

V.F.

**CONNECTICUT STATE BOARD OF EDUCATION
Hartford**

TO BE PROPOSED:

March 1, 2017

RESOLVED, That the State Board of Education, pursuant to Section 10-66tt of the Connecticut General Statutes, approves the contract for whole school management services between Elm City College Preparatory, Inc. and Achievement First, Inc. and directs the Commissioner to take the necessary action.

Approved by a vote of _____, this first day of March, Two Thousand Seventeen.

Signed: _____
Dr. Dianna R. Wentzell, Secretary
State Board of Education

CONNECTICUT STATE BOARD OF EDUCATION
Hartford

TO: State Board of Education

FROM: Dr. Dianna R. Wentzell, Commissioner of Education

DATE: March 1, 2017

SUBJECT: Consideration of Approval of Proposed Contract for Whole School Management Services Between Elm City College Preparatory, Inc. and Achievement First, Inc. (collectively the “Parties”)

Executive Summary

Introduction and Parties

Pending renewal of its charter, Elm City College Preparatory, Inc. (ECCP) seeks State Board of Education (SBE) approval of its proposed contract for whole school management services with Achievement First, Inc. (AF), a not-for-profit charter management organization (CMO). (Attachment A) Pursuant to Connecticut General Statutes (C.G.S.) Section 10-66tt(c), effective July 1, 2015, the governing council of a state or local charter school is required to submit any contract for whole school management services between the governing council and a CMO to the SBE for approval. The proposed contract between ECCP and AF is substantially the same as the one between AFHA and AF that the SBE approved on September 7, 2016, and we recommend approval as set forth below.

ECCP is a charter school located in New Haven serving 726 students in Grades K-12. Renewal of its charter, subject to specific conditions, will be considered by the SBE on March 1, 2017. AF was established in 2003 and currently serves over 20 charter schools in three states.

The Statutory Framework and the Review Process

On January 13, 2017, the Connecticut State Department of Education (CSDE) received the proposed contract for whole school management services between ECCP and AF. AF and ECCP have had a contractual relationship since 2007. For charter schools and CMOs that were parties to a contract when C.G.S. Section 10-66tt(c) became effective, CSDE understands the statute to require SBE approval of the contract after the first renewal of the charter following the statute’s effective date, i.e., July 1, 2015. If ECCP obtains charter renewal, it will also seek approval of its contract for whole school management services with AF in accordance with Section 10-66tt(c).

The proposed contract for whole school management services between ECCP and AF consists of three parts: (1) a contract dated July 1, 2007, (2) a signed amendment to this contract dated June

2011, and (3) an additional amendment to the contract, not yet signed, which contains many of the provisions necessary to bring the contract into compliance with the new statutes, i.e. C.G.S. Sections 10-66tt and 10-66uu. Each of these documents was reviewed by appropriate CSDE staff, including legal counsel, to ensure compliance with the requirements of C.G.S. Sections 10-66tt and 10-66uu which are discussed below.

C.G.S. Section 10-66tt, in addition to requiring SBE approval of contracts for whole school management services, sets certain standards for such contracts. For example, Section 10-66tt provides that the governing council of a state or local charter school shall not enter into a contract that: is contrary to state or federal law; entails a financial or other conflict of interest; amends, alters, or modifies any provision of the charter; has the effect of reducing the governing council's responsibility for the operation of the charter school; or hinders the governing council in exercising effective supervision of the charter school. Section 10-66tt also requires that a contract for whole school management services include, but need not be limited to, the following:

1. the roles and responsibilities of the governing council of the charter school and the charter management organization, including all services to be provided under the contract;
2. the performance measures, mechanisms and consequences by which the governing council will hold the charter management organization accountable for performance;
3. the compensation to be paid to the charter management organization, including all fees, bonuses and what such compensation includes or requires;
4. financial reporting requirements and provisions for the governing council's financial oversight;
5. a choice of law provision that states that Connecticut state law shall be the controlling law for the contract;
6. a statement that the governing council of the charter school and the charter management organization shall ensure compliance with the provisions of Section 10-66uu; and
7. any such information required by the Commissioner of Education to ensure compliance with the provisions of this chapter.

