its employees at the Academy worksite or working on Academy operations irrespective of whether Teachers First receives any advancement of costs or payment of services from the Academy.
- VII.8 **Compliance with Contract.** Teachers First agrees that it shall comply with the requirements of the Contract to the extent Teachers First is performing services on behalf of the Academy.

VIII. MUTUAL OBLIGATIONS

VIII.1 **Waiver of Subrogation.** Each party releases and discharges the other party, and any officer, agent, employee or representative of such party, from any liability whatsoever arising from the loss, damage or injury, for any reason, for which insurance is carried by the insured party at the time of such loss, damage or injury, to the extent of any recovery by the insured party. Provided, however, this paragraph shall not apply if its application would invalidate insurance protection.

VIII.2 **Mutual Cooperation.** The parties agree that, except where conflicts prevent it, they shall render to each other reasonable assistance and shall cooperate in good faith with each other to ensure the proper and adequate defense of any claim, action, suit or proceeding brought by a third party.

VIII.3 **Confidentiality.** The parties agree to cooperate in such a manner as to preserve and uphold the confidentiality of all business records and the attorney-client and work-product privileges, subject to FOIA and the disclosure provisions of the Code.

IX. MISCELLANEOUS

IX.1 **Governing Law.** This Agreement shall be interpreted and enforced under the laws of the State of Michigan applicable to contracts made and to be performed entirely within the State without giving effect to choice of law principles of the State. Any claim or controversy arising out of or relating to this Agreement or breach thereof, shall be litigated in the Wayne County Circuit Court or the U.S. District Court for the Eastern District of Michigan. The prevailing party shall be awarded its reasonable attorney fees and costs.

IX.2 **Independent Contractor.** Teachers First is an independent contractor of the Academy, and neither party is the agent of the other. 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 re-disclosure of personally identifiable information from education records. The Academy designates Teachers First and certain of its employees and subcontractors as school officials of the Academy having a legitimate educational interest such that they are entitled to access to educational records under FERPA. Teachers First 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 Teachers First shall be deemed to be an agent of the Academy.

IX.3 **Enrolling New Worksite Employee.**

(a) **Selection of Worksite Employees.** Teachers First shall engage new Worksite Employees only as set forth below. The School Leader may recommend job candidates to Teachers First for interview and potential hiring and shall not offer employment to any individual without consent of Teachers First. Teachers First

shall employ and assign to the Academy all such qualified and certified classroom teachers, instructors and support staff that the Academy, through its School Leader, approves and deems necessary to accomplish the educational mission of the Academy, and as provided in the Academy's approved budget and as directed by the Academy Board. Based upon recommendations by the Academy, Teachers First shall make the final selection of all Worksite Employees assigned to the Academy. Teachers First shall comply with the Immigration Reform and Control Act.

- (b) **Hiring, Evaluating, Supervising, Disciplining and Terminations.** Teachers First shall have the complete and exclusive authority and control over hiring, evaluating, supervising, disciplining and termination of Worksite Employees. Teachers First agrees that it will adopt, implement, and maintain a performance evaluation system for all required personnel as required by the Contract and applicable law.
- (c) **Teachers First Requirements.** Except as otherwise provided herein, Teachers First, or its designated subcontractor (approved by the Academy) shall be responsible for performing all pre-employment, background, license and eligibility review and other screening and investigation required by federal, state or local law, including the Code, as if employed by the Academy directly. Employment records of Worksite Employees shall be made available to the Academy upon request for purposes of auditing such records for compliance with applicable law.

IX.4 **Assignment/Amendment.** This Agreement may not be assigned and is not assignable to any third party. 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 Policies. 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.

IX.5 **Severability.** If any provision of this Agreement should be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected thereby and the provision deemed invalid, illegal, or unenforceable shall be construed and enforced to the greatest extent legally possible.

IX.6 **Waiver.** Failure by either party to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach nor prejudice either party with regard to any subsequent action.

