**Instructions for using the TEA Performance Contract Template**

Districts and operating partners may use this document as a template and reference for developing their performance contracts. This template is not a model and is only intended to serve as a support in creating the final contract. **To ensure the contract will meet benefits elgibilty requirements, disitrcts and partners choosing to use this template must amend the terms and attach addenda that describe the terms of their specific partnership**. Addena that are referenced in this template must be developed locally.

***Last updated April 7, 2021.***

**Revision history:**

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| --- | --- |
| **Date of Update** | **Revision Summary** |
| April 7, 2021 | * Clarified SB 1882 requirement related to enrollment at turnaround partnerships (p. 8)
* Updated template instructions (this page)
 |
| August 28, 2020 | * Original
 |

**Agreement between Texas ISD and**

**Great School Nonprofit, Inc**.

This Agreement (the “Agreement”) is made and entered into as of December \_\_\_, 20XX (“Commencement Date”) by and between TEXAS INDEPENDENT SCHOOL DISTRICT, a public independent school district and political subdivision of the State of Texas, (“TISD”) and GREAT SCHOOL NONPROFIT, Inc. (“Operating Partner ” or “OP”) (together, the “Parties”) to operate LONE STAR ELEMENTARY SCHOOL (the “School”).

ARTICLE I.

RECITALS

* 1. Independent School District. TISD is an independent school district created within the laws of Texas.
	2. Authority to Contract. The board of trustees of TISD is empowered by Texas Education Code, Sections 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the district.
	3. Non-Profit Organization. Great School Nonprofit, Inc. is an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)),

*If entering into an Agreement under SB 1882, add:*

 [holds an open enrollment charter contract under TEC Subchapter D, Chapter 12, has not had a contract for charter revoked, has received overall performance ratings of acceptable or higher under Chapter 39, Subchapter C for each of the last three years, and has received financial accountability ratings under Chapter 39, Subchapter D of satisfactory or higher for each of the last three years], or [awarded a charter granted under TEC Subchapter C, Chapter 12 and is eligible under TEC 12.101(a) . TISD has granted (hereby grants) OP a charter under TEC Chapter 12, Subchapter C.]

*If entering into an Agreement under SB 1882, add:*

* 1. Consultation. TISD has consulted with campus personnel regarding provisions to be included in this Agreement. TISD recognizes that all rights and protections afforded by current employment contracts or agreements may not be affected by this Agreement.
	2. 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 understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school 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 authorizing OP to operate the School as an autonomous campus subject to transparent accountability requirements. 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 and shall be renewed for successive [term length] terms unless terminated in accordance with the provisions of Article XVI.

ARTICLE III.

DEFINED TERMS

3.01 School. School has the meaning assigned in the Texas Administrative Code §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 the other responsibilities associated with school operation.

3.02 Facilities. Facilities are defined as a building and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building and related improvements are located as more fully defined in Article X.

3.03. 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 OP to meet generally accepted fiscal management and government accounting principles, comply with Applicable Law, state agency rule, or meet the student outcome goals required by this Agreement.

ARTICLE IV.

RELATIONSHIP OF THE PARTIES

4.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP will operate as an independent contractor to TISD and will 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.

4.02 No Agency. Neither Party will be the agent of another except to the extent otherwise specifically provided by this Agreement. Neither Party has the express or implied authority or will in any case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind the other Party to any duty imposed by contract, other than this Agreement, unless the Party on which such duty is to be inferred has specifically authorized such action at a meeting of that Party’s governing board held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed in writing by that Party.

4.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party or has the right or authority to exercise any common control of any other Party. Nothing herein will be construed to create a partnership or joint venture by or between TISD and SMP.

4.03 Assurance of Independence. The OP governing body shall remain independent of the independent school district. This governing body is not and shall not be comprised of any members of the independent school district's board of trustees or staff.

ARTICLE V.

