

## AGREEMENT *between*

LONGVIEW ISD and

LONGVIEW LEAP

This Agreement (the “Agreement”) is made and entered into on April 23, 2020 (Commencement Date) and effective as of July 1, 2020 (“Effective Date”) by and between **LONGVIEW INDEPENDENT SCHOOL DISTRICT**, a public independent school district and political subdivision of the State of Texas, (“LISD” or “District”) and LONGVIEW LEAP (“Operating Partner” or “OP” ) (together, the “Parties”) to operate LEAP Early Graduation High School (composed of Longview Early Graduation High School and the East Texas Advanced Manufacturing Academy or “ETxAMA”) (the “School”, “School Campus” or “campus”), or as modified by Section 3.02 below. The purpose of this Agreement is to create new opportunities for students and educators to thrive in educational settings that prioritize student outcomes. The Agreement is designed to be compatible with, but not dependent on, the operation of Senate Bill No. 1882, adopted by the 85th Texas Legislature in 2017, codified as Texas Education Code (“TEC”) §§ 11.174 and 42.2511 (“SB 1882”), which entitle a qualifying partnership between a public education institution and a campus charter holder to certain benefits.

### **ARTICLE I. RECITALS**

- 1.01 **Independent School District.** The District is an independent school district created in accordance with the laws of Texas.
- 1.02 **Authority to Contract.** The Board of Trustees of the District is empowered by the Texas Education Code (“TEC”), §§ 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the District.
- 1.03 **Benefits.** This Agreement is made pursuant to and in accordance with Texas Education Code (“TEC”) §§ 11.174 and 42.251 , which entitle a qualifying partnership between a school district and a campus charter holder to certain benefits.
- 1.04 **Non-Profit Organization.** Longview LEAP is an organization that is applying for exemption from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).
- 1.05 **Charter Granted & Term of Charter.** On this Commencement Date, the District hereby grants OP a campus charter in accordance with and under TEC Chapter 12, Subchapter C, specifically §12.0522, for the operation of LEAP Early Graduation High School. The campus charter

hereby granted authorizes OP to operate the School for a term beginning on July 1, 2020 and ending on July 31, 2023 unless terminated under Article IV.

- 1.06 Process to Add Schools to OP Scope of Authority. The Parties may, by amendment of this Agreement and issuance of an additional campus charter or amendment of the current charter, agree that OP is authorized to operate one or more schools in addition to the School specified in this Agreement at the time of the Commencement Date. OP will not be required to comply with an application or other procurement process in order to be so authorized, but the District may require OP to amend the educational plan, financial, and staff plans such that they address OP's plan for the additional School(s).
- 1.07 Consultation. The District has consulted with campus personnel regarding provisions to be included in this Agreement. The District's consultation with campus personnel occurred at a meeting in which personnel were able to ask questions and receive information. At that meeting, the District informed campus personnel of the opportunity to potentially be assigned to the School and campus personnel understand that assignments shall be determined solely by OP and that OP and the District are not dual employers. OP will be the sole employer of its personnel, and its personnel are subject to OP's Employee Handbook and OP's policies. The District will be the sole employer of School personnel, but District employees accepting a position at a campus operated by OP have been notified that OP has initial, final and sole authority to select, supervise, manage, assign, evaluate, develop, advance, compensate, and establish any other terms of service of any employee assigned to the campus.
- 1.08 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

## **ARTICLE II. PURPOSE OF AGREEMENT**

- 2.01 Contract for Services. This Agreement constitutes a contract for services.
- 2.02 Premise of Agreement. This Agreement is predicated on an understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the campus level and that autonomy and accountability are mutually reinforcing principles.
- 2.03 Student Achievement. The primary purpose of this Agreement is to

improve student outcomes by allowing the District to partner with OP to operate the School as an independent campus subject to transparent accountability requirements, which are primarily based on the performance standards established under TEC Chapters 39 and 39A. The provisions of this Agreement shall be construed and applied to achieve this purpose.

- 2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Agreement shall continue in effect for an initial three (3) -year term and, in accordance with the provisions of Article IV, renew automatically for successive three-year terms if the specified performance goals set forth in **Addendum A-3**, or a successor document approved by both Parties, are substantially met and the Agreement has not been terminated under Article IV.

### **ARTICLE III. DEFINED TERMS**

- 3.01 School Campus. “School Campus”, “Campus”, and “School” each has the meaning assigned in the Texas Administrative Code Title 19, § 97.1051(3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations, scheduling, transportation, and other services and responsibilities associated with school campus operation. Additionally, at the option of the OP for Longview High School (LHS), OP may enter into a contract to provide Career and Technology Education (CTE) services for students enrolled at LHS.
- 3.02 Schools. “Schools” shall refer to LEAP Early Graduation High School unless this Agreement is amended in accordance with Section 1.06, in which case “School” shall refer to any school over which OP has operating authority.
- 3.03 Facilities. “Facilities” are defined as the building(s) located on the School Campus and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building(s) and related improvements are located as more fully defined in Article XIII.
- 3.04 Material Breach. A “Material Breach” of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term, representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by either Party to meet generally accepted fiscal management and government accounting principles or comply with all Applicable Law under Section 3.05.

3.05 Applicable Law. “Applicable Law” means all state and federal laws, rules, regulations, and administrative and judicial determinations and decisions that govern the performance of this Agreement, as they currently exist or as they may be adopted, amended, or issued during the Term of this Agreement.

#### ARTICLE IV. TERM AND TERMINATION

4.01 Initial Term. The term of this Agreement shall begin on the Commencement Date and end on July 31, 2023 (“Initial Term”).

4.02 Renewal. If this Agreement remains in effect at the end of the Initial Term, it will renew automatically for successive three-year terms, or for longer terms if the Parties agree, if the specified performance goals set forth in **Addendum A-3** or a successor document approved by both Parties are substantially met, unless terminated under Article IV.

4.03 Termination Right to a Public Hearing. If the School successfully achieves the student outcome goals specified in **Addendum A-3**, attached, the District must hold two public hearings at least one week apart and at least sixty (60) days prior to any District action to terminate or non-renew the Agreement. At least one of the two public hearings shall be held at the OP’s campus between 6PM and 8PM Central Standard Time on a weeknight with at least five (5) days’ notice to OP and the public. If the School fails to achieve the student outcome goals specified in **Addendum A-3**, the District shall not extend this Agreement without a public hearing at least sixty (60) days prior to any District action to extend or renew this Agreement. Only after conducting the above required public hearing(s), may the District’s Board of Trustees schedule a meeting to take possible action on termination. The Board must conduct at least two readings of this action as described below in this section. Any deliberations among and action taken by the Board of Trustees shall be conducted in open session with specific notice on the Agenda(s) that the Board is considering and may take action to terminate this Agreement with OP.