IX.7 **Section Headings.** The Section Headings of this Agreement are for the convenience of the parties only and in no way alter, modify, limit or restrict the contractual obligations of the parties.

IX.8 **Forms.** The Academy shall utilize forms provided by Teachers First unless otherwise required by law or regulation.

IX.9 **Notices.** Any notice or other communication required by this Agreement shall be sufficiently given in writing and delivered personally, sent by confirmed facsimile transmission, overnight air courier (postage prepaid), or by registered or certified mail (postage prepaid with return receipt requested) addressed as follows:

For the Academy, to:

Muskegon Maritime Academy
571 East Apple Avenue,
Muskegon, MI 49442

with a copy to:

SVSU School/University Partnership Office

For Teachers First, to:

David Patterson
Teachers First, Inc.
27655 Middlebelt Road
Farmington Hills, MI 48334

with a copy to:

David L. Steinberg, Esq.
David L. Steinberg, P.C.
27777 Franklin Road, Ste. 2500
Southfield, MI 48025-4519

IX.10 **Entire Agreement.** This Agreement and the attached Addendum to this Agreement constitutes the entire agreement between the parties with regard to the subject matter herein. No prior oral or written agreement, practice or course of dealing between the parties relating to the subject matter herein shall supersede this Agreement or the Addendum.

IX.11 **Authorization.** The individual executing this Agreement is authorized on behalf of the Academy to bind the Academy to the terms set forth herein.

IX.12 **Compliance with Academy's Contract.** Teachers First agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Academy's Contract issued by the Authorizer. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement. 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 any action or inaction of Teachers First.

TEACHERS FIRST, INC.,
a Michigan corporation

By: Michelle Kyles
Michelle Kyles
Its: Executive Director

Dated July 1, 2024

~~Eric Hobb~~
Muskegon Maritime ACADEMY,
~~BY~~ Michigan public school academy

Name: Eric Hobb
Acting President
Its: _____

Date: July 1, 2024

ADDENDUM
TO EDUCATIONAL SERVICES AGREEMENT DATED EFFECTIVE AS OF
JULY 1, 2024, BY AND BETWEEN MUSKEGON MARITIME ACADEMY, A
MICHIGAN PUBLIC SCHOOL ACADEMY AND TEACHERS FIRST, INC.

This Addendum (this “Addendum”) to the above-entitled Educational Services Agreement (the “Agreement”) is effective the 1st day of July 2024, by and between Muskegon Maritime Academy, a Michigan public school academy (the “Academy”), and Teachers First, Inc., a Michigan Corporation (“TF” or “Teachers First”) with reference to the following:

RECITALS:

WHEREAS, the Parties have entered into the above referenced Agreement with respect to provision by Teachers First to the Academy of school management service, Worksite Employees; and

WHEREAS, the Parties desire to supplement certain provisions of the Agreement to reflect their mutual understanding as to certain agreed upon changes; and

WHEREAS, all capitalized terms herein, unless otherwise defined or modified hereby, shall have the same meaning for such terms as set forth in the Agreement.

NOW, therefore for valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. **On-Site Supervision and Worksite Employee Evaluation.** Teachers First shall bear the responsibility to coordinate and monitor the evaluation and supervision of all personnel, as well as the other duties and obligations of Teachers First. Teachers First and the School Leader shall jointly conduct all performance evaluations of Worksite Employees. The School Leader shall assist with human resources and personnel matters on the Academy’s premises during normal business hours and shall coordinate with and advise Teachers First as to the status of such matters at such times as requested by Teachers First’s home office. Teachers First and the School Leader shall determine the procedures to be followed by Worksite Employees in the day-to-day performance of their job duties. Teachers First shall adopt, implement and maintain a performance evaluation system for all required personnel as required by applicable law.

