

## **Agreement for Educational Management Services**

This Agreement is dated April 23, 2019 (the "**Effective Date**") and is by and between Jayne Ellspermann, LLC (the "Contractor") located at 2403 SE 19<sup>th</sup> Circle, Ocala, Florida 34471 and The School Board of Marion County, Florida, a body corporate existing under the laws of the State of Florida (the "District") located at 512 SE Third Street, Ocala, Florida 34471.

Whereas, pursuant to § 1008.33, Fla. Stats. (2018), and Fla. Admin. Code R. 6A-1.099811, the Florida Department of Education ("FDOE") requires the District to submit a "Turnaround Option Plan" that sets forth a new option for School Year 2019-2020 for the operation of Oakcrest Elementary School located at 1112 NE 28<sup>th</sup> Street, Ocala, Florida 34470 (the "School");

Whereas, the District has submitted its Turnaround Option Plan to FDOE, attached hereto and incorporated herein by this reference as **Exhibit A**, and approval of the District's Turnaround Option Plan is pending approval by the State Board of Education;

Whereas, the District's Turnaround Option Plan selected the option of entering into a contract with an external operator in order to satisfy the requirements of § 1008.33, Fla. Stats. (2018), and Fla. Admin. Code R. 6A-1.099811;

Whereas, the District requested and reviewed proposals from several potential external operators and considered each proposer's demonstrated record of effectiveness to operate a school pursuant to § 1008.33(4)(b)3, Fla. Stats. (2018), and Fla. Admin. Code R. 6A-1.099811(6)(d);

Whereas, as a result of the District's review, the Contractor is selected by the District to fulfill the purpose of operating the School, and the Contractor agrees to provide such services to the District as outlined herein; and

The District and Contractor wish to outline in writing the terms and conditions pursuant to which the Contractor will provide such services to the District; and

The District is authorized to enter into this Agreement for professional development and educational services pursuant to School Board Policy 7.70 and Fla. Admin. Code R. 6A-1.012(11)(a)&(b).

In consideration of the promises and the mutual covenants and undertakings, the parties hereto agree as follows:

1. Recitals. The recitals outlined above are true and correct and incorporated herein by this reference.
2. Conditions to this Agreement. It is the intent of the parties that this Agreement satisfy the requirements of FDOE regarding the District's obligation "to enter into a contract with an outside entity [or external operator] that has a demonstrated record of school improvement in turning around schools that are high-poverty and low-performing with students of similar demographics and effectiveness to operate the [School]" pursuant to § 1008.33(4)(b)3, Fla. Stats. (2018), and Fla. Admin Code R. 6A-1.099811(6)(d). Notwithstanding anything to the contrary in this Agreement, the parties agree that this

Agreement will automatically terminate, and be of no further force and effect, upon the occurrence of any of the following:

- (a) The School earns a grade of "C" or higher upon the Florida Department of Education release of school grades in the Summer of 2019 (or any subsequent school year if this Agreement is renewed), thereby resulting in the School's exiting the statutory or regulatory requirement that the District enter into a contract with an outside entity that has a demonstrated record of effectiveness to operate the School;
- (b) The requirements of differentiated accountability require termination of this Agreement, or are amended by the Florida Legislature and/or FDOE thereby resulting in the purpose of this Agreement being terminated (for example, whether the District is no longer required to enter into this Agreement or whether the District is required to select a different option for the School);
- (c) The Florida statutes and/or FDOE administrative rules are invalidated by a court of competent jurisdiction, with the resulting outcome being that this Agreement is no longer required of the District;
- (d) Upon release of the current year's school grades should the operator fail to make progress in its current schools; or

In the event that any of the above-conditions occur, then either party may send written notice to the other party to terminate this Agreement pursuant to the terms and provisions outlined above, with such termination to be effective no earlier than the completion of the Review and Needs Analysis phase (described in **Exhibit B**). If this Agreement is terminated as provided herein, then the parties will be relieved of all of their respective obligations under this Agreement, and the District will only be required to pay to the Contractor that amount of work under this Agreement actually performed to the date of termination. Access to any and all work papers and data collected will be provided to the District after the termination of this Agreement, and the parties will reasonably cooperate regarding the transition of rights, obligations and duties back to the District to operate the School. In the event this Agreement is terminated pursuant to this section 2, then the parties agree to jointly review the School's performance for the prior school year and negotiate in good faith for educational and professional services as may be needed for the School for the subsequent school year.

3. **Turnaround Option Plan.** The parties agree that the Turnaround Option Plan outlined in **Exhibit A** is a draft to be approved by the State Board of Education. If the State Board of Education requires alterations to the Turnaround Option Plan for approval, and such changes are immaterial, then the parties agree that the Turnaround Option Plan approved by the State Board of Education shall be substituted and replace the document attached in **Exhibit A**. If, however, the State Board of Education requires material alterations to the Turnaround Option Plan for approval, then the parties agree to negotiate in good faith such amendments to this Agreement as may be necessary to fully implement this Agreement in compliance with the approved Turnaround Option Plan.