C.G.S. Section 10-66uu, in turn, establishes important transparency requirements. First, it requires that each contract for whole school management services shall provide that the governing council of the charter school is entitled to receive a copy of all records and files related to the administration of the charter school, including the compensation paid to the CMO and any expenditures of compensation by the CMO. Second, it establishes that such records and files are subject to Connecticut's Freedom of Information Act once they are received by the governing council.

CSDE reviewed the ECCP proposed contract with AF to ensure that this contract complies with C.G.S. Sections 10-66tt and 10-66uu. This review included comparing the ECCP proposed contract with AF to the contract for whole school management services between Achievement First Hartford Academy and Achievement First which was approved by the SBE on September 7, 2016. The two contracts are substantially the same. CSDE's assessment is that the proposed contract complies with the requirements of Sections 10-66tt and 10-66uu.

In addition to the review discussed above, CSDE solicited the views of the relevant local school district for SBE's consideration in connection with determining whether to recommend to the SBE approval of the proposed contract, in accordance with Section 10-66tt(c). The CSDE received no letter in response to the solicitation.

Recommendation

CSDE recommends that the SBE approve the contract for whole school management services between ECCP and AF.

Prepared by: Robert E. Kelly, Charter School Program Manager
Turnaround Office

Reviewed by: Louis Todisco, Attorney
Division of Legal and Governmental Affairs

Approved by: Peter Haberlandt, Director
Division of Legal and Governmental Affairs

ACADEMIC AND BUSINESS SERVICES AGREEMENT

By and Between

ACHIEVEMENT FIRST, INC. and

ELM CITY COLLEGE PREPARATORY, INC.

This Academic and Business Services Agreement (the "Agreement") is made and entered into as of July 1, 2007 (the "Effective Date"), by and between Achievement First, Inc., a Connecticut not for profit corporation ("AF") and Elm City College Preparatory, Inc., a Connecticut education corporation (the "School," and the School together with AF, each a "Party" and collectively the "Parties").

WHEREAS, AF is a charter school management organization;

WHEREAS, Elm City College Preparatory has been granted by the Connecticut State Board of Education the authority to operate a public charter school;

WHEREAS, it is the Parties' intention to create a relationship based on trust, common educational objectives, and clear accountability, through which they will work together to bring educational excellence to the School;

WHEREAS, the Parties desire to enter into a written agreement to set forth the terms and conditions of their agreement;

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, the Parties agree as follows:

1. DEFINITIONS

"AF" has the meaning set forth in the recitals.

"AF School Model" means the School model based on the AF curriculum, described in the AF School Model Agreement, which is attached as Exhibit A hereto.

"Agreement" has the meaning set forth in the recitals.

"Approved Per Pupil Operating Expense" means the annual per pupil amount of State funds granted to the School. The amount is established and announced for all Connecticut public charter schools each year.

"Arbitration Rules" has the meaning set forth in Section 11.2(b).

"Authorizer" means the Connecticut State Department of Education.

“Board of Trustees” means the Board of Trustees of the School.

“Charter Contract” means the School’s contract with the Authorizer, which authorizes the School to organize and operate the School, and which includes the final charter application.

“Claims” has the meaning set forth in Section 9.2.

“Confidential Information” has the meaning set forth in Section 8.1.

“Cure Period” has the meaning set forth in Section 10.2(b).

“Derivatives” has the meaning set forth in Section 8.2.

“Director of School Operations” means the senior-most School employee who manages non-instructional operations.

“Dispute” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth in the recitals.

“Facility” means a building or other structure, of sufficient size to house the student enrollment, suitable for use by the School and meeting all applicable building codes, zoning ordinances and laws, environmental laws and regulations, and all other laws and regulations applicable to the operation of a School.

“FERPA” has the meaning set forth in Section 6.6.

“Indemnified Claims” has the meaning set forth in Section 9.2.

“Indemnified Party” has the meaning set forth in Section 9.6(a).

“Indemnifying Party” has the meaning set forth in Section 9.6(a).

“IT” has the meaning set forth in Section 4.7.

“Initial Term” has the meaning set forth in Section 10.1.

“Marks” has the meaning set forth in Section 8.3.

“Master Teacher” means a teacher who has mastered the skills appropriate to an enhanced level of teaching competence as described in the AF School Model.

“Party” and **“Parties”** has the meaning set forth in the recitals.

“Principal” means the person in charge of the day-to-day operation of the School.