2. **Personnel Requirements.** The Academy, through its School Leader, shall advise Teachers First of the teachers, instructors, and administrators required by the Academy to perform its mission, as provided in the budget adopted by the Academy Board. Job descriptions and qualifications shall be consistent with Schedule 5 of the Contract (as defined in the Agreement). Teachers First shall comply with the Code with respect to the evaluation and compensation systems. (See Sections 1249 and 1250 of the Code).

3. **Worksite Employee Handbook and Policies.** Teachers First shall provide the Academy with its handbook of personnel policies and procedures, which policies and procedures guide Teachers First with respect to the discipline, layoff or termination of Worksite Employees. If a Worksite Employee has a problem or dispute regarding a co-worker, a student, parent, or any

other matter, the Worksite Employee shall first bring the problem or dispute to the attention of the School Leader. If the problem or dispute is not resolved in a reasonable time period, the Worksite Employee shall take the matter to Teachers First. If the issue continues and is related to a co-worker the issue is to be resolved by Teachers First. If the issue continues and is related to a student or parent, the issue shall be referred to the Academy Board.

4. **Personnel Issues.** In the event the Academy becomes dissatisfied with the performance of any individual Worksite Employee, the Board President, on behalf of the Academy Board, shall notify Teachers First, in writing, setting forth the nature of the dissatisfaction. Upon receipt of such notice Teachers First agrees to promptly begin to investigate the incident and to determine if the Worksite Employee should be removed from the premises during the investigation based on the severity of the incident. The determination of any disciplinary action to take (or not taken) with respect to the Worksite Employee, including termination, shall be solely that of Teachers First.

5. **Independent Auditor.** Teachers First shall not select, retain, evaluate or replace the independent auditor for the Academy. Teachers First and its staff will cooperate with the Academy's independent auditor.

6. **Compensation and Benefits.** Teachers First shall present to the Academy Board, on a frequency established by the Academy, the level of compensation and fringe benefits provided to Worksite Employees.

7. **Authority.** Neither Teachers First nor any provision of this Agreement and Addendum shall interfere with the Academy Board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the Academy. This Agreement and Addendum shall not in any way restrict the Academy 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.

8. **Governmental Immunity.** This Agreement and Addendum does not in any way restrict the Academy Board from waiving its governmental immunity or require the Academy Board to assert, waive or not waive its governmental immunity.

9. **Deposit of Funds.** No provision of this Agreement and Addendum shall affect the right of the Academy Board to direct that the deposit of all funds received by the Academy be placed in the Academy's depository account as required by law. The signatories on the Academy's accounts shall solely be properly designated Academy Board member(s) or Academy Board employees. Interest income earned from the Academy's accounts shall accrue to the Academy.

10. **Payment.** The Academy Board shall either pay or reimburse Teachers First for approved fees or expenses upon properly presented documentation and approval by the Academy Board or a properly designated Academy Board member. The Academy Board may advance funds to Teachers First for the fees or expenses associated with the Academy's operation provided that satisfactory documentation for the fees and expenses are supplied for Academy Board ratification at its next regularly scheduled meeting. No corporate costs of Teachers First shall be charged to, or reimbursed by, the Academy. The Academy agrees to execute the Certificate of Tax Matters attached to this Agreement hereto.

11. **Academy Records.** The financial, educational and student records pertaining to the Academy are Academy property and shall be kept confidential and are subject to the provisions of FOIA and the Code. All Academy records shall be physically or electronically available, upon request, at the Academy's physical facilities. 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. All records shall be kept in accordance with applicable State and Federal requirements. 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.

12. **Access to Teachers First Records.** All financial and other records of Teachers First related to the Academy shall be made available to the Academy, the Academy's independent auditor, who shall be solely selected by the Academy Board, and the Authorizer upon request. Teachers First shall make information concerning the operation and management of the Academy, including but not limited to, information in the Contract, including all exhibits, schedules, and the like, available to the Academy as deemed necessary by the Academy Board in order to enable the Academy to fully satisfy its obligations under the Contract.