4. **Relationship of Parties.** Contractor is an independent contractor for all purposes arising under this Agreement. Contractor and its officers, agents, or employees will not, under any circumstances, hold themselves out to anyone as being officers, agents, or

employees of District. No officer, agent, or employee of Contractor, or District will be deemed an officer, agent, or employee of the other Party. Neither Contractor nor District, nor any officer, agent or employee thereof, will be entitled to any benefits to which employees of the other Party are entitled, including, but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave, or other leave benefits. Nothing in this Agreement will permit the District to exercise control or direction over the means or methods by which the Contractor perform the services for which it has been engaged. However, the District and the Contractor will fully comply with all performance standards outlined in this Agreement, all currently approved and generally accepted professional standards governing the particular professional specialty for which the Contractor has been engaged, and all other applicable local, state or federal rules and regulations pertaining to licensure and the provision of professional services. As an independent contractor, the Contractor is responsible for all taxes incident to payments made in connection with this Agreement (including without limitation, all state and federal income taxes payroll and other taxes, and Workers' Compensation).

5. Services. Both parties agree that the scope of the Contractor's responsibility, as outlined in this Agreement, will be performed in accordance with the Turnaround Option Plan and statutory requirements, and will consist of the services set forth in Exhibit B attached hereto and incorporated herein by this reference. If any services, functions, or responsibilities not specifically described in this Agreement are necessary for the proper performance and provision of the services, upon the agreement of the parties, such services, functions, or responsibilities is included within the scope of the services. Subject to the terms and conditions in this Agreement, the Contractor is responsible for providing the supplies, leadership and instructional staff, curriculum and instruction, assessments and progress monitoring, professional development, and any other identified school improvement areas, along with any other resources as necessary to provide the services.

6. Duties of Contractor. Subject to the provisions of section 7(a) below, the Contractor is responsible for the following:

(a) The services provided by the Contractor under this Agreement will be consistent with the available facilities, the Contractor's professional judgment and the standards established in the District's community.

(b) The Contractor will comply with the requirements of providing a free appropriate public education, including but not limited to, compliance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, Sections 1000.05 and 1001.42(4)(I), Fla. Stats. (2018), Fla. Admin. Code R. Chapter 6A-6 Special Program I, and 20 U.S.C. §1221 - the General Education Provisions Act.

(c) The Contractor agrees to comply with all applicable laws, statutes, regulations, rulings, or enactments of any governmental authority, and will obtain from third parties, including State and local governments, all licenses and permissions necessary for the performance of the work. The Contractor shall comply with policies, rules, and regulations of the District, including but not limited to, the following:

(i) The District's plan for English Language Learners;

- (ii) The District's Code of Student Conduct;
- (iii) The District's Student Progression Plan;
- (iv) The District's State-approved Special Programs and Procedures Plan (for exceptional education students);
- (v) Operate the School on the same calendar as the District's calendar for District schools.

(d) The Contractor must maintain adequate and current records for the Services in the manner consistent with applicable legal requirements and consistent the District's prior practices, including but not limited to the Contractor's use of the District's student information system to input student data (including but not limited to attendance, discipline, grades, scheduling and enrollment in order to generate FTE for the Florida Education Finance Program and other state and federal revenue); and the Contractor will use the District's SEAs platform for ESE and 504 as applicable; and the District's SAP system as applicable;

(e) The Contractor will cause the students to participate in all state required assessments and comply with state reporting requirements, and the Contractor will comply with requirements of any student's IEP, 504, or EP (e.g., accommodations or an alternative assessment, as the case may be), and will comply with state reporting requirements associated with the same;

(f) If the Contractor purchases any furniture, fixtures, supplies or equipment using public funds, then the same must not be subject to any liens; in addition, such property will be the property of the District and made available to the District to inventory.

(g) The Contractor will enroll students according to the requirements of law (e.g., open enrollment), and according to the requirements of the District pursuant to attendance boundaries and the requirements of law; and the Contractor will comply with class size requirements;

(h) The Contractor will operate the School in compliance with federal and state grants applicable to the School, and cooperate with the District concerning any information required for compliance with federal and state grant funds;

(i) The Contractor will operate the School in a manner that protects the health, safety, and welfare of the students;

(j) The Contractor will implement the school advisory committee according to the requirements of law;

(k) The Contractor will implement a schedule of professional development for the School's leadership, instructional, and other personnel (the Contractor may utilize the District's professional development, utilize Contractor's professional development, or a combination);

(l) The Contractor will reasonably cooperate with the District concerning the

District's maintenance and renewal of the District's accreditation; and,

(m) At no additional cost to the Contractor, the Contractor agrees to reasonably assist the District if any service required to operate the School or required by law is omitted from this Agreement; it being understood that the parties will mutually cooperate to ensure continuity of operations of the School.

(n) The Contractor shall be responsible for recruitment, selection and placement of instructional personnel with proven experience and capacity to serve students who may need intensive remediation and instruction.

(o) The Contractor shall be responsible for the recruitment, selection, placement, training and oversight of the school leadership team.

(p) At no additional cost to the District, with sufficient reasonable notice, the Contractor agrees to reasonably assist the District in dealing with the Florida Department of Education as well as the State Board of Education including attending State Board of Education meetings regarding Oakcrest Elementary School. Also, Contractor agrees to reasonably assist with and participate in the site visits and reporting requirements by the DOE. The District will be responsible to notify the Contractor in advance of any State Board of Education meetings regarding Oakcrest Elementary School and will provide the Contractor with a schedule of Differentiated Accountability Team visits to Oakcrest. If a schedule of Differentiated Accountability team visits is not available, Contractor should be consulted on an acceptable date(s) and time(s) to prevent any material disruption to operations of Oakcrest Elementary School.

7. Duties of the District.

(a) For all purposes, the District is the Local Education Agency ("LEA"). Nothing in this Agreement is intended to, delegate the District's responsibilities as LEA to the Contractor.