“Regulatory Authority” means any United States federal, State or local government, or political subdivision thereof, any authority, agency or commission entitled to exercise any

administrative, executive, judicial, legislative, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), any arbitrator or arbitral body, or any similar body.

“Renewal Term” has the meaning set forth in Section 10.1.

“School” has the meaning set forth in the recitals.

“School Indemnified Persons” has the meaning set forth in Section 9.2.

“Service Fee” has the meaning set forth in Section 7.4.

“State” means Connecticut State.

“Student Confidential Information” means all personal and academic information and records pertaining to the students of the School.

“Term” has the meaning set forth in Section 10.1.

“Termination Assistance Period” has the meaning set forth in Section 10.7.

“Termination Notice” has the meaning set forth in Section 10.2(b).

“Third Party Claim” has the meaning set forth in Section 9.6.

“Threshold Amount” has the meaning set forth in Section 9.4.

“Use” means the right to load, execute, store, transmit, display, copy, disseminate, reproduce, maintain, modify, enhance, create derivative works, make and cause to be made.

2. REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of AF.

AF represents and warrants as follows:

- (a) **Organization.** AF is a non-stock, not for profit corporation duly organized under the laws of the state of Connecticut, with the purpose and legal ability to contract to provide educational management services. AF shall notify the School of any change in its corporate status. AF shall not change its corporate status such that this Agreement is materially affected.
- (b) **Authority.** AF is authorized to do business in the State. AF has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement constitutes a valid and binding obligation of AF, enforceable against AF in accordance with its terms.

- (c) **Full Disclosure.** No representation or warranty of AF herein and no statement, information or certificate furnished or to be furnished by AF pursuant hereto or in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.
- (d) **Litigation.** There is no suit, claim, action or proceeding now pending or, to the knowledge of AF, threatened before any Regulatory Authority, to which AF is a Party or which may result in any judgment, order, decree, liability, award or other determination which will or may reasonably be expected to have an adverse effect upon AF. No such judgment, order, decree or award has been entered against AF which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or, to the knowledge of AF, threatened before any Regulatory Authority involving AF which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.
- (e) **Conduct of AF.** AF has complied, and at all times during the Term will comply, with all local, state and federal laws and regulations that are applicable to AF, which include, but are not limited to, the Internal Revenue Code, the non-profit corporation law of Connecticut and the Charter Schools Law. AF has maintained and will maintain adequate records of the activities and decisions of AF to ensure and document compliance with all such laws and regulations.

2.2 Representations and Warranties of the School.

The School represents and warrants as follows:

- (a) **Organization and Tax Exempt Status.** The School is, and at all times during the Term will be, an education corporation duly organized under the laws of Connecticut, with the purpose and legal ability to contract to operate a charter school and to contract for educational management services. The School shall apply for federal tax-exempt status no later than one year following the execution of the Charter Contract. Should the Internal Revenue Service require changes to this Agreement in conjunction with the School's application for or continuation of tax exempt status, both Parties will take all reasonable steps and agree to all reasonable modifications to effectuate the necessary changes.
- (b) **Authority.** The School has all requisite power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the agreements contemplated hereby and thereby. This Agreement constitutes a valid and binding obligation of the School, enforceable against the School in accordance with its respective terms.
- (c) **Litigation.** There is no suit, claim, action or proceeding now pending or, to the knowledge of the School, threatened before any Regulatory Authority, to which the School is a Party or which may result in any judgment, order, decree, liability,

award or other determination which will or may reasonably be expected to have an adverse effect upon the School. No such judgment, order, decree or award has been entered against the School which has, or may reasonably be expected to have, such effect. There is no claim, action or proceeding now pending or, to the knowledge of the School, threatened before any Regulatory Authority involving the School which will or may reasonably be expected to prevent or hamper the consummation of the agreements contemplated by this Agreement.

- (d) Full Disclosure. No representation or warranty of the School herein and no statement, information or certificate furnished or to be furnished by the School pursuant hereto or in connection with the agreement contemplated hereby contains any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading.
- (e) Conduct of the School and the Board of Trustees. The School has complied, and at all times during the Term will comply, with all local, State and federal laws and regulations that are applicable to the School, which include, but are not limited to, the Internal Revenue Code, the non-profit corporation law of Connecticut, the open records and meetings laws of Connecticut, and the Charter Schools Law. The School has maintained and will maintain adequate records of the activities and decisions of the School to ensure and document compliance with all such laws and regulations. The School agrees to provide AF with copies of all such records and to allow AF to, at AF's discretion, assist with the preparation and retention of such records.
- (f) Due Authorization. The School is authorized to organize and operate the School and is vested by the Authorizer with all powers necessary to carry out the educational program outlined in the Charter Contract. Regardless of the delegation of any duties to AF, the School shall at all times retain all rights and responsibilities under the Charter Contract.