13. **Purchases.** All equipment, materials and supplies purchased by Teachers First on behalf of or as agent of the Academy, shall be and remain the property of the Academy. Teachers First agrees to comply 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. If Teachers First procures equipment, materials and supplies at the request of or on behalf of the Academy, Teachers First shall not include any added fees or charges with the cost of equipment, materials and supplies purchased from third parties.

14. **Proprietary Rights.** All curriculum and educational materials that (i) are both directly developed and paid for by the Academy; or (ii) were developed by Teachers First at the direction of the Academy Board with Academy funds, shall be the sole proprietary property of the Academy. Curriculum or educational materials previously developed or copyrighted by Teachers First, or that are developed by Teachers First from funds from the Academy paid to Teachers First using funds from the Academy that are not dedicated for the specific purpose of developing Academy curriculum or educational materials, shall be the sole proprietary property of Teachers First. All educational materials, from any source, including from Teachers First, and teaching techniques used by the Academy, are subject to disclosure under the Code and the FOIA.

15. **Personnel Responsibility.** For all Worksite Employees, Teachers First accepts full liability and is responsible for administration and payment of benefits, salaries, payroll taxes, workers' disability compensation, unemployment compensation and liability insurance and for maintenance of Worksite Employees' personnel files and all other employee records required by state and/or federal law and the Contract for Worksite Employees and other employees working on Academy operations irrespective of whether Teachers First receives an advancement of its costs or the payment of services from the Academy. The Academy acknowledges that non-payment of such funds is considered a material breach of this Agreement. If unable to remedy the breach, this Agreement can be terminated subject to Sections 6.6 and 2.2 of this Agreement.

16. **Marketing and Development.** Marketing and development costs paid by or charged to the Academy shall be limited to those costs specific to the Academy program as approved by the Academy Board and shall not include any costs for the marketing and development of the business of Teachers First.

17. **Performance Evaluation of Teachers First.** The Academy Board may develop and implement a process for the review and evaluation of the performance of Teachers First under this Agreement. The policies and procedures providing for any such evaluation process shall be provided in writing to Teachers First. The Academy Board shall communicate in writing to Teachers First the results of any such performance review.

18. **Compliance with Academy's Contract.** Teachers First agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Academy's obligations under the Academy's Contract issued by the Authorizer. The provisions of the Academy's Contract shall supersede any competing or conflicting provisions contained in this Agreement.

19. **Required Disclosure.** On an annual basis, Teachers First shall provide the Academy Board all the same information that a school district is required to disclose under section 18(2) of the State School Aid Act, MCL 388.1618(2), for the most recent school fiscal year in which the information is available. Within thirty (30) days of receiving the information under section 18(2), the Academy Board shall make this information publicly available on its website, 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. Teachers First shall be responsible to provide only the items Teachers First is responsible for in conjunction with the scope of services in this Agreement.

20. **Other Agreements.** If the Academy intends to enter into a lease, execute promissory notes or other negotiable instruments, or enter into a lease-purchase agreement or other financing relationships with Teachers First, then such agreements must be separately documented, separately approved, and not be a part of or incorporated into this Agreement. All such agreements must comply with the Contract, as well as any applicable Authorizer policies and guidelines.

21. **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 Teachers First nor any owner, officer, director, employee or agent of Teachers First shall be designated as the Chief Administrative Officer of the Academy, but a Teachers First employee may assist an Academy Board member who is the Chief Administrative Officer in carrying out their responsibilities as permitted by the Academy Board.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date set forth above.