APPLICABLE LAWS

5.01. Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within TISD may not apply to the School or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12 [*Other examples may include: waiver under Chapter 7 and a Local Innovation Plan under Chapter 12A, Texas Education Code, or other operation of law*]. The Parties further agree that, except as provided in this Agreement or required by Applicable Law, no provision of Texas law otherwise applicable to a governing body or school, or rule or guideline, shall apply to the School or its operation.

5.02. Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with all laws and regulations that do apply to the School or its operation (collectively, “Applicable Law”), as may be amended from time to time. The Parties stipulate that Applicable Law includes, but is not limited to, 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; the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act; 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; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Local Government Code, to the extent it applies to school districts; the Texas Open Meetings Act and Texas Public Information Act under the Texas Government Code; and any amendments, interpretations, and reauthorizations of the foregoing.

ARTICLE VI.

GOVERNING POLICIES

6.01. Limitation on Authority. An educational or administrative service necessary for operation of the School not specifically reserved for provision by TISD 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.

6.02. Policy Election. OP elects to operate in accordance with TISD Board Policies specified in Addendum A-1, attached to this agreement.

6.03. Adoption and Publication of School Policies. The governing board of OP will adopt policies addressing matters specified in Addendum A-2, attached to this agreement, at a public meeting held in conformance with requirements of the Texas Open Meetings Law, Chapter 551, Texas Government Code. OP will provide proposed policies or proposed amendments to policies currently in effect in draft form to TISD for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and TISD Board Policies applicable by law or by election under this agreement on the School’s Internet website.

6.04. Future Waivers and Exemptions. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the School. If TISD is relieved from compliance from certain state or federal law or regulation through a waiver, 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, and the policy is not waived by this Agreement, the waiver applies to the School unless TISD notifies the School otherwise in writing within 60 days of the waiver’s application to the other school.

ARTICLE VII.

PERFORMANCE REQUIREMENTS

7.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in Addendum 3 are achieved.

7.02 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 3 will be determined using the methods, indicators, and timelines specified that Addendum.

 7.03 Performance Consequences. The Parties agree to specific, material consequences in the event that the operating party does or does not meet the annual academic or financial performance expectations and goals described in Addendum 3.

 7.04 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 3 and is obliged to oversee management of the School and intervene as required to ensure that performance goals are achieved.

ARTICLE VIII.

SCHOOL OPERATIONS

8.01. Operational Autonomy. OP shall have full and sole autonomy with respect to School operations. Domains of autonomy specified in this Agreement are intended as illustrative and do not represent an exhaustive listing.

8.02. Governing Structure. Subject to the terms of this Agreement, the governing board of OP will serve as the governing board of the School, will oversee management of the School, and has sole authority to hire and manage the School leader and to set the terms and conditions of the School leader’s employment.

8.03. Governing Board. OP represents that a true and accurate list of its current directors (“Directors”) is attached to this Agreement as Addendum 4. If there is any change to the Directors during the Term of this Agreement, OP shall provide notice to TISD of the change within 30 days.

8.04. Budgetary Authority of OP. OP has sole authority to approve or amend the budget for the School.

8.05 Grade Levels. Beginning in the \_\_\_\_\_\_ school year the School will serve students in grade levels \_\_\_ through \_\_\_.

8.06 Attendance Area. The School’s attendance area (“Attendance Area”) shall be defined as the area designated in Addendum 5 to this agreement subject to TEC §12.065.

8.07 Enrollment Policies. Any student who resides in the Attendance Zone of the district campus as it existed before the operation of the district campus under this contract may attend the School and may not be refused enrollment. If there are additional spots remaining then they shall be filled by the students who reside in the district and then filled by students who reside outside the school district. *[Alternatively, the contract could provide for open-enrollment.]* The Parties will collaborate and agree on a process for enrollment of students into the School.