(b) The District will provide the Contractor with adequate work areas and equipment, as reasonably deemed necessary by the Contractor, for the Contractor to perform the services at the School, as well as adequate work areas for the Contractor's delivery of professional services.

(c) The District will provide support services as follows:

(i) The District will provide the physical plant, furniture, fixtures, equipment and supplies for the School operations, and the District will maintain the same in working condition; however, the parties understand and agree that: (A) the District may continue to use a designated portion of the facility for district offices, and (B) that the Contractor agrees to continue Oakcrest's International Baccalaureate Magnet Program and will follow District policy for Student assignment;

(ii) The District will provide custodial services according to the same standards as provided for other District schools during the school year, and the District will pay for and maintain utilities for the School according to the

same standards as provided for other District schools during the school year (e.g., electric, telephone, water and sewer);

(iii) The District will provide the same standard of technological infrastructure to the School to enable the Contractor to support and administer all required online test administrations, to input student data into the District's student information system, input student data into the District's SEAs platform, and input data into the District's SAP system;

(iv) The District will provide meal service to the School's students in compliance with the USDA meal requirements and Federal and State Child Nutrition Standards (e.g., breakfast and lunch according to the requirements of USDA as administered by the Florida Department of Agriculture);

(v) The District will provide transportation to the School's students according to the same standards as the District provides for other District school during the school year;

(vi) The District will provide school resource officer support to the School according to the same standards as the District provides to any other elementary school in the District;

(vii) The District will provide health services to the School according to the same standards as the District provides for other District schools during the school year;

(viii) The District will cooperate with the Contractor to implement the school advisory committee;

(ix) The District will continue to be responsible for compliance with all duties and obligations that it has as the LEA under applicable laws relating to services provided to students with disabilities, including exceptional education and Section 504. The District will provide staff and services for the School's students with disabilities in substantially the same manner as the District provides such staff and services to other District schools and in compliance with law. The District will provide such staff and services in manner that is consistent with the School's academic program and general operations.

(x) The District will continue to provide English as a Second Language services and support to the School's students in the same manner that it provides to other District schools.

(xi) The District will make available to the Contractor the District's professional development (and materials) on the same basis as is available to the District's employees; there will be up to 5 days of Early Return for a teacher orientation and training before the beginning of the school year, which will be conducted by the Contractor.

(xii) The District agrees to reasonably assist the Contractor if any

service required to operate the School or required by law is omitted from this Agreement; it being understood that the parties will mutually cooperate to ensure continuity of operations of the School.

8. Personnel.

(a) Recognizing that the District engages Contractor based on the experience, knowledge, skills, and abilities of its personnel, the Contractor's personnel for the Services (including title and hourly rates) is to be determined by Contractor. Contractor personnel may not provide any services until District provides Contractor with notice of clearance in accordance with the Jessica Lunsford Act, and issues official School District badges. Contractor must provide to the District the resume/biography of each of Contractor's personnel assigned to the School for the District's review and approval according to the criteria in Section 29 of this Agreement. Contractor will not transfer or replace such personnel without the prior written consent of the District, which consent may be withheld in its reasonable discretion.

(b) The Parties acknowledge that pursuant to section 1001.42(21), Fla. Stats. (2018), an educational emergency exists with respect to the School. This Agreement is governed by, that certain executed Memorandum of Understanding between the District and Marion Education Association (the MEA/MESP MOU"), attached to this Agreement as **Exhibit C** which addresses the selection, placement and expectations of instructional personnel and provides autonomy to school principals as outlined in section 1012.28(8), Fla. Stats. (2018). Nothing in this Agreement is to be construed or interpreted to supersede the obligations of the District to bargain compensation, working conditions and other mandatory bargaining issues.

(c) The District will continue to provide operational Human Resource services to include processing of applicants, ensuring certification compliance, conducting background screenings, maintaining employment records, and investigating allegations of employee misconduct. Matters involving employee grievances will be governed by existing District policies and applicable collective bargaining agreements.

(e) The District will serve as the fiscal agent and will pay the salaries and benefits of District employees assigned to the School in accordance with the District's approved compensation schedules. Primary management of personnel, to include selection, placement, and evaluation of school-based instructional, administrative and support staff will be provided by the Contractor. All School staff will be selected through an interview protocol established by the Contractor. Teachers with end of year state VAM data in the Needs Improvement or Unsatisfactory range will not be eligible to remain at the School. In the event that an individual is not selected to remain at the School by the Contractor or otherwise elects to voluntarily surplus or transfer out of the School, the District will make every effort to reassign the employee to another District school. However, nothing herein is to be construed to create a guarantee of employment or otherwise expand rights not currently guaranteed by law. To assist the Contractor with identification and placement of staff, the District will make available its personnel systems and structures at a level comparable to other District schools.

(f) The Contractor will implement the provisions of the Turnaround Option Plan regarding the selection of the School's administrators according to the requirements of law. If the School's principal and assistant principal(s) leave their positions, the Contractor will consult with the District regarding the identification and selection of eligible candidates for the School's principal and assistant principal(s), and the Contractor will have final authority regarding the engagement of the School's principal and assistant principal(s).

(g) Instructional and other eligible staff will continue to utilize the District's then-current provider of substitute services for substitute personnel.