TEACHERS FIRST, INC.,
a Michigan corporation

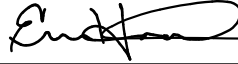
By: 

Michelle Kyles

Its: Executive Director

Dated: July 1, 2024

MUSKEGON MARITIME
ACADEMY, a Michigan public school
academy

By: 
Name: _____

Acting President

Its: _____

Date: July 1, 2024

CERTIFICATE RELATED TO TAX MATTERS

Teachers First, Inc. (the “Company”) and the Muskegon Maritime Academy (the “Academy”) hereby certify as follows, with regard to its performance under the Employee Management Services Agreement (the “Agreement”). These representations are deemed to be incorporated into the Agreement and binding upon the parties:

(A) The Company’s compensation under the Agreement is reasonable and is not based, in whole or in part, on a share of the 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;

(B) The Agreement does not pass along to the Company the burden of bearing any share of the net losses from the operation of the Academy or upon the disposition, damage or destruction of the Academy’s property;

(C) The term of the Agreement is not greater than 30 years or 80 percent of the useful life of the Academy’s tax-exempt bond financed school facility (if shorter) including all renewal options;

(D) The Academy bears the risk of loss upon the disposition, damage or destruction of the Academy’s property; and

(E) The Company 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.

Further, with regard to governance;

(A) No more than 20 percent of the voting power of the governing body of the Academy is vested in the directors, officers, shareholders, partners, members, and employees of the service provider, in the aggregate;

(B) The governing body of the Academy does not include the chief executive officer of the service provider or the chairperson (or equivalent executive) of the service provider’s governing body; and

(C) The chief executive officer of the service provider is not the chief executive officer of the Academy or any of the Academy’s related parties (as defined in §1.150-1(b)).

SCHEDULE A
Educational Services Agreement
Between Teachers First, Inc. and Muskegon Maritime Academy

- | | |
|--|--|
| 1. <u>The ESP/HR Solution:</u> | <u>3.5% of gross payroll (based on an estimate of \$400,000 annual gross payroll is \$14,000 annually)</u> |
| 2. <u>The Business, Finance and Accounting Solution:</u> | <u>\$4000 monthly</u> |
| 3. <u>Pupil Accounting/Compliance/Reporting Solution</u> | <u>\$1300 monthly</u> |
| <u>Total Approximate Annual Cost</u> | <u>\$81,100</u> |

Additional work to be performed by Teachers First must be requested by the school leader/superintendent and will be billed at \$75.00 per hour. Bills will be invoiced and provided to the Board of Directors each month.

This fee includes all items below, and the cost of M.U.S.I.C. Staffing Liability insurance as required will be paid by the Academy:

<u>State, MDE and the Authorizer.</u>	<u>included</u>
<u>HR Administration</u>	<u>included</u>
<u>Payroll Processing</u>	<u>included</u>
<u>Benefits Administration</u>	<u>Included</u>
<u>Employee Handbook</u>	<u>included</u>
<u>W-2 Processing</u>	<u>Included</u>
<u>401(k) management fees</u>	<u>Included</u>
<u>Flexible Spending Account fees (FSA)</u>	<u>Included</u>
<u>HRIS support, Time clock support, PTO, EE Portal</u>	<u>Included</u>

Safety Inspection Services Included

Pass-through/Reimbursed taxes & fees. These rates are subject to change)

<u>F.I.C.A.</u>	<u>6.20%</u>
<u>Medicare</u>	<u>1.45%</u>
<u>State Unemployment Tax (\$9,500)</u>	<u>4.86%</u>
<u>Federal Unemployment Tax (\$7,000)</u>	<u>0.80%</u>
<u>Set up fee---New Hire (after the initial agreement)</u>	<u>\$20.00</u>
<u>Termination fee---Employee</u>	<u>\$20.00</u>

Workers Compensation Rates: Per \$100.00 of payroll

<u>Code: 8868 Teaching Staff</u>	<u>\$0.68</u>
<u>Code: 8810 Clerical Staff</u>	<u>\$0.43</u>
<u>Code: 9058 Food Service</u>	<u>\$1.95</u>
<u>Code: 9015 Bldg. Maintenance</u>	<u>\$5.84</u>

Code: 7380 Drivers

\$6.76