[*SB 1882 Requirement: for turnaround parternships, the contract must provide that any student residing in the attendance zone of the district campus as the attendance zone existed before operation of the district campus under the contract shall be admitted for enrollment at the campus. The contract must establish enrollment preference for students who do not reside in the attendance zone as follows: (1) other students residing in the school district in which the campus is located; and (2) students who reside outside the school district.]*

8.08 Discipline and Expulsion Policies. *[Insert district discipline and expulsion policy, including DAEP/JJAEP placement, or link to addendum with local operator specific policy]*

8.09 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 agrees to provide this information to TISD no later than \_\_ days before start of school and to confer with TISD prior to altering.

8.10 TISD Meetings, Initiatives, and Training. School staff will not be required to participate in TISD training events or other meetings unless directed by OP. OP agrees that all School staff will comply with training requirements under Applicable Law. OP will have sole authority to determine professional develop activities or programs for School staff.

8.11 Contractor Criminal History Background Checks. OP will require criminal history background checks on all vendor and contractor personnel who enter the School or any TISD campus or building.

8.12 Technology Infrastructure; Network Services. TISD 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 TISD schools. OP shall provide TISD with a list of equipment purchased and collaborate for consistency between the standard equipment and needs of the School. The initial information technology equipment located at the School as of the commencement of the Term is included in the defined term Furnishings under Article X.

8.13 Media Requests. The Parties agree to collaborate regarding any media requests or press releases related to the School, 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. This requirement does not apply to general communications regarding OP or TISD that may include references to the School.

8.14 Communications with Parents. The Parties agree to jointly approve a protocol for both general and urgent communications with parents within 60 days of the execution of this Agreement.

ARTICLE IX.

STAFFING

*If personnel are to be employees of OP:*

 *9.01 Employment Status.* Faculty and staff of the School, including, but not limited to, the School Leader, other administrators, teachers, and teaching assistants, are employees of OP and not of TISD. The Parties acknowledge and understand that employees of OP are not subject to TISD personnel policies and that OP has sole authority over hiring, assignment, evaluation, development, advancement, compensation, continuation, other terms of employment with respect to School staff.

*If personnel are to be employed by the district (specific provisions will vary considerably depending on the arrangements determined by the Parties):*

*9.01 Employment status.* Faculty and staff of the School are employees of TISD and 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 initial and final authority to rescind the assignment of any district employee or district contractor from the campus. This authority includes hiring, assignment, evaluation, development, advancement, compensation, continuation, and establishment of any other terms of employment. TISD will grant any requests from the OP to rescind the assignment of any district employee or district contractor from the campus within 20 business days of receiving the request from the OP.

 9.02 Criminal History Background Checks. OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check.

 9.03 Certified Personnel. The School’s personnel shall at a minimum have the qualifications required by Applicable Law for the assigned role except to the extent a requirement has been lawfully waived or the individual is subject a lawful exemption.

 9.04 Employment Records. OP is responsible for maintaining the employment records for all School Personnel and all employment records of OP employees are the property of OP except that OP agrees to make records of affected staff members available to TISD should TISD become employer of those staff members.

 9.05 Employee Complaints and Grievances. The Parties agree that employee complaints and grievance will be governed by the applicable policy of his or her employer.

 9.06 Non-Solicitation. OP agrees it will not solicit or hire any TISD employees unless and until it receives written confirmation from TISD that the employee has been released from any contractual obligations with TISD. TISD agrees it will not solicit or hire any employee of OP during any school year, Summer school, or after July 1 of any year. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.

9.07 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 X.

ACADEMIC PLAN

 10.01 Curriculum and Program. OP will have sole authority to approve all curriculum decisions beyond the minimum requirements outlined in 19 Texas Adminstrative Code §74.2 (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus. This authority includes sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations.

 10.02 Educational Plan or Academic Model. OP will implement the education plan or academic model described in its proposal to operate the School, attached as Addendum 6. The OP will include in the plan or model the vision for the School, including its culture, curriculum, assessment program, instructional strategies, talent recruitment and management strategies, professional development activities or programs, evidence that the aforementioned strategies and programs can be effective with the student population served at the School, and the management routines and practices to be implemented by the OP in managing the staff and academic programs at the School. OP will ensure that curriculum satisfies the minimum requirements outlined in 19 TAC §74.2 (relating to Description of a Required requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3of this title (relating to Description of a Required Secondary Curriculum). OP agrees to notify TISD any significant alteration of this plan within 10 days.