4.04 Vote by Board of Trustees. Any decision by the Board of Trustees to terminate or non-renew this Agreement for any reason shall be accomplished by an affirmative vote of the full Board of Trustees with the vote and decision of the Board being confirmed through two meetings and two votes of the Board held at least five (5) business days apart.

4.05 Modification or Termination by Mutual Consent. The Parties shall

annually meet to conduct a joint review of this Agreement as well as matters related to effective implementation of its terms. This Agreement may be modified or terminated at any time by mutual written agreement of OP and the District without penalty if termination is effective no sooner than the end of the then-current school year.

- 4.06 Termination for Cause. Either Party may terminate this Agreement prior to the end of the then-current term if the other Party fails to remedy a Material Breach of this Agreement within sixty (60) days after written notice by the non-breaching Party of such Material Breach; provided, however, that if the breach involves failure to protect the health, safety, or welfare of students enrolled at the school within the meaning of Education Code Section 12.115(a)(3), then no such notice and opportunity to cure shall be required. The termination of the Agreement shall be effective as of the end of the then-current school year unless it is manifestly unsafe for students to remain at School under the direction of OP for the remainder of the school year. If OP terminates this Agreement during the term of the Agreement because of the District's Material Breach that is not cured, then the District shall pay OP a transition fee that equals the sum of four monthly disbursements under the common schedule of accrual as liquidated damages. If the District terminates this Agreement during the term of the Agreement because of a Material Breach by OP that is not cured, then OP shall pay the District the sum of four monthly disbursements under the schedule of accrual under Article XII as liquidated damages.
- 4.07 Termination Related to Academic Performance. The District may terminate this Agreement or take another action set forth in **Addendum A-4** if the School does not meet performance standards specified in **Addendum A-3**. Termination under this Section shall be effective at the end of the then current school year so long as written notice of such termination is provided no later than thirty (30) days after receipt of the Texas Education Agency's academic ratings. The District may terminate this Agreement at the end of the then-current school year if the Commissioner of Education orders closure of the school based on academic performance.
- 4.08 Bankruptcy; Dissolution. This Contract will terminate immediately upon the (i) filing by any party of a voluntary petition in bankruptcy; (ii) adjudication of such party as bankrupt; (iii) the filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of such Party under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; or (iv) the permanent dissolution

of OP or any valid assignee of OP as a corporate entity.

- 4.09 Change in Applicable Law. Subject to the terms of Section 3.05, the Parties agree to negotiate in good faith to amend to this Agreement in the manner and to the extent necessitated by changes in applicable law. The Parties stipulate that funds due OP under the terms of this Agreement may not be reduced without mutual agreement of the Parties.
- 4.10 Termination for Non-Appropriation. The obligations for payment by the District to OP under this Agreement constitute a commitment of current revenues only and do not create an impermissible debt. Likewise, the obligations of OP to expend any public funds for the School Campus costs and expenses constitute a commitment of current revenues only and do not create an impermissible debt. Either Party may terminate this Contract at the end of the current fiscal year in the Event of Non-Appropriation. As used herein, the term “Event of Non-Appropriation” shall mean the failure of the District to be appropriated any state funds by the Texas Legislature or as a consequence of court order . In the Event of Non-Appropriation, the District shall give as much notice as reasonably possible but, in no event, will give written notice less than forty-five (45) days before the end of the then current fiscal year.

#### **ARTICLE V. RELATIONSHIP OF THE PARTIES**

- 5.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP shall operate as an independent contractor to the District and shall be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.
- 5.02 No Agency. Neither Party will be the agent of the other Party except to the extent otherwise specifically provided by this Agreement. Neither Party has the express nor implied authority to bind the other Party to any contractual duty other than what is specifically stated in this Agreement. Furthermore, both Parties shall represent to third parties and shall disclaim to such third parties the extent of that Party’s binding authority, which must be approved by the Parties’ respective governing boards held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed to in writing by the Parties.
- 5.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or

any part of the other Party nor has the right or authority to exercise any common control of any other Party. Nothing herein shall be construed to create a partnership or joint venture by or between the District and the OP.

- 5.04 Assurance of Independence. The OP's governing body shall remain independent of the District. OP's governing body shall not be comprised of any members of the District's Board of Trustees, the District's Superintendent, or any staff member responsible for granting this Agreement. Further, no member of the OP's governing body is or will be related within the first degree of affinity or consanguinity with any members of the District's Board of Trustees, Superintendent, or any staff member responsible for granting this Agreement or overseeing this Agreement.

#### **ARTICLE VI. APPLICABLE LAWS**

- 6.01 Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with applicable state and federal law. The Parties stipulate that Applicable Law includes but is not limited to the following: Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act ("IDEA"); the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds Act to the extent specified in the Act; the Texas Education Code to the extent the School is not exempt; applicable state record retention laws and conflicts of interest laws; the Texas Local Government Code, to the extent it applies to school districts; and any amendments, interpretations, and reauthorizations of the foregoing.
- 6.02 Scope of Applicable Law. The School is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C and is exempt from all District policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract. The Parties further agree that, except as provided in this Agreement, as identified in **Addendum A-2**, or required by Applicable Law, no provision, rule, or guideline of Texas law otherwise applicable to a governing body or school shall apply to the School or its operation.
- 6.03 Immunity. OP is granted a charter under TEC Section 12.0522 and therefore is immune from liability and suit to the same extent as open-enrollment charter holders under TEC Section 12.056. Nothing contained

in this Agreement shall be read to waive the immunity granted by TEC, Chapter 22, Subchapter B, and TEC, Chapter 12, Subchapter C.

## ARTICLE VII. GOVERNING POLICIES

- 7.01 Limitation on Authority. An educational or administrative service necessary for operation of the School, but not specifically reserved for the District to provide under this Agreement, shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service. Neither this Section nor this Agreement prohibits the District from contracting with another entity for the provision of services for the campus, but any and all services contracted for or performed for the School must be made in deference to and in accordance with the responsibilities detailed in this Agreement.
- 7.02 Policy Election. OP shall operate in accordance with the District's Charter Policy specified in **Addendum A-1** and other policies specified in **Addendum A-2**, as they currently exist as of March 1, 2020. OP may, in its sole discretion, adopt an update or successor policy to any policy specified in **Addendum A-2** but must take specific action to do so. The District is not required to notify OP of changes to its policies; rather, OP shall monitor publicly available notices of District policy adoption and amendments. If, after execution of this Agreement, OP determines that a policy specified in **Addendum A-2** and not otherwise required by state or federal law is not suited to the needs of the School, it will provide notice of its intent to remove the policy from **Addendum A-2** or alter the manner and/or extent of the policy's application to the District twenty-one (21) calendar days prior to the date on which it plans to cease operating in accordance with the policy. During the twenty-one-day notice period, OP will provide the District the opportunity to present any concerns about cessation in a meeting attended by the Superintendent and Executive Director. OP agrees to give concerns due consideration and negotiate solutions in good faith. OP may cease operating the School in accordance with the policy upon an affirmative vote of OP's board of directors and agrees to give due consideration to any further alternatives proposed by the District at a later date.
- 7.03 Adoption and Publication of School Policies. OP shall have the initial and final decision in adopting School-level policies that do not conflict with policies specified in **Addendum A-2** as that Addendum exists at the time the School-level policy is adopted. All policies adopted by OP shall



comply with Applicable Law.