(h) For consistency with evaluations of personnel, all formal evaluations will utilize the District's current state approved evaluation system for formal evaluation of personnel, and all formal evaluations will be performed by district staff. Additional monitoring systems may be utilized to provide teachers performance feedback.

9. Curriculum and Instruction.

(a) The Contractor will improve the School in terms of student performance on FSA and school grade while implementing next generation instructional systems that will build the capacity of the School to sustain and continue its own improvement in preparation for returning the School to District control as stipulated in this Agreement. Instructional delivery models must include Multi-tiered Systems of Support (MTSS) in accordance with federal and state laws and the District's Student Progression Plan.

(b) The Contractor has reviewed the District's curriculum and instructional materials and the Contractor agrees to utilize and implement the same. If, however, the Contractor determines that revisions are required, then Contractor will provide prior written notice to the District, and the Contractor will be responsible for the selection of instructional materials (including the major tools of instruction, ancillary materials and supplemental materials) in full compliance with all legal requirements. If the purchase of the instructional materials cannot be borne by the District pursuant to the School's budget allocation, then in such event, and subject to the availability of funds, the cost of the acquisition will be borne by the District. In addition to the foregoing, Contractor may elect to utilize the District's curriculum and instructional materials but nonetheless select supplemental materials that are aligned to the current curriculum; in such event Contractor will provide prior written notice to the District, and if the purchase of the supplemental materials cannot be borne by the District pursuant to the School's budget allocation, then Contractor, at its sole option and cost, will have the right to purchase such supplemental materials.

(c) The Contractor will have full access to all Professional Development provided by the District to other district employees and will provide additional specific instructional and leadership training to School employees.

(d) The District will continue to provide supplemental academic services to students at the School in a manner consistent with services provided to other



District schools during the school year, however agreements with external providers will be governed by existing contract terms.

(e) The Contractor agrees to use the District's established interim/ benchmark assessments and statewide summative assessments. If, however, the Contractor determines that alternative benchmark/assessments are required, then Contractor will provide prior written notice to the District for the District's review and consent (which will not be unreasonably withheld), and the Contractor will be responsible for the selection of alternative benchmarks and assessments in full compliance with all legal requirements and the cost of the acquisition will be borne by the Contractor. In addition, the Contractor may utilize additional progress monitoring systems to assess evidence of student learning.

(f) The Contractor agrees to implement the District's curricular programs (including but not limited to choice/magnet programs, tutoring, before and after care programs, and any programs implemented by the District or any third party) as the District provided for the School for the 2018-2019 school year. Except for the curricular program expressly identified in section 7(c) above (if any), if the Contractor determines that any elements of the District's provision of curricular programs do not contribute to the Contractor's services at the School, then the Contractor will provide written notice to the District and the parties agree to expediently collaborate regarding a resolution. After such collaboration, if the Contractor determines that it desires to opt out of the District's identified curricular program, then the Contractor will provide written notice to the District to remove such curricular program from the School.

(g) The Contractor agrees to provide leadership development to train staff to maximize grant spending. The leadership development must include how to monitor grant expenditures to ensure that over-spending or under-spending is addressed before the end of grant periods, and must train staff on how to prepare required financial and program process reports in accordance with the use of grant funding.

10. Term; Renewals. The term of this Agreement commences upon approval on April 23, 2019 for the Review and Needs Analysis, with External Operator services commencing July 1, 2019, if necessary, and ends June 30, 2020. There shall be one(1) potential annual renewal for the 2020-2021 school year. The District will notify the Contractor in writing of its option to exercise any annual renewal no later than before the commencement of the next renewal term, and if renewed, the fees will be as outlined in **Exhibit B**. Further, the effectiveness of any exercised renewal term is subject to the same conditions described in section 2 above (it being understood, for example, that if any of the conditions set forth in section 2 occur, then this Agreement will terminate according to the provisions of section 2 above).

11. Fees and Expenses.

(a) The Contractor will be compensated for services rendered. For all the services actually, timely, and faithfully rendered by Contractor, the District agrees to pay Contractor for the services set forth in **Exhibit B**, in an aggregate maximum indebtedness amount not to exceed three hundred thousand and No/100 Dollars (\$300,000.00). Contractor shall remit a proper invoice for the component of

service described in **Exhibit B** in such form and containing such documentation as may reasonably be required by the District to substantiate the charges (including timesheets, meeting agenda, training materials, and other artifacts), and such invoice shall be delivered according to the schedule specifically set forth in **Exhibit B**. The District will make payment to Contractor in accordance with Sections 218.70. et sq. Fla. Stats. (2018), Local Government Prompt Payment Act, after receipt of an acceptable invoice, inspection, and acceptance of goods or services provided in accordance with the terms and conditions of this Agreement. Any penalty for delay in payment will be in accordance with applicable law. Contractor is responsible for payment of its travel, if any.

(b) Additional Funding (Allocations per School) - The District will provide all funding or services that the School would normally receive, such as entitlement funding (e.g. Title I, Parts A, C, D; Title II, Part A; Title III; Title IV, Parts A and B; Title IX, Part A). The District will also ensure that the School is included in the needs assessment process for applications for competitive grant funding as appropriate to its needs. The District shall provide Contractor with a detailed budget.

(c) The District is using federal funds for its payment for certain of the services outlined in this Agreement; accordingly, Contractor will execute and deliver to the District, concurrent with its signature of this Agreement the following, all of which is incorporated into this Agreement by this reference: (a) Federal Regulatory Compliance Statement; (b) Certification Regarding Drug-Free Workplace Requirements; (c) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; and (d) Non-Collusion Affidavit. The federal forms are attached hereto as composite **Exhibit D** and incorporated herein by this reference.