10.03 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 TEKS, or its successor, and any other standards that may be required under Applicable Law.

10.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state for federal law.

10.05 Extracurricular Programming and Participation. Students enrolled at the School may join any extra-curricular activity offered to TISD 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.

10.06 Student Behavior. Students enrolled at the School will be required to follow the OP Code of Student Conduct as presented in its proposal to operate the School and attached as Addendum 6. OP agrees that it will not modify expulsion provisions without consent of TISD and agrees to notify TISD of any other modification at least 60 days in advance of implementation.

 10.07 Due Process. OP will cooperate with TISD to ensure that due process is afforded with respect to student removals and expulsions.

ARTICLE XI.

FACILITIES

 11.01 Facilities. TISD agrees to provide facilities, in the form of classrooms, office furniture, and equipment and storage areas, for the School at no cost and provide utilities in accordance with Facility Plan attached as Addendum 7. [*Note: If a school has been converted to a campus charter school, the district may not require the OP to pay rent or purchase the facility.]* The 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.

11.02 Ownership. The Parties acknowledge that all Facilities are owned by TISD.

11.03 Permitted Use. Beginning on \_\_\_\_\_\_\_ (“Possession Date”), and during the Term of this Agreement, OP may use and occupy the Facilities solely for the operation of the School as permitted by this Agreement and Applicable Law. To the extent OP wishes to use the Facilities for educational activities, separate from the School but associated with its educational purposes, OP will seek approval from TISD, and such approval shall not be unreasonably denied but any costs for such facility use shall be reimbursed to TISD by OP.

11.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with OP regarding the furniture and equipment needs of the OP classrooms, TISD will supply chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other furniture as reasonably required for the OP 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 TISD. OP also may furnish other furniture, fixtures, and equipment, at its cost and expense, as OP determines is require it implement the Program. The title to all furniture and equipment supplied by TISD for use by OP remains vested in TISD. OP and TISD will ensure that all property is asset tagged to clearly identify ownership. Each organization shall maintain an inventory list of all of its assets located at the school.

11.05 Fixtures and Alterations. OP may attach non-permanent materials and fixtures to the walls of the TISD classrooms but may not make any other alterations (including fixtures) in or to the OP classrooms or any other part of the TISD facilities used by OP for OP that would alter the walls, floors, or any other permanent structure of the TISD Premises without writtend consent of TISD.

11.06 Janitorial Services. OP shall provide janitorial services to the area used by OP in the same manner and at the same level as for the remainder of TISD.

11.07 Maintenance. OP shall maintain the School classrooms and any other portion of the TISD 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. TISD shall be responsible for routine maintenance and major repairs of the OP School including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. TISD shall maintain all other portions of the OP School in a neat and orderly manner.

11.08 Insurance Coverage. Each Party, at its own expense, will maintain its own insurance throughout the Term of this Contract. The insurance required under this Contract shall be as follows:

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 Contract. Such insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term:
2. Automobile insurance to cover losses for motor vehicles accidents by that Party; and
3. Workers Compensation insurance as may be required by Applicable Law for that Party.
4. TISD will obtain and maintain property insurance for School as it deems necessary and advisable to carry. Each Party may elect to carry insurance to insure its own personal property located at the School.

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

11.09 Surrender of the Facilities. On the termination of this Agreement, OP shall leave the Facilities in good condition and repair. OP shall return and surrender to TISD all keys, security access cards, mail box keys, and keys to interior doors and improvements that were provided to Operator by TISD. The obligations under this Section shall survive the termination of this Agreement.

11.10 Forfeiture for Breach of Contract. It is mutually understood and agreed that any material failure by OP to perform under this Agreement that remains uncured after receipt of ten (10) day’s written notice shall be considered a material breach and default. In addition to any other remedy afforded TISD by law or this Agreement, TISD is entitled upon material breach to an order of forfeiture authorizing TISD to hold, maintain, lease, sell or otherwise dispose of the Facilities as defined by this Agreement.

