



Constellation Schools LLC

"The Right Choice for Parents and a Real Chance for Children"

MANAGEMENT AGREEMENT

This Agreement, made this **19th day of August, 2021** by and between **Constellation Schools LLC** (hereinafter referred to as "**CS**") and **Constellation Schools: Westpark Community Elementary** (hereinafter referred to as "**School**") (together, the "**Parties**") amends and revises the previously executed agreement and is for the purpose of setting forth the management and administration arrangement agreed to by the Parties with respect to the operation of the School.

WHEREAS, the School has entered into a contract with Educational Service Center of Lake Erie West ("**Sponsor**") for the Purpose of operating a community school within the Cleveland Metropolitan School District in Cuyahoga County, Ohio; and

WHEREAS, the parties wish to enter into an agreement for their mutual benefit;

NOW, THEREFORE, the parties agree as follows:

1. **CONTRACT TERM AND EARLY TERMINATION.** This Agreement, effective on the date stated above, shall be for a term that runs concurrently with the current term of the existing sponsor contract which remains in effect through June 30, 2023 and any extension thereof. Subject to the School being a party to a valid sponsorship agreement with an Ohio sponsor, this Agreement shall automatically renew for additional three (3) year term unless either party notifies the other in writing of its intention to renegotiate or terminate the Agreement at least one hundred and eighty (180) days prior to the expiration of the current Term. Either party may terminate or not renew this Agreement for material breach of the terms of this Agreement by prior written notice to the other, which must be received by the other party by January 10 of the year of termination or non-renewal, which shall be effective on June 30 of that year. Such notice shall detail all alleged material breaches of this Agreement justifying termination or non-renewal. The other party shall have thirty (30) day period to cure the reasons for termination. If the terminating or non-renewing party does not accept the cure provided, the Parties shall proceed to dispute resolution (as defined in Paragraph 15 below).
2. **SERVICES.** CS will provide business, financial, and other management services to the School during the term of this Agreement. Services to be provided by CS include:
 - a. CS will provide Superintendent, Treasurer, and Business Management Services;
 - b. Facilities management, including the coordination of all facility repairs and maintenances, cleaning services, grounds maintenance, proposed alterations, plans for future development, security planning and coordination of related contractor services;
 - c. Marketing and media relations;
 - d. Human Resources services, including recruitment of personnel, interviewing candidates, updating and revising position descriptions, preparing employment contracts, and conducting BCI/ FBI criminal background checks;
 - e. Centralized purchasing and inventory control;
 - f. EMIS reporting assistance;
 - g. Financial services, financial reporting and record-keeping, bookkeeping services, preparation of financial statements, monitoring banking relationships, obtaining annual tax return filings, obtaining annual audits, preparation and monitoring of budgets, developing and maintaining fiscal models consistent with an internal audit function, maintaining financial accounting policies and procedures, and any statutory duties set forth in the Ohio Revised Code;
 - h. Educational Services, including Curriculum Development evaluation and review, evaluation of student assessments and accountability systems, coordination of standardized testing, updating and revising policies and procedures, establishment of conflict resolution plan, coordination of consolidated local plan, development and maintenance of a viable technology plan, gifted plan, and special education plan, coordination of summer school and before/after school programs, and assisting with the breakfast and lunch program;

- i. Coordination of Professional and Staff Development, including the development and monitoring of teacher certification requirements and coordination of Local Professional Development Committee and Resident Educator program (does not include teacher mentoring and coaching).

Notwithstanding the foregoing, the School hereby designates CS as its agent, and CS hereby accepts such appointment, to undertake, or cause to be undertaken, any demolition, acquisition, construction, and/or development necessary or desired by the School which is related to any property owned or leased by the school. Any capital expenditures relating to the foregoing appointment shall be approved in advance by the School's governing authority.