3. AUTHORITY

3.1 Delegation of Authority to AF.

The School hereby authorizes AF to undertake the functions specified in this Agreement in regards to business and academic services of the School on behalf of the School, it being understood that, at all times, AF remains accountable and subject to the oversight of the School, the Authorizer and State authorities, as provided for in this Agreement and by law. The School also authorizes AF to take such other actions that may not be expressly set forth in this Agreement, but which are necessary in AF's good faith and reasonable judgment to properly and efficiently manage or operate the School, provided such actions are consistent with the Charter Contract, applicable laws and the annual School budget approved by the Board of Trustees.

3.2 AF Authority to Subcontract.

Except to the extent prohibited by law or this Agreement, AF may subcontract any function or service it is obligated to provide hereunder, provided that no such subcontract shall relieve or discharge AF from any obligation or liability under this Agreement.

3.3 Conflict with Charter.

Subject to Section 13.5, to the extent there are any conflicts between the terms of the Charter Contract and the terms of this Agreement, the terms of the Charter Contract shall control.

4. DUTIES AND OBLIGATIONS OF AF

In exchange for the Service Fee, described in Section 7.4 and paid by the School to AF, AF will provide the following services as and to the extent more specifically described in the balance of this Article 4 (which more specific descriptions shall control):

- Developing a core curriculum and supporting the School's implementation of the curriculum
- Preparing a budget for recommendation to the Board of Trustees
- Recruiting the Principal, teachers and other administrators
- Initial teacher training for all new teachers and a limited amount of ongoing professional development
- Initial training, ongoing coaching and evaluation of the Principal(s)
- Finding an adequate Facility and coordinating the completion of major repairs/renovations
- Facilitating the School's purchase and procurement of information technology equipment and services, and providing certain computer and information technology support to the school
- Managing the start-up process associated with any new Academies
- Conducting a school inspection and evaluation every three years
- Fundraising
- Marketing and advocacy for the School

AF may, but is not obligated to, provide additional services for additional compensation. AF may perform functions off-site, except as prohibited by State law. AF may utilize web-based systems to provide support and counsel to the School.

In addition to any duties and obligations expressly attributed to AF as set forth in Article 5, AF (and the School) shall have the following duties and obligations:

4.1 Curriculum.

AF shall support the school in implementing the AF curriculum in a manner that is consistent with all applicable laws, including requirements regarding content and subjects of instruction, unless such requirement has been waived by the relevant authorities. AF will provide the School with information and systems for implementing the curriculum, and initial

staff training. The curriculum will include scope and sequence, an assessment system, a daily schedule and a variety of curriculum materials and related documents.

4.2 Student Evaluation.

AF shall implement student performance evaluation systems, which permit evaluation of the educational progress of each student at the School in accordance with the goals set forth in the Charter Contract and any additional guidelines set forth by the Authorizer. The School shall, with AF's assistance, ensure that the students take all State required standardized tests in accordance with State laws and regulations. The School, with AF's assistance, shall maintain detailed statistical information on the performance of (i) the School as a whole, (ii) each individual student, and (iii) each grade. AF and the School shall cooperate in good faith to identify other measures of and goals for student and School performance, including but not limited to parent, teacher, and student satisfaction.

4.3 Annual Audit.

AF shall cooperate and provide all reasonably requested information, to the extent such information is in possession or under the control of AF, needed to complete an annual audit of the School.