ARTICLE XII.

FINANCIAL MATTERS

*Note: Funding provisions are subject to negotiation by the parties and may vary significantly. The following provisions are purely illustrative.*

12.01 Determination of Funding Allocation. Compensation to OP for eligible students is based primarily on the weighted average-daily-attendance (WADA) allocation received by TISD for students enrolled in the School and actual student attendance. For the \_\_\_\_\_\_\_\_\_school year, (“Initial Year”), OP shall be paid by TISD according to the base student allotment designed by the State for TISD of \_\_\_\_\_.00 per student ADA (*Note: funding may also be determined as the percentage of revenue generated by attendance at the campus)*plus weights for compensatory education, special education, bilingual (English Language Learners), gifted and talented and career and technology, per school year based on a 180-day school year. OP shall additionally be paid a share of any other allotments received by the district (including the instructional materials allotment) in proportion to the number of students enrolled at the School. The OP shall receive all federal, state, and local funds due the campus from TISD each year. The budget for the first year of operation of the School is included as Addendum 8.

12.02. Distribution of Funding Allocation. The allotment shall be paid in monthly installments on the *15th* day of each month during the term, commencing on \_\_\_\_\_\_\_\_\_\_\_\_\_. Payments shall be issued on an average monthly basis, based initially on a projected first-year enrollment of \_\_\_\_students at an estimated *97.3*% attendance rate, an estimated *50*% LEP students, and an estimated *80*% economically disadvantaged, over *11* equal periods, provided that the *11th* payment may be withheld by TISD to allow for any required adjustments for the reasons stated below. The estimated weights will be adjusted to actual weights for purposes of determining the compensation hereunder and the amount of the *11th* month payment. The *11th* payment shall not be withheld for more than 30 days, and if TISD is unable to determine the actual weights within 30 days after the *11th* payment is initially due, it shall make such payment based on estimated weights as described above; any adjustment determined thereafter shall be paid to OP upon such determination if warranted, or shall be withheld in *10* equal amounts from the next *10* payments due to OP if the final determination indicates an overpayment based on actual weights. In the event that the *15th* shall fall on a Saturday or Sunday, payment shall be made on the following Monday. In the event that the *15th* shall fall on a holiday, payment shall be made on the preceding day or preceding Friday as applicable.

12.03 Limitations. Payment shall be issued contingent on current ADA and FTE records (as applicable) in balance ten (10) days after receipt of the monthly invoice for the periods covered in this Agreement, and submitted to TISD. In no case shall TISD be obligated to pay any amount for students not included in the District’s eligible ADA count to the Texas Education Agency. Notwithstanding any terms herein to the contrary, TISD’s obligation to compensate OP is expressly subject to the receipt, adjustment, or modification of funds by TISD from the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced, TISD shall not be obligated to OP in any amount, and OP may terminate this Agreement, and any prior payments made by TISD shall be retained by OP in consideration of and as payment for educational services provided to the date of such termination. This section shall not be construed to relieve TISD of any responsibility or obligation to OP if TISD fails to receive funding as a result of a failure by TISD or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.

12.04 Procedure for Initiating Payment. By *January 30* of any calendar year, OP shall submit its projected enrollment for the upcoming school year to TISD, which shall use that projected enrollment to calculate the monthly payments for the next school year. For the second year of School’s operation, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on actual figures from the first year of operation. For the third year and succeeding years, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on an average of the prior two years.

 12.05. Refund upon Termination. In the event of termination prior to the full term of this Agreement, OP agrees to refund to TISD within ninety (90) days of the date of termination all advanced but unearned funds.

12.06 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State. Such funding must be spent as approved and designated by Federal and State agencies. OP admits knowledge of and agrees that TISD'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 TISD 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.

 12.07 Contracting, Purchasing and Procurement. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment. OP reserves the right to contract for any services it deems beneficial in operation of the School.