- 7.04 Future Waivers and Exemptions. Pursuant to 19 TAC § 97.1075(d)(6), the School is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all District policies except for laws, rules, and policies that are specifically identified as applicable to the School in this Agreement and/or incorporated by reference herein. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waivers would expand opportunities for students enrolled in the School Campus. If the District is relieved from compliance from certain state or federal law or regulation through a waiver, or adoption, or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the School is automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol, or other requirement is granted to another school in the District that serves students at the same grade levels offered at the School, and the policy is not waived by this Agreement, the waiver applies to the School Campus unless the District notifies the School otherwise in writing within 60 days of the waiver’s application to the other school(s). This Section does not limit OP’s rights under Section 7.02.

### **ARTICLE VIII. PERFORMANCE REQUIREMENTS**

- 8.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in **Addendum A-3** or as amended by mutual agreement are achieved. The District Superintendent or designee shall develop a School Performance Framework (“SPF”) by which all charter schools, including the School, and programs will be evaluated for purpose of progress monitoring. The SPF will inform District decisions related to campus replacement, restart, or closure; however, the Parties agree that failure to satisfy metrics established by the SPF is not a permissible basis for termination of this Agreement and that OP’s rights under this contract may not be abridged as a consequence of such failure. Rather, Sections 4.05 and 4.06 provide the exclusive bases on which the District may unilaterally terminate this Agreement. OP agrees to cooperate with the District, including providing student performance data, financial statements, governance materials, and other information as necessary to enable the District to implement its Monitoring and Oversight Plan attached hereto as **Addendum 5**.
- 8.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance

targets agreed upon by the Parties and specified in **Addendum A-3** will be determined using the methods, indicators, and timelines specified in that Addendum and in **Addendum 5** (Monitoring and Oversight Plan).

- 8.03 Performance Consequences. The Parties agree to consequences specified in **Addendum 4** in the event that the OP does not meet the annual academic or financial performance expectations and goals described in **Addenda A-3**.
- 8.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in **Addendum A-3** and is obligated to oversee management of the School and intervene as required to ensure that performance goals are achieved.
- 8.05 Monitoring Performance and Compliance . The District shall retain the right to monitor the performance of the School and OP with respect to progress toward goals specified in **Addendum A-3** and to monitor compliance and other indicators in accordance with Addendum 5 (the Monitoring and Oversight Plan).

#### **ARTICLE IX. RESPONSIBILITIES**

- 9.01 OP Responsibilities: The OP shall have the sole authority over matters involving academic curriculum and the instructional program. In accordance with Section 11.01, OP shall have sole authority to select, reassign at the School, or request removal by the District of District employees who are assigned to the School. OP shall have sole authority to hire or terminate OP's employees. OP must employ at least one employee with responsibility for oversight of the School.
- 9.01.1 *Administration.* OP shall have initial, final, and sole authority over the selection, supervision, assignment, evaluation, development, advancement, and compensation of the School's Principal, Assistant Principal, and any other role designated as an administrator of the School, whether that person is employed by the District or OP. OP has the initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment for its employees.
- 9.01.2 *Teaching Staff.* Except as provided in Section 9.01.3, OP shall have initial, final, and sole non-delegable authority to select, supervise, manage, assign, evaluate, develop, advance, compensate, and establish any other terms of employment of

the School's teachers, teaching assistants, para-professionals, curriculum specialists, program coordinators, and any persons assigned to the School, whether employed or contracted by the District or OP. OP shall have initial, final, and sole non-delegable authority over the terms and conditions under which staff from institutions of higher education are assigned to the School but shall coordinate such assignments as necessary with the District. OP has the initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment for its employees. OP authority over compensation includes authority to independently apply for and allocate funds available through the Teacher Incentive Allotment or participate in the District's application and allocation process.

9.01.3 *Salaries.* The salaries of all classroom teachers will be set no lower than the level associated with a teacher's years of experience in the state minimum salary schedule. The salaries of all staff assigned to the Schools and employed by the District on the Commencement Date of this Agreement will be maintained at the level specified in their employment contracts as of that date, or, in the sole discretion of OP, at a higher level during the term of this Agreement and subsequent terms if renewed.

9.01.4 *Staffing Plan.* OP shall have initial, final, and sole non-delegable authority to determine the staffing plan and positions at the School, provided that funds subject to OP's control (inclusive of funds allocated for compensation of School staff) under the terms of this agreement are sufficient to discharge all obligations associated with the staffing plan and positions.

9.02 District Responsibilities: The District shall maintain control of and shall be responsible for the following services, which include but are not limited to the matters listed below. The amount the District charges for these services may not exceed the District average cost per student for similar services rendered.

9.02.1 *Health:* The District shall appoint the School Campus nurse and/or any other health care provider to be located on the campus.

9.02.2 *Substitute Teachers:* The District shall be responsible for employing substitute teachers for the School.

- 9.02.3 *Special Education:* The District will ensure that the School’s special education program and 504 plans comply with state and federal laws, including but not limited to the Individuals with Disabilities Education Act (“IDEA”) and Section 504 of the Rehabilitation Act of 1973. As the LEA chiefly responsible for identifying and serving students with disabilities, the District shall retain final authority in Special Education litigation matters, but OP, subject 19 TAC § 97.1075(c)(2)(B) and to each child’s IEP, shall have final authority regarding the day-to-day learning environment, services, and expectations for students who receive Special Education services for mild or moderate disabilities.
- 9.02.4 *Dyslexia Services:* The District will be responsible for providing dyslexia services.
- 9.02.5 *Maintenance:* The District shall provide utilities to the OP. The District shall maintain the School Campus(es) and Facilities by overseeing and contracting for the maintenance of the campus via janitorial staff, grounds keeping, and necessary repair work. The District shall be responsible for all structural related issues at School (including roof, exterior walls, foundation, structural/load-bearing components), windows, doors, mechanical, electrical, plumbing and HVAC maintenance, repair and replacement if necessary.
- 9.02.6 *Record Keeping:* District and OP will coordinate record keeping and compliance with state law. OP will use the District’s Student Information System (SIS) in the manner required by the Texas Education Agency’s Public Education Information Management System (PEIMS) for purpose of data reporting. OP will also work with District to develop a mutually agreeable method by which OP will share all relevant and required student performance data, including data related to **Addendum 3**, and all information required by PEIMS.
- 9.02.7 *Data Sharing.* The Parties shall enter into a data sharing agreement that complies with all applicable requirements of FERPA.
- 9.02.8 *Transportation:* The District shall provide transportation to and from the School for purposes of the regular school day and for school related activities coordinated by the District for any student who resides within the District’s boundaries and is enrolled in the School as of the first day of the school yea. Any

transportation needs outside of the District's regular schedule or routes will be provided on a contract basis paid for by OP.