(d) Notwithstanding the foregoing, the Contractor acknowledges that the District is required by FDOE to enter into this Agreement; accordingly, the Contractor agrees to reasonably cooperate and provide (and will not unreasonably withhold, condition or delay) any information reasonably required for the District's reporting and compliance with the requirements of FDOE for the School. The District is not obligated to compensate Contractor for, and the Contractor is not obligated to provide, services to be performed after termination of this Agreement, or if the Contractor performs the services in a manner that causes the District to not be in compliance with the requirements of FDOE regarding the School.

(e) Each payment obligation of the District created by this Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of services or products. If such funds are not allocated and available, this Agreement may be terminated by the District at the end of the period for which funds are available. The District will notify the Contractor at the earliest possible time before such termination. No penalty will accrue to the District in the event this provision is exercised, and the District will not be obligated or liable for any future payments due or for any damages as a result of termination under this section beyond reimbursement for actual fees earned by the Contractor through the termination date.

12. Default; Termination.

(a) District Default. The District will be in default if any of the following happens:

- (i) The District fails to make any payment when due.
- (ii) The District fails to perform promptly at the time and in the specified manner provided in this Agreement.

(b) Contractor Default. The Contractor will be in default if the Contractor fails to perform promptly at the time and in the specified manner provided in this Agreement.

(c) Termination. This Agreement may be terminated (i) immediately upon written notice of breach of any party by the other party and the breaching party fails to cure the breach within ten (10) business days of such notice, or if such breach cannot reasonably be cured within 10 business days that the cure has commenced within such time and is completed within thirty (30) days of such notice (or such other time period to cure a breach as may be expressly set forth in this Agreement), or (ii) notwithstanding anything to the contrary herein, by the District for convenience upon ninety (90) days prior written notice to the Contractor. If this Agreement is terminated for convenience as provided herein, the District will be relieved of all obligations under this Agreement, and the District will only be required to pay to the Contractor that amount of work under this Agreement actually performed to the date of termination. Access to any and all work papers and data collected will be provided to the District after the termination of this Agreement. The parties understand and agree that the Contractor will in no event have the reciprocal right to terminate this Agreement; it being understood that the District's payment of this Agreement's fees forms the consideration for the Contractor not having this right to terminate for convenience. In the event of a termination pursuant to this subsection (c)(i) or subsection (c)(ii), notice will be delivered to the other party pursuant to the Notices section outlined hereafter.

13. Contractor Representations. Contractor represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Florida; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so.

14. Indemnification. Subject to the limitations of §768.28, Fla. Stats. (2018), the District agrees to indemnify and hold harmless Contractor from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the District in connection with the provisions of this Agreement. Contractor agrees to indemnify, hold harmless and defend the District from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of Contractor or its subcontractors in connection with the provisions of this Agreement.

15. Insurance Requirements. The District certifies that it is self-insured pursuant to the provisions of §768.28(16), Fla. Stats. (2018), for tort liability in anticipation of any claim which it might be liable to pay pursuant to that section. Worker's compensation coverage is also self-insured at levels conforming to statutory requirements. Such liability and workers' compensation self-insurance supersedes any insurance obligation imposed on the District in this Agreement. The District will ensure that Contractor receives immediate

notification of reduction in or cancellation of coverage. Contractor agrees to maintain insurance coverage according to the types and levels of insurance outlined in Exhibit E attached hereto and incorporated herein by this reference.

16. Student Records. Contractor understands and agrees that it is subject to all federal and state laws and Board Policies relating to the confidentiality of student information. Contractor further agrees to comply with the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99. The District recognizes and agrees that Contractor is a "school official" with a "legitimate educational interest" under the definition of those terms in the District's FERPA notification(s) to students and parents. Contractor shall regard all student information as confidential and will not disclose the student information to any third party. Contractor agrees to develop, implement, maintain, and use appropriate administrative, technical, or physical security measures to the full extent required by FERPA in order to maintain the confidentiality of "education records" as that term is defined by FERPA. Upon termination of this Agreement, the Contractor will, at the election of the District, either destroy or return to the District, all such information in its possession, if any, and confirm the same in writing to the District.

17. Governing Law; Venue; Attorneys' Fees. This Agreement and all transactions contemplated hereunder are governed by, and construed and enforced by, the laws of the State of Florida without regard to principles of conflicts of laws. Venue for any litigation related to this Agreement will be in Marion County, Florida.

18. No Third Party Beneficiaries. Nothing in this Agreement provides consent by any agency or political subdivision of the State of Florida to allow any person or entity not a party to this Agreement to sue, including, but not limited to, any citizen or employees of the Contractor or District, in any matter arising out of this Agreement, or to confer any rights on any third party to allow any claim otherwise barred under the doctrine of sovereign immunity or by operation of law.

19. Subcontractors. If Contractor subcontracts any of the services, Contractor will ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services outlined in this Agreement.

20. Public Records. Contractor understands the broad nature of these laws and agrees to comply with Florida's Public Records Laws relating to records retention.