 12.08 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. In addition to any audits required by Applicable Law, OP shall submit to TISD 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. 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 any expenditures relating to this Agreement are disallowed, OP agrees to reimburse TISD immediately for the full amount of such.

ARTICLE XIII.

RECORDS AND REPORTING

13.01 Records Management System. OP shall implement 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 the contract.

13.02 State and Federal Reporting. OP shall report timely and accurate information to TISD as necessary for TISD to comply with all applicable state and federal requirements. OP shall report information in the manner requested by TISD and correct any demonstrable errors as requested by TISD provided that the manner of reporting or correction quested is not unduly burdensome to TISD.

13.03 Lawful Disclosure. To the extent that OP or TISD will come into possession of student records and information, and to the extent that OP or TISD 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 Family Educational Rights and Privacy Act and the Texas Public Information Act. In the event that TISD is required to furnish information or records of the School pursuant to the Texas Public Information Act, OP shall furnish such information and records to TISD, and TISD shall have the right to release such information and records. Either OP or TISD may object to disclosure of information and records under the Family Educational Rights and Privacy Act or the Texas Public Information Act.

ARTICLE XIV.

INTELLECTUAL PROPERTIES

14.01 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 TISD for the School shall be owned by TISD, 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. 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.

14.02 Name. OP owns the intellectual property right and interest to the name “Great Schools Nonprofit.” The Parties agree that the name “Great Schools Nonprofit” may be used by either Party during the Term of the Contract. The Parties agree that after the expiration or termination of this Contract, TISD will not use the name “Great Schools Nonprofit” for its own individual purposes.

ARTICLE XV.

INSURANCE

15.01 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. TISD 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 or any event arising therefrom. TISD 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, in substantially the same manner as it maintains such insurance with respect to other TISD schools. Operator 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, TISD shall have the right to self-insure part or all of said insurance coverage in TISD’s sole discretion. In the event TISD 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, TISD shall make funds available to the same extent that they would have been available had such insurance policy been carried.

15.02 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 TISD. Such policies shall name TISD, and such other related parties as TISD elects, as additional insureds. Evidence of insurance shall be delivered to TISD 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.

15.03 Indemnification. Subject to the policy limits of the insurance coverage required by this Agreement, OP will protect, defend, indemnify, and save harmless TISD from and against all claims and suits, including court costs, attorneys’ fees, and other expenses, caused by the acts or omissions of OP, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement. Subject to the policy limits of the insurance coverage required by this Agreement, TISD will protect, defend, indemnify, and save harmless Operator from and against all claims and suits, including court costs, attorneys’ fees, and other expenses, caused by the acts or omissions of TISD, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement.

15.04 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.

15.05 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.

15.06 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 XVI.

TERM AND TERMINATION

16.01 Term. The term of this Agreement shall begin on the Commencement Date and end on \_\_\_\_ [5 years] (“Term”). This Agreement is subject to the termination provisions below.

16.02 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and TISD if termination is effective no sooner than the end of the then current school year.

16.03 Termination Rights of Both Parties. Either Party may immediately terminate this Agreement in the event that the other Party fails to remedy a material breach of this Agreement within \_\_\_ days after written notice by the non-breaching Party of such breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required. In the event the TISD terminates the agreement before the agreement end date and if the OP has met performance goals, then TISD will pay a transition fee of $1,000,000 to the OP to support costs related with exiting the agreement. The TISD also agrees that the OP has the right to use the facility, on a market rate level, for the duration of the original agreement. In the event that the OP terminates the agreement early or has a material breach, then the OP agrees to pay the TISD pro-rated market rate rent for the time that the OP operated in the facility without rent.

16.04 Termination Related to Academic Performance. TISD may terminate this Agreement if the School is placed in one of the lowest two categories of state or federal accountability ratings for three or more consecutive years in which it is operated by OP or fails to achieve the student outcome goals specified in Addendum 3, attached, after the third year of School operation under this Agreement. A termination under this section shall be effective at the end of the then current school year so long as notice of such termination is provided no later than one hundred eighty (180) days prior to the end of the then current school year.