4.4 Budget and Financial Statements.

On or before May 1 of each year, AF, in consultation with the Principal, will provide the School Finance Committee with a projected budget for the next fiscal year, for review and approval by the Board of Trustees. The annual budget for the School shall provide for payment of all operating expenses related to the opening and operation of the School, including, but not limited to: reimbursement to AF of certain expenses including AF's Service Fee; the Principal(s)'s compensation, including his or her salary and benefit costs; debt payments owing and owed to AF by the School; marketing and public relations costs; supplies; maintenance; staff development; curriculum materials; assessment materials and consulting fees; other third party consulting expenses; accountability plan costs; transportation and travel; printing and duplicating; postage; legal fees; and accounting fees. With respect to these items, AF may act as the disbursement agent on behalf of the School to timely pay all such agreed upon budget expenditures out of funds available therefore from the School bank accounts, from which the School shall give AF authority to remit payments. The School shall be the lawful owner of all real and personal property purchased with such funds, except for property covered by Article 8, which property shall be the sole and exclusive property of AF. AF shall have no responsibility to make any purchases on behalf of the School or to act as disbursement agent for the School unless and until the funds for such expenditures are in the School bank accounts to which AF has access.

The budget shall grant certain levels of discretion to the Principal (including, but not limited to, teacher salaries and the Principal's Discretionary Fund, as allocated in the budget) within parameters established by the Board of Trustees and approved in good faith by AF. Such AF approval shall not be unreasonably withheld.

The Director of School Operations, with the assistance of and in close consultation with AF, shall prepare bimonthly financial statements for review and approval by the Board of Trustees.

4.5 Principal.

The accountability of AF to the School is an essential foundation of the Parties' relationship, and the performance of the Principal is critical to the School's success. Therefore, AF shall have the authority and responsibility, to the maximum extent consistent with State law, to recruit and supervise the Principal(s) and to hold him or her accountable for the success of the School.

When a vacancy arises in one of the three Principal positions (elementary, middle, high school) AF shall nominate a candidate to become the new Principal. The Board of Trustees shall vote on whether to accept the candidate nominated by AF. If the Board of Trustees votes not to accept the candidate, AF shall nominate additional candidates until the Board of Trustees and AF agree that a candidate so nominated meets their shared standards of excellence.

AF shall present the proposed terms of the Principal's employment to the Board of Trustees, including therein the duties and compensation of the Principal. The Board of Trustees shall then vote on the approval of the terms of the Principal's employment.

The Principal shall serve pursuant to a year-to-year contract, which contract may be renewed by the Board of Trustees, subject to approval by AF. If either the Board of Trustees or AF wishes not to renew the Principal's contract, it shall not be renewed. In that event, AF shall nominate a new candidate to become the Principal (and present proposed terms of that Principal's employment), as provided above, until the Board of Trustees and AF agree that a candidate so nominated meets their shared standards of excellence.

AF may recommend termination of a Principal's employment. However, the Board of Trustees shall have the final authority with respect to termination of any Principal.

The Principal shall coordinate the management of the School with, and report on a day to day basis to the AF President or a designee specified in writing by the AF President. Notwithstanding the foregoing, the Principal shall be an employee of the School and, as set forth above in this Section 4.5, the Board of Trustees may (1) refuse to renew the Principal's contract and (2) terminate the Principal. AF shall provide to the Board of Trustees an annual report regarding the Principal's performance.

AF will (a) provide an intensive leadership training program for any new Principal, (b) conduct a Principal evaluation once per year, using a comprehensive performance assessment model and (c) provide ongoing coaching and training for the Principals.

4.6 Teachers and Other School Personnel.

AF shall support the School in the recruitment of teachers, administrators, and other personnel for the School. Specifically, AF will work to build a pool of qualified applicants

through advertising, networking and other methods. AF will conduct preliminary screens of candidates and will forward resumes of promising candidates to the Principal. The Principal shall have the final authority to hire such teachers, administrators, and other personnel. All employees working at the School shall be employees of the School. The Principal shall have the final authority to terminate School employees, although AF may recommend termination of a School employee.

The Principal shall have the authority to determine the compensation of all School employees, within the constraints of the budget adopted by the Board of Trustees.

AF, in conjunction with the Principal, shall perform the following personnel functions:

- (a) determining staffing levels;
- (b) determining staff responsibilities;
- (c) providing counsel as to evaluation and discipline of personnel;
- (d) initial training in AF's methods, curriculum, program, and technology to all teaching personnel;
- (e) training to all non-teaching personnel as AF, in consultation with the Principal, determines is necessary.

AF will continue to provide approximately two weeks of initial teacher training to all new AF teachers in the basics of the AF methodology. AF will assist the School (specifically the Principal and Academic Dean) to develop the internal capacity to deliver ongoing teacher training and support. AF will work closely with the Principal to jointly plan and deliver ongoing teacher training, and AF will sponsor two network-wide professional development days each year for all AF teachers.