A. To the extent that Contractor meets the definition of "contractor" under § 119.0701, Fla. Stats. (2018), and in addition to other contract requirements provided by law, the Contractor agrees that it is acting as a contractor on behalf of District as provided under § 119.0701(a), Fla. Stats. (2018) and as such it will comply with Florida's Public Records Law. Specifically, Contractor agrees that it will:

- i. Keep and maintain public records that ordinarily and necessarily would be required by District to perform the services performed by Contractor under contract;
- ii. Provide the public with access to such public records on request from District's custodian of public records;
- iii. Provide District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;

iv. Ensure the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency;

v. Upon completion of the contract, transfer, at no cost, to District all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to the public agency upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to District, upon request from District's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**B. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF RECORDS AT: PUBLIC RELATIONS AND COMMUNICATION OFFICER: KEVIN CHRISTIAN, APR, CPRC, AT (352) 671-7555, PUBLIC.RELATIONS@MARION.K12.FL.US OR IN PERSON AT 420-A SE ALVAREZ AVENUE, OCALA, FLORIDA 34471.**

21. Notices; District Contract Administrator. Every notice, approval, consent or other communication authorized or required by this Agreement will not be effective unless same is in writing and sent via hand delivery or overnight delivery (with a receipt), directed to the other party at its address provided below or such other address as either party may designate by notice from time to time in accordance herewith:

If to Contractor:

Jayne Ellspermann  
Jayne Ellspermann, LLC  
2403 SE 19<sup>th</sup> Circle  
Ocala, Florida 34471  
School Leadership Development  
JayneEllspermann@gmail.com  
352-598-4782

If to the District:

The School Board of Marion County, Florida  
512 SE Third Street  
Ocala, Florida 34471  
Phone: (352) 671-7702  
Attn: Kelly King, Board Chair

With copy to:

Paul Gibbs, School Board Attorney  
512 SE Third Street  
Ocala, Florida 34471

Notwithstanding the foregoing, the parties agree that all communications relating to the day-to-day activities must be exchanged between the respective representatives of the District and the Contractor as follows. Each party's representative will coordinate communications and processes as needed for the purposes of conducting the services outlined in this Agreement, as well as the process for routine or administrative communications. The parties will also reasonably cooperate as to the development (including content, format, and required deliverables) of the invoicing and any reports to be provided by Contractor as part of the services outlined in **Exhibit B**. For purposes of the District's representative for the day-to-day activities, the District's Contract Administrator shall be:

Marion County Public Schools  
Attn: Superintendent Heidi Maier, Ed.D.  
512 SE Third Street  
Ocala, Florida 34471

22. Indemnification for Copyright Infringement. Contractor will defend, indemnify and hold the District and its successors and assigns harmless from and against all third-party claims, suits and proceedings and any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) incurred as a result of (i) infringement by Contractor of any third-party patent, copyright or trademark or (ii) misappropriation by Contractor of any third-party trade secret in connection with any of the foregoing.

23. Intellectual Property Rights.

(a) Contractor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement. Contractor will indemnify and hold harmless the District from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, service marked, trademarked, patented or unpatented invention, process, article or work manufactured or used in the performance of this Agreement, including its use by the District. If Contractor uses any design, device, materials or works covered by letters, service mark, trademark, patent, copyright or any other intellectual property right, it is mutually agreed and understood without exception that the proposal prices will include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.

(b) Any of the teaching methods, ideas, concepts, presentation, or products utilized during the course of the presentations and instructions of Contractor, are wholly owned by Contractor. It is understood that the materials and processes espoused by Contractor in its presentations and teachings are the exclusive intellectual property of Contractor and remain so even when employed by any parties to this Agreement, their agents, assigns, employees, independent contractors, or any other person associated with this Agreement. It is further agreed that the District, its members, employees, agents, and assigns will be granted fair use of the ideas and techniques employed by Contractor during the term of this Agreement and it will not be considered infringement on the intellectual

property rights of Contractor for them to do so. Notwithstanding the foregoing, the parties acknowledge that the District is an agency subject to the provisions in Chapter 119, Fla. Stats. (2018) regarding public records and will fully comply with all requirements regarding access thereto. If Contractor considers any of its proprietary information to constitute a “trade secret” as defined by section 812.081(1)(c), Fla. Stats. (2018) (which would be exempt from disclosure under the Public Records Act, Chapter 119, Fla. Stats. (2018), and Article I, section 24 of the Florida Constitution pursuant to sections 815.045 and 812.081, Fla. Stats. (2018), then Contractor agrees to add the following language (hereinafter referred to as the “Legend”) on every page of its confidential information provided to the District in hard copy: “This information is confidential trade secret information exempt from disclosure under the Public Records Act, Chapter 119, Florida Statutes, and Article I, section 24 of the Florida Constitution pursuant to section 815.045 and 812.081, Fla. Stats. (2018).”

(c) Further Agreements Concerning Intellectual Property:

(i) Ownership of Contractor’s Intellectual Property: Both parties agree that all discoveries, inventions, improvements, methods, works of authorship, trademarks, service marks, technology, computer programs, databases, trade secrets, confidential information, patents, copyrights, and any other forms of intellectual property (whether or not reduced to practice or writing) (collectively, “Intellectual Property”) created or developed by employees or agents of Contractor (“Contractor Personnel”), excluding any District personnel, during the term of this Agreement will be owned exclusively by the Contractor (“Contractor Intellectual Property”).

(ii) Ownership of District Intellectual Property: Pursuant to this Agreement, the District assigns certain of its employees (“District Personnel”) to perform services for the Contractor at the School. Both parties agree that all Intellectual Property that District Personnel create or develop while performing services at the Schools or for the Contractor will be owned exclusively by the District (“District Intellectual Property”).