9.02.9 *Food Services.* The District will continue to provide food services to the School. The District shall have the right to operate the following programs, as applicable, at the School: National School Lunch Program, School Breakfast Program (including Breakfast in the Classroom and Universal Breakfast), After-school Care Program, Summer Food Service Program, Child and Adult Care Food Program, 'A la Carte, adult meals, contract meals, concessions, and disaster feeding. The District will be responsible for complying with state and federal regulations regarding the delivery of such programs.

9.02.10 *Security:* The District shall provide all security and police operations to the School in accordance with a plan agreed upon by the Parties specifying the level and type of security and policing services to be provided.

## **ARTICLE X. SCHOOL OPERATIONS**

- 10.01 OP's Governing Board. OP represents that a true and accurate list of its current directors ("Directors") is attached to this Agreement as **Addendum A-6**. If there is any change to the Directors during the Term of this Agreement, OP shall provide written notice to the District of the change within 30 days. No District Trustee or employee responsible for granting this Agreement shall be appointed to OP's Governing Board. District staff may not comprise a majority of OP's Governing Board.
- 10.02 Budgetary Authority of OP. OP has sole authority to approve and amend the budget for the School Campus.
- 10.03 Chief Operating Officer. The Executive Director of OP shall be the chief operating officer of the school. The School shall be subject to the direction, control, policies, practices, and procedures of the Executive Director subject to management by the OP Board of Directors and the requirements of this Agreement.
- 10.04 Principal. The Principal(s) shall be appointed by the OP.
- 10.04.1 OP Oversight Employee. For each School it operates, OP shall hire and manage at least one employee with responsibilities for

oversight of the School.

- 10.05 Coordination Meetings. OP's Executive Director for Schools or mutually determined designee will participate in monthly coordination meetings convened by the District.
- 10.06 Enrollment Policies. OP will collaborate with the District as it develops and implements its centralized enrollment process. Any student who currently resides, or resided as of July 1, 2020, in the District in the may attend the School and may not be refused enrollment, provided the student timely submits a completed application for enrollment through the District's centralized enrollment process. If after the District's initial enrollment period, there are additional spots remaining, they shall be filled by the students who reside outside of the District. A student who does not reside within the District may be denied admission initially or at any point during enrollment on the basis of discipline and attendance issues in accordance with OP's policies. No adult student not otherwise attending a public school in Texas may be enrolled in the School without the mutual agreement of the Parties. In addition to the agreed-upon admission policies, the following applies:
- 10.06.1 *Discrimination Prohibited*. OP is prohibited from discriminatory admission, suspension, or expulsion of a student on the basis of a student's national origin, ethnicity, race, religion, disability, gender, or academic achievement.
- 10.06.2 *Admission*. Subject to Section 10.07, OP shall give preference for admission to students who were previously enrolled at the School.
- 10.06.3 *Campus Lottery*. OP will participate in the Longview enrollment system and will comply with the District's policies concerning mid-year enrollment of students. As part of its enrollment system the District will run the lottery, if required, for enrollment at the campus. The lottery will be weighted so that currently enrolled students have priority, followed by students who reside in the District, and then followed by all other students. The lottery criteria will also include preferences for enrolled siblings and children of the OP's employees, but none of these applicants shall take priority over students previously enrolled in the school. The District's Innovation Office will manage the lottery process.
- 10.06.4 *Enrollment of Students Residing outside the District*. If openings at the School remain after serving LISD resident

students seeking enrollment, OP may, at its discretion, serve students who reside outside the District as provided in this Section. If OP elects to serve students residing outside the District, it may require payment of tuition from the District in which the student resides or may receive tuition from other stakeholder(s). The District (LISD) will collect any tuition charged and allocate it to OP as though the funds were generated by resident students enrolled at the School.

- 10.07 Discipline and Expulsion Policies. OP will implement the District’s Student Code of Conduct unless OP elects to modify or opt out of that policy in accordance with Section 7.02 and will utilize the District’s Disciplinary Alternative Education Placement (“DAEP”) on a prorated per student per day cost as based on the School principal’s discretion in alignment with District practices. The District shall schedule the student’s DAEP based on available space in the same way it does for a student at any other school in the District. A student enrolled at the campus may appeal a disciplinary decision initially to OP’s Board of Directors and may then appeal a decision of OP’s Board of Directors in accordance with the appeals process set forth in the District’s Student Code of Conduct.
- 10.08 Schedule. OP will have sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP’s schedule shall comply with the State of Texas’ required minutes of instruction. OP agrees to provide schedule information to the District no later than April 15<sup>th</sup> of the preceding school year. If OP permits use of the ETxAMA facility by individuals not enrolled in the District or another district served by OP, OP shall schedule such use during times that enrolled students are not present.
- 10.09 District Meetings, Initiatives, and Training. Except as required in this Section, school staff under the supervision and control of OP will not be required to participate but may participate in District training events or other meetings if District space is available. OP agrees that all School staff shall comply with and receive training required by Applicable Law. OP further agrees that it will cooperate with the District to enable participation by staff assigned to the School in up to four district-sponsored meetings each year. District staff may attend and participate in OP training where there is space available.
- 10.10 Contractor Criminal History Background Checks. The District shall conduct criminal history background checks for all vendors and contractors selected by the District as well as for all District

employees. OP shall conduct criminal history background checks for all vendors and contractors selected by OP as well as for all OP employees, or OP may contract with the District for such checks. The District and OP shall adhere to reporting requirements, definitions, and laws further detailed in Section 11.03. Either Party's failure to comply with this Section's reporting requirements shall amount to a Material Breach of this Agreement.