4.7 Equipment and Information Technology.

AF will manage the School's start-up process, and facilitate the School's purchase, at the School's expense, of desks and other furniture, equipment, library and media materials, and other similar materials and furnishings integral to the operation of a school.

AF will facilitate the School's purchase and procurement of information technology ("IT") equipment and services. In addition, AF will provide the following computer and IT support to the School:

- (a) maintaining and providing training in the use of a central file server containing electronic curricular and school administration resources;
- (b) providing training in the use of a student information system specifically designed to support the AF program;
- (c) providing all desktop and laptop support to the School staff and students;

- (d) recommending and ensuring the effective implementation of a data back-up protocol;
- (e) providing a phone system and voicemail support; and
- (f) creating and maintaining a link from AF's website to a page specific to the School.

All vendor products and services will be paid for by the School, unless otherwise specified by AF.

4.8 School Evaluation.

AF will conduct a thorough school evaluation within three years of the Effective Date. The evaluation will be designed as a comprehensive school inspection by a team of both AF and outside evaluators. The team will observe classes and other school operations, analyze a wide variety of data, review student work samples, meet with parents, students, and teachers, and engage in other activities designed to obtain a detailed picture of school and student success in preparation for charter renewal.

4.9 Fundraising.

AF will conduct fundraising activities on behalf of the School and other charter schools which AF manages. Monies raised from AF fundraising activities specifically for the School shall be given to or used for the benefit of the School. Other monies derived from general AF fundraising activities shall be used or distributed as AF deems appropriate, in its sole discretion, including but not limited to use for the benefit of, or distribution among, the charter schools that AF manages.

4.10 Marketing; Advocacy.

AF will market and advocate for the School.

5. DUTIES AND OBLIGATIONS OF THE SCHOOL

In addition to any duties and obligations expressly attributed to the School as set forth in Article 4, the School (and AF) shall have the following duties and obligations:

5.1 Provision of Suitable School Facilities.

- (a) Should the School or any of its Academies need to be moved in any subsequent year because of a need for more space, a dispute with the operators of the Facility or other reason, the School shall use its best efforts to provide the charter school with a suitable Facility located in New Haven. AF, if requested by the School, will use commercially reasonable efforts to assist the School in the identification of a Facility. The School will consult with and obtain approval from AF prior to entering into a lease or purchase of a Facility. AF will assist the School in providing Facilities needed to expand the School in the future.

- (b) The School shall procure and maintain insurance, or otherwise hold AF harmless, for damage or loss to the property. AF shall not be liable under any lease or other document pertaining to a facility.

5.2 Annual Audit.

The School shall arrange and pay for an annual audit of the School to be conducted in compliance with State law and regulations, and showing the manner in which funds are spent at the School. The annual audit shall be performed by a certified public accountant selected by the Board of Trustees of the School, who shall consult with AF prior to selecting the certified public accountant.

5.3 Legal Services.

The School shall arrange and, if necessary, pay for its own legal services.

5.4 Accounting, Bookkeeping, Procurement, and other Financial Functions.

The School shall be responsible and accountable for the following financial, accounting, and bookkeeping functions:

- (a) timely payment of invoices;
- (b) payroll, in accordance with Section 5.5.
- (c) monthly reconciliation of bank statements;
- (d) debit and credit entries, using the financial management software selected by AF; and
- (e) procurement.

AF shall provide initial training to the Director of School Operations in the use of the financial management software selected by AF, and shall provide support and oversight as may pertain to the functions listed above. AF shall also work closely with the Director of School Operations to ensure accurate and timely financial reporting to the Board of Trustees and funding agencies, including but not limited to the Connecticut State Department of Education.

5.5 Payroll, Employee Salaries and Benefits.

The School shall be responsible and accountable for the funding and payment of the salaries, fringe benefits, and State and federal payroll taxes for all individuals employed at the School. All such payments shall be made on a timely basis, in accordance with all State and federal laws and regulations, including all tax requirements.

5.6 Power and Authority.

The School shall ensure that AF has all power and authority necessary to carry out the duties of AF under this Agreement. This shall include ensuring that no other entity or any individual, including any officer, agent or director of the School, has or exercises any authority which might interfere with the duties of AF.