(iii) License of District Intellectual Property: The District hereby grants to the Contractor a non-exclusive and royalty-free license to use products and services embodying District Intellectual Property for Contractor’s use at the School for the services outlined in this Agreement and not otherwise. Although the above license is non-exclusive, this is intended to ensure that the District retains the right itself to commercialize and sell to third parties the District Intellectual Property.

(iv) Ownership of Joint Intellectual Property: If any item of Intellectual Property is developed jointly by Contractor Personnel and District Personnel, such that, pursuant to applicable law, such item of Intellectual Property is jointly owned by the parties (“Joint Intellectual Property”), the parties hereby agree to such joint ownership of such item of Joint Intellectual Property.

(v) Division of Net Revenue: The parties acknowledge that section 1012.985(2)(b), Florida Statutes, requires the parties to share income

generated by certain Intellectual Property as the parties mutually agree. To that end, the parties agree that any commercialization of Joint Intellectual Property by either party will be subject to an equal division of net revenue between the Contractor and the District. If the Contractor sells any Joint Intellectual Property licensing rights, then the Contractor will pay to the District its portion of the net revenue received on an annual basis when the Contractor provides its last report to District as required by this Agreement. If the District sells any Joint Intellectual Property licensing rights, the District will pay to the Contractor its portion of net revenue received on an annual basis within thirty (30) days of the close of the District's fiscal year. For purposes of this section, "net revenue" means all value (e.g., upfront payments, milestone payments, royalties, other cash payments, and non-cash items) received by either Party from the sale, license or other commercialization of Joint Intellectual Property, minus the party's out-of-pocket costs and expenses directly attributable to such sale, license or other commercialization transactions, including, without limitation, broker fees, legal fees, commissions, travel expenses, refunds, chargebacks, taxes (other than the party's income taxes), third-party royalties, duties, governmental fees, insurance, rebates, allowances, and the like, as and when applicable. For clarification, there will be no revenue division with respect to commercialization of any District Intellectual Property, and no revenue division with respect to commercialization of any Contractor's Intellectual Property. Likewise, if Contractor Personnel create or develop Intellectual Property at the direction of the Contractor outside the context of performance of services pursuant to this Agreement, then there will be no revenue division with respect to commercialization of that Intellectual Property. And likewise, if any District Personnel create or develop Intellectual Property at the direction of the District outside the context of performance of services pursuant to this Agreement, then there will be no revenue division with respect to commercialization of that Intellectual Property.

(vi) Cooperative Efforts in Commercialization: In light of the fact that each party will have the ability to commercialize the Joint Intellectual Property, the parties agree that they shall work together reasonably and in good faith in an effort to prevent any direct competition or conflict between their respective commercialization efforts.

(vii) Return of Property: Upon termination of this Agreement for any reason, the District shall return to the Contractor within thirty (30) days any and all materials provided by the Contractor which constitute the Contractor's intellectual property as set out in this Agreement. Likewise, the Contractor shall return to the District any and all materials provided by the District which constitute the District's intellectual property as set out in this Agreement.

24. No Discrimination. The Parties agree that no person will be subjected to discrimination because of age, race, color, disability, pregnancy, gender, marital status, national origin, or religion, in the performance of the Parties' respective duties, responsibilities, and obligations under this Agreement.



25. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the remainder of this Agreement will not be affected thereby; and in lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there will be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

26. No Assignment. Neither this Agreement, nor any portion thereof may be assigned by Contractor, in whole or in part, without the prior written consent of the District.

27. Survival. Those provisions which by their nature are intended to survive the expiration, cancellation, or termination of this Agreement, including, by way of example only, the Indemnification and Confidentiality provisions, will survive the expiration, cancellation, or termination of this Agreement.

28. No Gifts. It is the policy of the District to not accept gifts, gratuities, or favors of any kind or of any value whatsoever from vendors, members of the staff, or families. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual for firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. Contractor further warrants that it, nor any of its directors, employees, officers or agents, nor any of Contractor's respective subsidiaries or affiliates, has taken, is currently taking or will take any action in furtherance of an offer, payment, promise, gifts or anything else of value, directly or indirectly, to anyone to improperly influence or otherwise secure any improper advantage in procuring business in relation to this Agreement. For the breach or violation of these provisions, the District shall have the right to terminate this Agreement without liability and/or, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

29. Former District Employees. Pursuant to District Policy all bidders, proposers, consultants, and contractors are required to disclose the names of any of their officers, directors, agents, or employees who serve as agents or principals for the bidder, proposer or contractor, and who within the last two (2) years, have been or are employees of the District. And all bidders, proposers, consultants, and contractors are required to disclose the name of any District employee who owns, directly or indirectly, any interest in the Contractor's business. Such disclosures will be in accordance with current District policies, but will include, at a minimum, the name of the former District employee, a list of the positions the employee held in the last two (2) years of his or her employment with the District, and the dates the employee held those positions. By its signature on this Agreement, Contractor certifies to the District that there are no names to disclose to the District pursuant to this section.

30. Background Screening. All Contractor employees, appointees, or agents who come into contact with students at the Contractor's facility as part of this Agreement must submit a Level 2 background check in a manner prescribed by the District, at Contractor's expense (if any). Contractor shall not permit persons to provide services to students under this Agreement if any such persons do not meet the background screening requirements

of the District for Contractor employees at the Contractor's location. Notwithstanding the foregoing, if the services are provided by the Contractor at a District location, then the requirements of Level II screening outlined in the Jessica Lunsford Act (JLA) will be applicable, and the Contractor will bear the expense of the JLA screening. Failure to comply with this provision will be cause for immediate termination of this Agreement.