- 10.11 Technology Infrastructure; Network Services. The District shall be responsible for providing, repairing, and maintaining technology infrastructure and network services at the School to the extent reasonably necessary to permit OP to establish its own internet and phone service at the School of a standard reasonably comparable to other District schools. OP shall provide the District with a list of equipment purchased and collaborate with the District to ensure consistency between the standard equipment and the needs of the School. The initial information technology equipment located at the School as of the commencement of the Initial Term of this Agreement is included in the term "furnishing."
- 10.12 Media Requests. The Parties agree to collaborate on responses to any media requests or press releases related to the School. The Parties shall collaborate prior to responding to any media request or making a press release and further agree that any statement made will have prior approval by each Party, which shall be reasonably and timely granted. This requirement does not apply to (a) general communications regarding OP or the District that may include references to the School, or (b) crisis communications regarding the OP or the School Campus
- 10.13 Communications with Students' Parents/Family. The Parties agree to jointly approve a protocol for communications with students' parents/family within 60 days of the execution of this Agreement. The Parties understand and agree that OP shall have sole authority to develop and distribute information to potential students and their families regarding OP and its plans for operating the School Campus.

## **ARTICLE XI. STAFFING**

- 11.01 Employment Status and Assignment. Faculty and staff employed by the District at the School will be employees of the District, and if eligible will participate in the Teacher Retirement System of Texas. OP



has sole, initial, and final authority to approve the assignment of all District employees or contractors to the campus, as well as sole, initial and final authority to rescind the assignment of any District employee or District contractor serving the campus. If OP chooses to rescind assignment of a District employee at any of the Schools it operates, OP shall take steps necessary to enable the District to successfully terminate the contract of that employee in compliance with Chapter 21, Texas Education Code. If the employee whose contract was terminated was selected for hiring by OP and the termination requires the District to incur legal expenses, those expenses will be paid in their entirety from funds allocated to OP under Section 14.01. If the employee whose contract was terminated was selected for hiring by the District and the termination requires the District to incur legal expenses, half of those expenses will be paid from funds allocated to OP under Section 14.01. The District will grant any requests from the OP to rescind the assignment of any District employee or District contractor serving the campus within 20 business days of receiving the request from the OP.

11.02 Offers of Employment to District or OP Staff. The Parties agree that either Party may at its sole discretion offer employment to any employee of the other Party or to the employee of another operating partner. Neither Party may offer employment to an employee of the other or to an employee of another operating partner without first conducting a reference check with the employee's current supervisor (or HR department, if preferred by supervisor). If the employee accepts the offer, the employing Party shall release the employee from any current contractual obligations in a manner that enables the employee to begin employment with the hiring Party within 15 business days of acceptance by the employee. Both Parties agree to work together to ensure that the transition does not disrupt student learning.

11.03 Criminal History Background Checks. Unless contracted for by the District as stated in Section 10.12, OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for vendors and contractors it selects, and shall take action required by law upon completing the background check. The District shall perform all criminal history background checks required by Applicable Law, including without limitation those required for the School's employees. The District and OP shall adhere to the laws in Senate Bill 7 in the 85th Texas Legislature and codified in TEC §§ 21.006 and 22.087. OP shall adhere to any District policies relating to TEC §§ 21.006 and 22.087 that are included in **Addendum A-2**. OP shall notify the District of any unlawful conduct or criminal misconduct discovered by or reported to the School's principal, OP's

Executive Director, or School's Working Group within seven (7) business days of notice. Similarly, the District shall notify OP of any unlawful conduct or criminal misconduct discovered by or reported to the District within seven (7) business days of notice. OP shall comply with any subsequent investigation by the District as OP understands that the District is bound by the reporting requirements of TEC §§ 21.006 and 22.087. Additionally, OP also understands that the District's Superintendent may investigate and report any educator misconduct of a District employee that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249 and/or Chapter 247, Educators' Code of Ethics. OP's failure to comply with this Section's reporting requirements shall amount to a Material Breach of this Agreement.

- 11.04 Child Abuse Reporting. All District and OP employees working at the School shall comply with all Applicable Law governing mandatory child abuse and neglect reporting including but not limited to the Texas Family Code Chapter 261, TEC §§ 38.004, 38.0041, and the Texas Administrative Code § 61.1051.
- 11.05 Certified Personnel. The District personnel assigned to the School shall be certified for the position for which they are assigned unless OP selects a District employee who is not certified for an assignment, and the certification requirement for the position has been waived under the District's Innovation Plan or Commissioner waiver or the District agrees to the assignment. OP may directly employ an uncertified person for an assignment, but shall otherwise verify and monitor the employee's competence and capacity to perform the assignment.
- 11.06 Employment Records. The District is responsible for maintaining the employment records for all School Personnel it employs. OP is responsible for maintaining the employment records for all School Personnel it employs. The employment records of District employees are the property of the District and OP shall make these employment records available to the District if in OP custody. All employment records of OP employees are the sole property of OP.
- 11.07 Employee Complaints and Grievances. The Parties agree that OP's employees' complaints and grievances will be governed by OP's policies. Complaints and grievances from District employees at the School or from any individual about an employee of OP will be heard in accordance with District policies, provided that the Principal of the program shall conduct the Level 1 hearing and the Executive Director shall conduct the Level 2 hearing. The Level 3 hearing shall be conducted by the District's Superintendent or designee, with the Level

4 hearing held before the District Board of Trustees unless OP's Board of Directors elects to hear the matter. Parties shall adopt procedures by which they will notify one another of complaints and shall work together to ensure complaints and grievances are adequately addressed and shall maintain a proper record of the complaint(s) or grievance(s), any decision(s) rendered, and any and all documentation relied upon by the administration in rendering a decision.

- 11.08 Teacher Retirement System. An employee of the OP is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at the District.

## ARTICLE XII. ACADEMIC PLAN

- 12.01 Curriculum and Program. OP will have sole authority to approve all curriculum decisions beyond the minimum requirements of the International Baccalaureate Career-Related Programme and those outlined in 19 Texas Administrative Code § 74.2 (relating to Description of a Required Elementary Curriculum) and § 74.3 (relating to Description of a Required Secondary Curriculum). This authority includes sole authority over lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at the School. OP will also have sole authority educational programs for specific, identified student groups, such as students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations.
- 12.02 Educational Plan. OP will implement the education plan described in its proposal to operate the School, attached as **Addendum A-8**. OP will ensure that curriculum satisfies the minimum requirements outlined in 19 Texas Administrative Code §§ 74.2, 74.3. OP agrees to notify the District of any significant alteration of this plan.
- 12.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the School and represents that selected materials will align with the Texas Essential Knowledge and Skills ("TEKS"), or its successor, and any other standards that may be required under Applicable Law. The District will permit OP to use any materials currently at the School. OP agrees to notify the District by November 1, 2020 if it will not use the materials and will permit the District to collect the materials for distribution at other schools.

- 12.04 Assessments. OP will administer the Iowa Test of Basic Skills in accordance with the District-wide assessment policies and provide student performance and related information to the District upon request. Otherwise, OP has sole authority over the selection and administration of student assessments not required by state or federal law.
- 12.05 Extracurricular Programming and Participation. Students enrolled at the School may join any extracurricular activity offered to District students to the same extent as other students so long as participation does not interfere with the School's schedule, tutorials, or other parts of the program as determined by the OP School leader and so long as such enrollment adheres to the rules and guidance of the University Interscholastic League ("UIL").