5.7 State and Federal Waivers.

The School shall, with AF's assistance, timely apply for and support the waiver of any federal or State rules or regulations that interfere with the AF School Model.

6. OPERATION OF THE SCHOOL

6.1 Students with Special Needs.

The School recognizes its obligation to provide an appropriate education to all students enrolled in the School, regardless of special need, in accordance with the requirements of the *Individuals with Disabilities Education Act (IDEA)* and Section 504 of the *Rehabilitation Act of 1973*. As required by law, the School shall be open to individuals with handicapping conditions and other special needs. AF may, on behalf of the School, subcontract as necessary and appropriate to a municipal, public or private contractor or otherwise for the provision of special education services, subject to approval by the School, which shall not be unreasonably withheld. Any cost, fee or expense associated with such subcontract will be paid by the School.

6.2 Recruitment and Admission.

AF and the School shall be jointly responsible for the recruitment of students and the administration of the lottery.

Application by or for students shall be voluntary, and shall be in writing. Admission shall be open to all individuals who reside within New Haven, on a space-available basis without regard to race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language, academic achievement, or any other basis that would be illegal if used by a public school district. If there are more applications for enrollment for any grade in the School than there are spaces available for such grade, students shall be selected using a random selection process, provided however, to the extent permitted by law, preference for enrollment will be given first to students who were enrolled in the School in the previous year, then to siblings of current students, and then to students residing in New Haven.

6.3 School Day and Year for Students.

The normal school day shall be approximately nine hours. The normal school year will consist of approximately 180 days of regular instruction for students, as well as 15 days of summer academy during which the school day may be shorter (for a total of 195 school days). Elm City College Preparatory currently offers a Summer Academy for most but not all students;

the decision to change this will be made by the Achievement First Bridgeport Board of Trustees. The School's calendar shall be developed annually by the Principal in consultation with AF, and shall extend from on or about August 30 to on or about June 20, with scheduled vacations. AF may extend the school year, subject to the School's approval and available funds.

6.4 School Policies.

The School and AF are committed to the success of the educational program set forth in the AF School Model (attached as Exhibit A hereto) and related documents. Consequently, AF shall make reasonable recommendations to the School concerning calendar, policies, rules, regulations, procedures, personnel, and budget, to enable the School to implement the AF School Model; and the School shall exercise good faith in considering and adopting AF's recommendations, so that AF's School Model may be properly implemented.

6.5 Due Process.

The School shall provide students due process hearings in conformity with the requirements of State and federal law regarding discipline, special education, confidentiality and access to records. The Principal shall have the authority to suspend a student as provided for in the Charter Contract or in subsequent policies adopted by the Board of Trustees. Only the Board of Trustees may expel a student, based on a recommendation by the Principal.

6.6 Family Educational Rights and Privacy Act.

The School hereby designates employees of AF as agents of the School having a legitimate educational interest such that they are entitled access to education records under 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act ("FERPA"). AF, its officers and employees shall comply with FERPA at all times.

7. FINANCIAL ARRANGEMENTS

7.1 Funding Eligibility.

The Director of School Operations and Principal shall be responsible for complying with applicable requirements for the purpose of receiving or maintaining the School's eligibility to receive from the Connecticut City, State, and federal governments all applicable funds to which the School is entitled. The School shall apply for all State aid or other monies it is eligible to receive from the Authorizer. AF shall provide such assistance to the School in the preparation or review of State aid applications and reports as the School may request. The School shall permit AF to review any such applications and reports prior to their submission, and AF shall have the right to assume control of the application and report process if and to the extent it deems it appropriate to do so.

7.2 Donations and Grants.

Both the School and AF may solicit and receive grants and donations consistent with the mission of the School.

7.3 Extracurricular Fees.

Consistent with local practice and as allowed by law, the School may charge fees to students for extra services such as summer activities, extracurricular clubs and after school athletics.