3. PERSONAL PROPERTY. All personal property of the School, including equipment, furniture, fixtures, instructional materials and supplies, computers, printers, and other digital devices, shall be listed in **Exhibit A**. Exhibit A shall indicate whether each item is owned by the School or by CS. Any personal property purchased by CS after February 1, 2016 with state funds paid to CS by the School as payment for services rendered for use in the operation of the School shall be the property of the School.
4. REAL PROPERTY. Any facility owned by CS or the School shall be detailed in **Exhibit B**, which will include a description of the ownership of the property and, if CS leases the property to the School, an addendum to the lease demonstrating that an independent professional in the real estate field has verified that, at the time the lease was agreed to, the lease was commercially reasonable. In the event that this Agreement is terminated, title to the real property shall be retained by whichever party holds the deed.
5. MANAGEMENT FEE. The School agrees to pay for the above services during the term, and any renewal thereof, a fixed fee equal to One Hundred Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$192,500.00) (the "Fixed Fee") plus a sum equal to 6.25% of the 2022 fiscal year Foundation payment received by the School, as reported in the Monthly Community School Foundation Report (the "Percent Fee") (collectively, the "Total Fee"). Notwithstanding anything to the contrary in this Agreement, the Fixed Fee shall in no event be less than fifty percent (50%) of the Total Fee and the Percent Fee shall be capped, if necessary, by an amount sufficient to meet this requirement. The Total Fee shall be due and owed at the beginning of the term or any renewal thereof, as applicable. CS may draw upon the annual obligation periodically. In addition to the Total Fee, the School shall reimburse CS for all out-of-pocket expenses that it may incur in carrying out the above listed activities.
6. LIMITED GUARANTY OF SCHOOL'S LEASE REVENUE BONDS. CS has entered into a Guaranty Agreement dated as of March 1, 2014 (as it may be amended, the "Guaranty Agreement") relating to (a) \$29,980,000 Cleveland-Cuyahoga County Port Authority Tax-Exempt Refunding and Improvement Lease Revenue Bonds (Constellation Schools Project), Series 2014A (the "Series 2014A Bonds") and (b) \$810,000 Cleveland-Cuyahoga County Port Authority Taxable Lease Revenue Bonds (Constellation Schools Project), Series 2014B (the "Series 2014B Bonds"; and collectively with the Series 2014A Bonds, the "Series 2014 Bonds"); pursuant to which CS has guaranteed the prompt payment of the Series 2014 Bonds; provided, however, that such guarantee shall be limited to a maximum aggregate amount of \$2,206,000 (the "Guaranty Amount").

In any year in (i) which School fails to pay any debt service on the Series 2014 Bonds and CS is required to make a payment under its Guaranty not otherwise reimbursed or covered by other sources (a "Guaranty Payment") or (i) the School has inadequate cash flow to pay its debt service on the Series 2014 Bonds and CS is required to defer payment of any portion of its management fees owed by the School to CS under this Agreement (a "Deferred Fee"), the Parties agree that the School shall be obligated to reimburse CS for such Guaranty Payment (a "Reimbursement Obligation") or pay such Deferred Fee in accordance with this Section 6. Any Reimbursement Obligation or Deferred Fee shall be paid by School to CS on the earlier of (A) the end of the next fiscal year in which the School has sufficient funds available to make such payment or (B) five years after the original due date of the payment. Any Reimbursement Obligation or Deferred Fee shall accrue interest at a rate equal to the "prime rate" plus 2.0% as published in the Wall Street Journal, as it may be adjusted from time to time. CS agrees that any Reimbursement

Obligation or Deferred Fee arising in accordance with this paragraph shall not constitute a default by School under this Agreement; provided that CS shall have the right to terminate this Agreement without causing a breach.

It is the intention of the parties for this Agreement to comply with the management contract guidelines set forth in IRS Rev. Proc. 2017-13 and the parties agree that the obligations of the parties under this Section 6 shall be interpreted accordingly.

7. SECURITY DEPOSIT. The School has paid to CS a refundable security deposit in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). The Security deposit shall be used to secure payment of any outstanding obligations upon termination of the Agreement.
8. REPORTS. CS will provide the School with reports, information, and documentation that the School deems necessary, and CS deems to be reasonable.
9. SERVICE PROVIDERS. CS will use its best efforts to locate service providers (i.e. independent contractors) necessary to carry out this Agreement, and in so doing CS shall comply with all state and federal laws relating to governing the engagement and assignment of such providers. Non-licensed/certificated personnel will be appropriately supervised.
10. INDEMNIFICATION. CS agrees to indemnify, defend and hold harmless the School from any loss, cost, expense, obligation, liability, fee, (including, but not limited to reasonable attorney fees) or other expenditures incurred by the School due to any claims, actions or lawsuits brought against the School as a result of (i) the performance of CS, its employees, agents, subcontractors, representatives and assigns (collectively, "CS's agents") pursuant to the terms of this Agreement; (ii) the negligence, recklessness or intentional misconduct of CS or CS's agents; or (iii) any breach of this agreement by CS or CS's agents. Likewise, the School agrees to indemnify, defend and hold harmless CS from any loss, cost, expense, obligation, liability, fee (including, but not limited to reasonable attorney fees) or other expenditures incurred by the CS as a due to any claims, actions or lawsuits brought against CS as a result of (i) the performance of the School, its employees, agents, subcontractors, representatives and assigns (collectively, the "School's agents") pursuant to this Agreement; (ii) the negligence, recklessness or intentional misconduct of the School or the School's agents; or (iii) any breach of this Agreement by the School or the School's agents.