### **ARTICLE XIII. FACILITIES**

- 13.01 Facilities. Except as provided herein, the District shall provide facilities, in the form of classrooms, office furniture, equipment, and storage areas for the Schools at no cost detailed in Article XIV, and provide utilities in accordance with Facility Plan attached as Addendum A-9. Parties may expand or reduce the amount of space allotted to use by OP during the term as mutually determined and agreed upon by the Parties. Facilities do not include classroom materials (*e.g.*, books, notepads, pencils, etc.) or any other resources needed for the Schools' academic curriculum. With respect to the facility at which the ETAMA (is operated, OP, in coordination with the District, will be responsible for securing a suitable facility at which to operate the Academy during the term of this Agreement.
- 13.02 Ownership. The Parties acknowledge that , with the exception of the facility at which the ETAMA is operated, all Facilities used by the School(s) are owned by the District.
- 13.03 Permitted Use. By a date that is mutually agreeable by both Parties and not later than two weeks after the last school day of the 2019-2020 school year, the OP may use and occupy the Facilities owned by the District solely for the operation of the School as permitted by Applicable Law.
- 13.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with OP regarding the furniture and equipment needs of the OP classrooms, the District will supply chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other

furniture as reasonably required for the School. Such furniture and equipment will be substantially the same as furniture and equipment provided in other classrooms for the same grade level and/or same subject at the District. Such furniture and equipment may not include classroom materials (e.g. books, notepads, pencils, etc.) or any other resources needed for the School's academic curriculum. OP may also furnish other furniture, fixtures, and equipment, at OP's cost and expense, as OP determines what is needed to implement the Program at School(s). Any costs for removal, disposal and/or storage of furniture, technology and equipment not to be used by the OP will be at a cost to the OP for the removal. Unless otherwise stated, the title to all furniture and equipment supplied by the District for use by OP remains vested in the District. OP and the District shall tag and identify their respective property so that ownership is clear. Each Party shall maintain an inventory list of all of its assets located at the campus.

- 13.05 Fixtures and Alterations. OP may attach non-permanent materials and fixtures to the walls of the School's classrooms. OP shall not make any other alterations (including adding/removing fixtures) in or to the School's classrooms or any other part of the District's facilities used by OP that would alter the walls, floors, or any other permanent structure of the District's premises unless permitted with written consent of the District.
- 13.06 Order and Maintenance. OP shall keep the School classrooms and any other portion of the District's premises, such as office space and storage area used exclusively for OP, in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students. The District shall be responsible for routine maintenance and major repairs of the School including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. The District shall maintain all other portions of the School in a neat and orderly manner. OP shall immediately (no later than 12 hours of discovery) notify the District of any immediate and urgent repairs needed at the School.
- 13.07 Insurance Coverage. In addition to the requirements of Article XVII below, each Party, at its own expense, shall maintain its own insurance throughout the Term of this Agreement. The insurance required under this Agreement shall be as follows:
- 13.07.1 Comprehensive or commercial general liability insurance for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Each Party may elect to carry what other

insurance that Party decides is necessary or advisable for its obligations under this Agreement. Such insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the Term:

- i) Automobile insurance to cover losses for motor vehicles accidents by that Party; and
- ii) Workers Compensation insurance as may be required by Applicable Law for that Party.

13.07.2 The District shall obtain and maintain property insurance for the School Facility, naming the OP as additional insured on each policy and endorsement. Each Party may elect to carry insurance to insure its own personal property located at the School.

13.07.3 Neither Party will be responsible for the negligence or liability of the other Party.

13.07.4 Each Party shall be responsible for the management and supervision of claims relating to its own operations.

13.08 Surrender of the Facilities. Except for the limited instance provided in 13.01.1 above, on the termination of this Agreement OP shall surrender the Facilities to the District. OP shall leave the Facilities in good condition and repair. OP shall return and surrender to the District all exterior door keys, interior door keys, mail box keys, and security access cards. The obligations under this Section shall survive the termination of this Agreement.

#### **ARTICLE XIV. FINANCIAL MATTERS**

14.01 Allocation of Funds. Except as provided in Sections 14.02.1 and 14.02.2, OP will have initial, final and sole authority to determine the use of local, state and federal funds generated by students enrolled at the School and/or that is otherwise made available to OP directly or to LISD for the benefit of students at the School. Funds allocated for control by OP shall be determined by the formulas provided in Addendum 10.

14.02 Student Based Budgeting. As a condition of eligibility for benefits

under SB 1882, the District must make a good faith effort to adopt a student based budgeting model whereby the revenue for campuses would be generated based on the number and characteristics of the students attending the campus (Student Based Budget Model). The District will assure the Texas Education Agency that it will undertake in good faith to adopt such a Student Based Budget Model, but that undertaking is conditioned upon the approval of the District's Board of Trustees. The adoption of a Student Based Budgeting Model by the District's Board of Trustees could occur during the term of this agreement, but only after consultation with OP, and would thereafter be applicable to the revenue calculation contained in this agreement. Should the District's Board of Trustees adopt a Student Based Budgeting Model during the term of this agreement, and should as a specific consequence lower the overall revenues available to the OP, the District will not reduce the revenues available to OP during the remainder of the term of this agreement due to such adoption.

#### 14.03 District Services.

14.03.1 Authorizing Fee. LISD will reserve five percent of the funds allocated under Section 14.01 as an authorizing fee. LISD has initial, final, and sole authority to determine the use the funds it retains as an authorizing fee.

14.03.2 District Responsibilities. OP will purchase all services listed in Section 9.02 at the cost specified in the price list provided in Addendum 9 .

14.03.3 Optional District Services. OP may purchase District services not identified in Section 9.02 at the cost specified in Addendum 9. .

#### 14.04 Calculation of Funding Allocation.

14.04.1 Mutual Agreement As a part of the budget development process for each fiscal year of this Agreement, LISD and OP shall agree upon an estimate of the allocation to OP in accordance with Section 14.01. The preliminary student-level amount due to OP shall be determined by Addendum 10.

14.04.2 Adjustments. Not earlier than January 15 of each year, LISD shall provide OP the summer PEIMs data submissions and other data updates as appropriate for the purpose of adjusting the estimates set forth in Section 14.01 above to

reflect changes in WADA-calculated formula revenues. LISD will make available upon request the Fall Snapshot enrollment numbers to OP.