31. Publicity. Contractor shall not use the District's name, logo, or other likeness in any press release, marketing materials, or other public announcement without receiving the District's prior written approval. Contractor shall not host or stage events at District locations without receiving prior approval by the District Contract Administrator.

32. Entire Agreement. This Agreement constitutes the final, complete, and entire Agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether written or oral. There are no representations or other agreements included. No supplemental modification or waiver of this Agreement will be binding unless executed in writing by the parties to be bound thereby.

33. Amendments. This Agreement may be amended at any time by mutual agreement of the parties. However, before any amendment will be operative or valid, it must be reduced to writing and signed by both the District and the Contractor.

34. Inspector General Audits. Contractor and its subcontractors (if any), shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General or by any other Florida official with proper authority.

35. Representations & Warranties. Contractor represents and warrants to District under this Agreement that:

A. Contractor is not bound by any other contract, agreement, business relationship or another arrangement that would preclude it from entering into, or from fully performing, the services required under this Agreement;

B. Contractor affirms and certifies that none of Contractor's agents, employees or officers have ever had his or her professional license or certification in the State of Florida, or of any other jurisdiction, either denied, suspended, revoked, terminated or voluntarily relinquished under threat of disciplinary action, or restricted in any way;

C. Contractor affirms and certifies that it has not been convicted of a public entity crime as provided in § 287.133, Fla. Stats. (2018), to wit: A person or affiliate who has been placed on convicted vendor list following a conviction for public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in § 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list;

D. Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority over its business activities, including but not limited to Chapter 287, Florida Statutes (2018), and Fla. Admin. Code R. 60A. Contractor shall further comply with Section 274A [8 U.S.C. 1324a] of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination. Violation by Contractor of any laws, rules, codes, ordinances, or licensing requirements will constitute, on the date and time of any such violation, a material breach of this Agreement and serve as grounds for termination or nonrenewal of this Agreement;

E. The Parties must comply with the code of ethics for public officers and employees, Chapter 112, Fla. Stats. (2018); and

35. Certifications. Contractor certifies, to the best of its knowledge and belief, that neither Contractor nor its principals:

A. Are debarred, suspended, proposed for debarment, declared ineligible from operating, or voluntarily excluded from participation in covered transactions by any federal, state, or local department or agency.

B. Have, within the five-year period prior to this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

C. Are presently indicted or otherwise criminally charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph B.

D. Have, within the five-year period before this Agreement had one or more public transactions terminated for cause or default.

Contractor shall notify District within thirty (30) days after occurrence of any of the events, actions, debarments, proposals, exclusions, convictions, judgments, indictments, or terminations as described in paragraphs (A-D) above, concerning Contractor or its principals.

36. E-Verify. In accordance with Executive Order 11-116, Contractor shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.

37. Force Majeure. Neither Party are obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either Party, and which cannot be overcome by reasonable diligence and

without unusual expense (“Force Majeure”). In no event will a lack of funds on the part of either Party be deemed Force Majeure.

38. Equal Employment Opportunity. If this Agreement involves Federal funds more than \$10,000, Contractor must be in compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 C.F.R. Chapter 60).

39. Clean Air Act. If this contract involves Federal funds and is over \$100,000, Contractor must comply with all applicable standards, orders, or regulations of the Clean Air Act, as Amended (42 U.S.C. chapter 85) and the Clean Water Act, as amended (33 U.S.C. chapter 26), Executive Order 11738, and Environmental Protection Agency regulations codified in Title 50 of the Code of Federal Regulations. Contractor must report any violations of the above to the District.

40. Byrd Anti-Lobbying Amendment. If this Agreement is in excess of \$100,000, Contractor shall comply with all applicable standards, orders, or regulations, including but not limited to:

- A. Certification Regarding Lobbying pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F.R. Part 3018); and
- B. Disclosure of Lobbying Activities pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F. R. Part 3018).

41. Counterpart and Facsimile Signatures. This Agreement may be executed in one or more counterparts and via facsimile signature, the counterparts and facsimiles of which, when taken together, shall be deemed to constitute an entire and original Agreement.

42. No Waiver of Sovereign Immunity. This Agreement does not waive sovereign immunity by any agency or political subdivision to which sovereign immunity may apply, or of any rights or limits of liability existing under § 768.28, Fla. Stat. (2018). This term survives the termination of all performance or obligations under this Agreement and is fully binding until any applicable statute of limitations bars any proceeding brought under this Agreement.

43. Legal Authority. Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party concerning all provisions contained in this Agreement.

*[Signatures follow on next page]*


[Signature page to Agreement for Professional Services between The School Board of Marion County, Florida, and Jayne Elspeth, dated April 23, 2019]


The parties have executed this Agreement as of the Effective Date first set forth above.

By:   
Name: Jayne Elspeth, LLC  
Title: Managing Member

ATTEST:


THE SCHOOL BOARD OF MARION  
COUNTY, FLORIDA

By:   
Heidi Maier, Ed.D.,  
Superintendent of Schools  
and Ex-Officio Secretary  
to the Board

By:   
Kelly King, Board Chair

Form Approved:

Approved by Board:

By:   
Paul Gibbs, School Board Attorney