CS shall indemnify the School for financial losses up to the amount of the management fee specified in Section 5 herein in the event such losses occur as a direct result of the existence of a business or familial relationship between the governing authority of the School or any of its officers or employees and CS or any of CS' officers or employees, unless such position with the governing authority or the business relationship is created pursuant to the operating agreement itself.
11. ADDITIONAL SERVICES. Nothing herein prevents the School from contracting with CS for certain additional support services at rates negotiated between CS and the School on a fee for service basis, so long as such services are not part of the services performed under this Agreement.
12. EMPLOYMENT OF CS EMPLOYEES. The School shall not offer employment to any CS employee assigned to the School during the current academic year without the express written consent of CS. The School shall not employ or contract with any CS employee for a period of two (2) years after such person leaves CS, for any reason, without the written consent of CS.
13. NONDISCRIMINATION. Neither party to this Agreement will discriminate against any person on the basis of race, color, religion, disability, national origin, age, or sex.
14. SUCCESSION. This Agreement shall inure to the benefit of CS and the School, and their respective successors, and permitted assigns. CS may assign this Agreement at its discretion and the School may assign this Agreement with the prior written consent of CS.

15. THREAT TO SCHOOL'S TAX-EXEMPT STATUS; COMPLIANCE WITH IRS MANAGEMENT CONTRACT GUIDELINES; NO INCONSISTENT TAX POSITION.

(a) If School or its representative makes a reasonable determination that one or more terms of this Agreement threaten either (i) School's status as an organization described in Internal Revenue Code Section 501(c)(3) and exempt from federal income tax under Code Section 501(a); (ii) School's sponsorship contract; or (iii) compliance by this Agreement with the safe harbor conditions under which a management contract does not result in private business of property financed with tax exempt bonds under Section 141(b) of the Internal Revenue Code as set forth in IRS Rev. Proc. 2017-13 or any successor federal guidance, then the parties agree to renegotiate the problematic terms of this Agreement. If agreeable renegotiated terms cannot be reached within thirty (30) days of School providing CS with notice and an explanation of its determination pursuant to this Section, then either party may terminate this Agreement without breach.

(b) It is the intention of the parties for this Agreement to comply with the management contract guidelines set forth in IRS Rev. Proc. 2017-13. CS agrees that it will not take any tax position that is inconsistent with being a service provider to School with respect to the Services described in this Agreement. Without limiting the foregoing, CS agrees it will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to any of School's property.

16. NOTICES. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by certified mail to the last known address for the School, Attention: Board Chairman, and to the principal office of CS at 5730 Broadview Road, Parma, Ohio 44134, Attention: Board Chairman, respectively.

17. DISPUTE RESOLUTION. The Parties agree that each will make every good faith effort to resolve any and all disputes under this Agreement amicably before taking any legal action in court, including submitting to non-binding mediation. If a dispute is not settled between CS and the School, non-binding mediation shall take place by a mediator provided by the Ohio State Bar Association and acceptable to both Parties. Each party shall pay for its own attorney fees.

18. TIME IS OF THE ESSENCE. Time is of essence, and this Agreement. The Agreement is not effective until executed by each party.

19. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding and contract between the Parties. All prior representations or agreements that are not explicitly contained herein are null and void and of no effect.

This Agreement may only be modified in a writing executed by each party hereto.

CONSTELLATION SCHOOLS, LLC

By: 
Executive Director

Date: 8/19/2021

CONSTELLATION SCHOOLS: WESTPARK COMMUNITY ELEMENTARY

By: 
President

Date: 8/19/2021

EXHIBIT A

PERSONAL PROPERTY

All personal property located at the School is either owned directly by the School or is leased through a third party leasing company. Leased items include copy machines, postage machines and technology equipment.

The management company, Constellation Schools, LLC does not own or lease any equipment used by or located at the School.

EXHIBIT B

SCHOOL FACILITY REAL PROPERTY

All real property which the school operates out of is owned 100% by the school. A copy of the deed is available for review at the management company offices.

The address of the property is 16210 Lorain Avenue, Cleveland, Ohio 44111.