14.04.3 Settle-Up. No earlier than July of each year, LISD shall provide OP the summer PEIMs initial data submissions and other data updates as appropriate for the purpose of adjusting the estimates set forth in Sections 14.01 and 14.02 to reflect changes in WADA-calculated Settle-Up. "Settle-up" refers to the end-of-fiscal-year process for reconciling the District's allocation of funds to OP with the allocation OP is due based on the District's actual earnings. Annually, the Parties shall meet to review near-final and final settle-up data within seven business days of the District's receipt of such data. Following each settle-up process, the District shall pay OP any additional funds due OP within thirty (30) business days of receipt by the District. In the event the District is due a refund from OP on the basis of the settle-up data, OP and LISD shall agree to the repayment schedule in the most current fiscal year.

14.04.4 Adjustments for Grants. Changes in allocations for grant and special project funding shall be made at the time such grant funding becomes available.

14.05 Payments to Partner. Annually, LISD will pay OP the product of \$130 multiplied by the number of students enrolled at the School as of the last Friday in October. Payments under this Section will be made to an account held by OP in its name and under the exclusive control of OP.

14.06 Distribution and Availability of Funds to OP. Subject to Section 14.04, on the first month of each year of this Agreement (August of each year), LISD shall allocate to OP an amount equal to the following cumulative percentages of the most recent allocation amount calculated in accordance with Sections 14.01 and 14.02. above in accordance with a schedule mutually agreed upon by the Parties no later than July 1, 2020.

Individual<sup>[A1]</sup> Service Pricing. The price list for District services under Section 9.02 is set forth in **Addendum 9**. Prices may not exceed the actual cost to the District of providing the service.. In order to ensure continuity of services, the District must make provision for expenses arising from unanticipated circumstances, including regulatory changes, calamitous weather, equipment failure, and unanticipated price increases related to services the District provides



OP. In order to minimize service disruption, OP agrees to make contributions to a risk fund the District will establish and draw from solely for the purpose of paying expenses arising from such anticipated circumstances. OP's required contributions are determined on a *pro rata* basis, commensurate with the share of District students it serves, and are set forth in Addendum A-9.

14.06 Management of Funds Retained in District Accounts.

14.06.1. Funds Paid for District Services. LISD shall have the exclusive control of funds it retains as payment for services under Section 9.02 and optional services it provides under this Agreement. LISD agrees to perform all services to the same or higher standard of quality that it has provided those services historically.

14.06.2. Funds Available for Discretionary Use by OP. Any funds allocated for use by OP under Section 14.01 that are not dedicated for payment for services provided by the District or for payment to OP under Section 14.04 shall be set aside by LISD in a special reserve account and may be requisitioned and managed at the sole discretion of OP's Board of Directors or its expressly designated agent. Funds reserved for discretionary use may be expended by LISD personnel to cover repetitive expenses of the School(s), such as wage and benefit payments in accordance with Section 14.08, based upon a standing authorization of the OP Board, or they may be expended by LISD personnel based upon a single, stand-alone spending decision by the OP Board of Directors or its expressly designated agent.

14.06.3. Accounting for Funds Retained in District Accounts. The Parties shall jointly develop and ensure the utilization of internal accounting control mechanisms necessary to ensure that all funds drawn from the special reserve account established under Section 14.07.2 shall be properly allocated to the LISD Reserve and that all required accounting data necessary for the proper recording of the item of expenditure is properly recoded at the point when the transaction is authorized and made. LISD agrees to maintain a current accounting of all transactions made in performing the optional and mandatory services under this Agreement.

14.07 Employee Wage and Benefit Payments. With respect to LISD employees assigned to campuses operated by OP, LISD shall deduct from the special reserve account described in Section 14.07.2 all

salaries, deductions and/or benefits paid to or on behalf of these employees as those funds are paid to or on behalf of the employee. All other costs for such employees such as worker's compensation coverage shall be similarly deducted. OP admits knowledge of and agrees that LISD's obligation hereunder for payment of Federal and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event LISD is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, it is understood and agreed that OP shall be liable for and shall forfeit and refund to LISD such amounts allocated to it.

- 14.08 Limitations. This Agreement shall not be construed to relieve the District of any responsibility or obligation to OP if the District fails to receive funding as a result of a failure by the District or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.
- 14.09 Refund upon Termination. In the event of termination during the Term of this Agreement, OP agrees to refund to the District within ninety (90) days of the date of termination, any advanced but unearned funds.
- 14.10 Federal and State Grants. District agrees to submit all federal and state grant applications by the deadline for grants OP decides to pursue for its campus, provided that OP's campus is eligible and that OP completes required submission materials at least three (3) days before the submission date. District also agrees that OP has initial, sole, and final discretion over the proposed budget for grant funds. OP agrees to reimburse the District for costs associated with obtaining said grant funds. In the event the District is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received. OP acknowledges any grants issued to a School under LISD DUNS or TIN numbers are reported under the District's "schedule of federal awards" and as such will be audited during the District's annual audit. OP will provide any needed documentation to LISD for the completion of its annual federal audit of grant awards. OP agrees to maintain required documentation and provide it to LISD as needed for grant reporting.
- 14.11 Contracting, Purchasing and Procurement. LISD and OP agree to develop and establish systems and processes by mutual agreement for obtaining, contracting with, and paying vendors for goods and services to be acquired by OP or at the direction of OP. Systems established under this Section will provide the full extent of contracting, purchasing and procurement flexibility available to entities holding a Subchapter C

campus charter. OP will ensure compliance with applicable state and federal contracting and payment laws and will comply with the requirements of Chapter 171, Texas Local Government Code, as though it were an independent school district and its employees and board members were employees and board members of an independent school district. In those instances in which District action is necessary for procurement of goods or services, the District agrees to initiate such action within three (3) business days of OP's request and to notify OP immediately if additional information is necessary for the District to complete the required action or if other barriers to completion require resolution. OP reserves the right to contract for any services it deems beneficial in operation of the School. Purchases of goods with federal grant funds will be made by the District in compliance with its purchasing policies and procedures.

14.12 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. The Parties shall comply with the financial performance goals detailed in **Addendum A-3**, which shall include, but is not limited to a completion of OP's annual financial report, receipt of an unqualified audit opinion, and specific consequences in the event that OP does not meet the financial performance goals. In addition to any audits required by Applicable Law, OP shall submit to the District within 180 days following the end of each fiscal year during the Term of this Agreement, financial statements audited by an independent certified public accountant. The District shall also retain the right to conduct at its own expense its own campus audit of the School Campus as it deems necessary. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and both Parties agree that any expenditures relating to this Agreement are disallowed, OP agrees to reimburse the District immediately for the requisite full amount.

14.13 OP's Acceptance and Use of Private Philanthropic Support. The Parties acknowledge that OP raises private philanthropic funding to support the costs of its School Campus operations across its entire nationwide network of public charter schools. The District acknowledges and agrees that any philanthropic support raised by OP to support the School Campus will be accepted and used at the OP's sole discretion for the benefit of the students.