16.05 Termination Right to a Public Hearing. TISD may not terminate this Agreement if the school successfully achieves the student outcome goals specified in Addendum 3, attached, without a public hearing at least 30 days prior to any district action to terminate the contract. TISD may not extend this Agreement if the school fails to achieve the student outcome goals specified in Addendum 3, attached, without a public hearing at least 30 days prior to any district action to extend or renew the contract.

16.06 Termination Related to Academic Performance. TISD may terminate this Agreement if the School is placed in one of the lowest two categories of school improvement for three or more consecutive years in which it is operated by OP or fails to achieve the student outcome goals specified in Addendum 3, attached, after the third year of School operation under this Agreement. A termination under this section shall be effective at the end of the then current school year so long as notice of such termination is provided no later than one hundred eighty (180) days prior to the end of the then current school year.

ARTICLE XVII.

Service-level Agreements

17.01 OP Authority. The OP has sole decision-making authority regarding the delivery of any service related to transportation, food services, janitorial, security, or related services. OP may, at its sole discretion, choose to purchase one or more services from TISD, including student transportation, child nutrition, services for special populations, library, counseling, facilities maintenance, temporary alternative programs, and other services at a cost jointly approved annually. The cost of such services will be agreed upon at a per-pupil amount, per-square foot amount, per-campus amount, or as a percentage of the total disitrct budget for the service and are set forth in Addendum 9, attached. If OP operates more than one campus within TISD, the services and terms of purchases may vary for each school. The TISD will not and cannot require the OP to use any TISD provided services without the consent and agreement of the OP.

 17.02 Administrative Services. The Parties agree that TISD shall withhold no more than \_\_\_% of all funds annually for TISD services, including mandatory state and federal reporting and data system administration. The Parties agree to meet annually to review and jointly approve such fees. Itemization and cost of administrative services for \_\_\_\_\_\_\_\_\_ are set forth in Addendum 9, attached.

17.03 Individual Service Pricing. TISD agrees to publish annually a service menu and price list for all services. Prices will be stated in a per-pupil or per-square foot format. Prices will be actual prices that the TISD service costs for TISD schools.

17.04 Service Pricing at Cost. If the OP decides, as documented in this agreement, to buy services from the TISD then TISD must charge the OP the same per-pupil or per-square foot price that TISD delivers the service to TISD direct run schools. *[Note: If a school has been converted to a campus charter school, district fees for services may not exceed cost to the district.]*

17.04 [INSERT SPECIFIC SERVICE-LEVEL AGREEMENT]

ARTICLE XVIII.

GENERAL AND MISCELLANEOUS

18.01 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.

18.02 Severability. If any provision of this contract is determined by a court other tribunal to be unenforceable or invalid for any reason, the remainder of the contract shall remain in full force and effect so as to give effect to the intent of the parties to the extent valid and enforceable.

18.03 No Waiver of Breach. No assent, express or implied, to any breach of any of the covenants or agreements herein shall waive any succeeding or other breach.

18.04. Venue. Any suit arising under this contract shall be brought in \_\_\_\_\_ County, Texas.

18.05. Governing Law. In any suit arising under this contract, Texas law shall apply.

Entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_

Texas ISD

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By

Great Schools Nonprofit, Inc.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By

ADDENDUMS REFERENCE

Addendum 1: TISD Charter Policy

Addendum 2: Board Adopted School Policies

* Local district or operating partner policies and bylaws

Addendum 3: Student Outcome and Financial Performance Goals

* Includes specific and material performance consequences

Addendum 4: OP Governing Board

Addendum 5: School Attendance Area

* To be developed locally

 Addendum 6: OP Charter Proposal (Application)

* Includes educational plan/academic model

Addendum 7: Facility Plan

* To be developed locally

Addendum 8: First Year Budget

Addendum 9: TISD Services and Fees

* To be developed locally