## **ARTICLE XV. RECORDS AND REPORTING**

15.01 Records Management System. The District and the OP shall maintain a records management system that conforms to the system required of

school district under the Local Government Records Act, Section 201.001 *et seq.*, Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of this Agreement.

- 15.02 State and Federal Reporting. OP shall report timely and accurate information to the District as necessary for the District to comply with all applicable state and federal requirements. OP shall report information in the manner requested by the District and correct any demonstrable errors as requested by the District, provided that the manner of reporting or correction requested is not unduly burdensome to OP. The parties shall work cooperatively to develop an efficient system of data collection and reporting process that eliminates duplication of effort to the largest extent possible.
- 15.03 Lawful Disclosure. To the extent that OP or the District will come into possession of student records and information, and to the extent that OP or the District will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the FERPA and the Texas Public Information Act. In the event that the District is required to furnish information or records of the School Campus pursuant to the Texas Public Information Act, OP shall furnish such information and records to the District, and the District shall have the right to release such information and records. Either OP or the District may object to disclosure of information and records under FERPA or the Texas Public Information Act.

## **ARTICLE XVI. INTELLECTUAL PROPERTIES**

- 16.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by the District for the School shall be owned by the District, and any materials created exclusively by OP for the School shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest or claims in the other Party's proprietary materials, but each party has a license to use the other party's proprietary materials for the entire term of this Agreement so long as prior written approval is secured from the other Party and proper attribution is made. Notwithstanding the foregoing, materials and work product jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.

16.02 Name. OP owns the intellectual property right and interest to the name “**Longview LEAP**”. The Parties agree that the name **Longview LEAP** may be used by either Party during the Term of the Agreement. The Parties agree that after the expiration or termination of this Agreement, the District shall not use the name **Longview LEAP** for its own individual purposes.

## ARTICLE XVII. INSURANCE

17.01 Insurance Coverage. OP shall secure and keep in force during the Term of this Agreement commercial general liability insurance coverage, including contractual coverage, automobile liability insurance coverage, and sexual misconduct and molestation coverage, with minimum liability limits of \$1,000,000 per occurrence, with a \$2,000,000 annual aggregate. The District is to be named as an additional insured under such coverage for any liability arising, directly or indirectly, under or in connection with this Agreement, or with regard to the operations of the School Campus or any event arising therefrom. The District shall maintain casualty insurance on the Facilities and on its personal property and commercial general liability coverage applicable to any services it provides at the School Campus, in substantially the same manner as it maintains such insurance with respect to other District schools. OP shall also maintain (a) broad form casualty coverage for all personal property located or used at the School, including the Furnishings, which coverage shall be on a full replacement value basis, and (b) worker’s compensation insurance to the extent required by the laws of the State of Texas. Any deductible or other similar obligation under OP’s insurance policies shall be the sole obligation of OP and shall not exceed \$25,000. Notwithstanding the foregoing requirement regarding insurance coverage, the District shall have the right to self-insure part or all of said insurance coverage in the District’s sole discretion. In the event that the District elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, the District shall make funds available to the same extent that they would have been available had such insurance policy been carried.

17.02 Form of Policies. All of OP’s insurance policies shall be issued by insurance companies qualified to operate in Texas and otherwise reasonably acceptable to the District. Such policies shall name the District, and such other related parties as the District elects, as additional insureds. Evidence of insurance shall be delivered to the District on or before the Possession Date, and thereafter within thirty (30) days prior to the expiration of the term of each such policy, or immediately upon OP’s obtaining a new policy. Such coverage may be maintained under a

blanket insurance policy of OP.

- 17.03 Evidence of Insurance. Upon request, a Party will furnish a certificate of insurance to the other Party evidencing the required coverage within thirty (30) days after the Possession Date of this Agreement and annually thereafter. Each Party will provide to the other Party notice of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.
- 17.04 Cooperation. To the extent that it is reasonably practicable, each Party will comply with any information or reporting requirements required by any of the other Party's insurers.
- 17.05 Insurance Companies. All insurance coverage described in this Article shall be obtained from companies that are authorized to do business in the State of Texas.

#### **ARTICLE XVIII. MUTUAL INDEMNIFICATION**

18.01 TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO COMPLY WITH THE FOLLOWING MUTUAL INDEMNITY PROVISION:

TO THE EXTENT PERMITTED BY LAW, EACH PARTY COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, THE OTHER PARTY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE OTHER PARTY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE OTHER PARTY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF EITHER PARTY, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF EITHER PARTY, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS

SECTION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE EITHER PARTY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT OP AND THE DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT OR THE OP UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

THE PROVISIONS OF THIS MUTUAL INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

EACH PARTY SHALL ADVISE THE OTHER PARTY IN WRITING WITHIN 24 HOURS OF ANY CLAIM OR DEMAND KNOWN BY THE PART THAT IS AGAINST THE EITHER PARTY AND IS RELATED TO OR ARISING OUT OF THE ACTIVITIES UNDER THIS AGREEMENT.

#### **ARTICLE XX. GENERAL AND MISCELLANEOUS**

- 20.01 Entire Agreement. This Agreement, including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by and canceled by this contract.
- 20.02 Severability. The parties intend that each provision hereof constitute a separate agreement between or among them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties.
- 20.03 Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing

waiver unless otherwise expressly stated herein.

- 20.04 Venue and Jurisdiction. OP and the District agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Longview County, Texas. Any action or proceeding to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Longview County or in the United States District Court for the Western District of Texas, Longview Division
- 20.05 Governing Law. The laws of the State of Texas, without regard to its conflict of laws provisions, will govern this Agreement, its construction, and the determination of any rights, duties, obligations, and remedies of the parties arising out of or relating to this Agreement.
- 20.06 Assignment. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party.
- 20.07 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.
- 20.08 Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.
- 20.09 Amendment. Any future amendment to this Agreement shall be in writing and signed and agreed to by both Parties.
- 20.10 Notice. Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile and/or e-mail address as follows:

**If to the OP:**

Executive Director

Longview LEAP

Email:

**If to the DISTRICT:**

James Wilcox  
Longview Independent  
1301 E. Young Street  
Longview, Texas 75602  
Email:



*With a copy to:*

Email

*With a copy to:*

1

Email

LIST OF ADDENDA:

Addendum 1: District's Charter Policy

Addendum 2: Policies Applicable to OP

Addendum 3: Annual Academic & Financial Performance Specifications/Goals

Addendum 4: Performance Consequences

Addenda 5: Monitoring and Oversight Plan

Addendum 6: Board of Directors

Addendum 7: Attendance Area Defined (?)

Addendum 8: Facility Plan

Addendum 9: Service Menu and Price List

Addendum 10: Financial Calculation Worksheet