7.4 Service Fee.

- (a) For each school year covered by this Agreement (those school years being five successive 12-month periods, each beginning on July 1, and the first beginning on July 1, 2007), the School shall pay AF a service fee equal to eight percent of: the average number of students enrolled during that school year, times the Approved Per Pupil Operating Expense (the "Service Fee"). The Service Fee shall be based on an estimate of the number of students expected to be enrolled in that school year. At the end of that school year, if the estimated enrollment differs from the actual enrollment, the Service Fee shall be adjusted accordingly and (i) for the first four school years, the amount equal to the difference between the estimated Service Fee and the actual Service Fee shall be added to or subtracted from, as appropriate, the first invoice of the following school year (*i.e.*, in accordance with Section 7.4(b), the October invoice) and (ii) for the final school year of the Term, the amount equal to the difference between the estimated Service Fee and the actual Service Fee shall be paid by the appropriate party to the other party no later than the first day of October following such school year.
- (b) Subject to Section 7.4(a) and Section 7.4(c), the Service Fee shall be due and payable in four equal installments on the fifteenth day of October, January, April and July.
- (c) If AF fails to meet its obligation to raise the dollar amount of private funds to which it agreed as part of the School's approved budget for any school year and if the School's budgeted expenses exceed its revenue for that year, the fourth (July) payment with respect to that year (or such smaller portion of the fourth payment as is equal to the difference between revenue and budgeted expenses for that year) shall be deferred until the school shall obtain sufficient resources to meet the budgeted expenses, including the full Service Fee, for that year.

7.5 AF Not Required to Make Loans or Advances.

AF shall have no obligation to advance or loan any funds to the School.

8. PROPRIETARY AND CONFIDENTIAL INFORMATION

8.1 Confidential Information.

"Confidential Information" means:

- (a) any and all technical and non-technical information, whether communicated orally or in writing, including, without limitation, patent, copyright, trade secret and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, formulae, apparatus, equipment and biological materials related to the current, future and proposed products, services, or projects of AF, and includes, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts and sales and marketing plans, and any Derivatives of the foregoing whether created by AF or the School;
- (b) any instructional materials, training materials, curriculum and lesson plans, and any other materials developed by AF, its employees, agents or subcontractors, any individual working for or supervised by AF, or any individual employed by the School working primarily at the School;
- (c) any information that AF treats or maintains as confidential, proprietary, restricted, or otherwise as not to be disclosed generally;
- (d) any information disclosed by AF to the School or known by the School as a result of the relationship created by this Agreement, which information is not generally known or publicly available and that in any way relates to AF's products; services; techniques or know-how; trade secrets; ideas; processes; computer programs; documents; materials; business information; marketing materials (including costs, pricing, and customer lists); and
- (e) all information received in confidence from third parties by AF.

"Confidential Information" shall not include Student Confidential Information.

8.2 Derivatives.

"Derivatives" means:

- (a) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted;
- (b) for patentable or patented material, any improvement thereon; and
- (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent, trade secret, and/or any other recognized proprietary right.

8.3 Marks.

“Marks” means all trademarks, service marks, design marks, trade names, domain names, registrations and applications for registration thereof, and any common law rights pertaining thereto, belonging to AF. Such materials shall include, but are not limited to, “Achievement First” and “Achievement First Endeavor Charter School.”

8.4 Treatment of Marks.

- (a) Ownership of Marks. All Marks, whether created by AF or the School, remain the property of AF, and no license or other right to use, modify and/or sell the Marks is granted or implied hereby, except as set forth in Section 8.4(b).
- (b) License to the School. AF hereby grants to the School, solely as may reasonably be required in connection with the performance of this Agreement, a nonexclusive, nontransferable, limited right to Use the Marks during the Term. The School may grant its agents, subcontractors, vendors and consultants the right to Use the Marks, solely as may be reasonably necessary in connection with the performance of this Agreement, and provided such agents, subcontractors, vendors and consultants comply with the terms of this Article 8.
- (c) Cease of Use of Marks. Upon termination or expiration of this Agreement, the School will not have any right to make any use whatsoever of the Marks. To the extent that the School’s corporate name, curriculum or any other materials include any of the Marks, including but not limited to the AF name, and unless expressly agreed to in writing by AF, the School shall immediately upon termination or expiration of this Agreement (i) return to AF or destroy such materials as may be returned or destroyed and (ii) change such name and/or materials so that they do not include any of the Marks, or any portion of the Marks.

8.5 Treatment of Confidential Information.

- (a) Ownership of Confidential Information. All Confidential Information and any Derivatives thereof, whether created by AF or the School, remain the property of AF, and no license or other right to use, modify and/or sell the Confidential Information and any Derivatives thereof is granted or implied hereby, except as set forth in Section 8.5(b).
- (b) License to the School. AF hereby grants to the School, solely as may reasonably be required in connection with the performance of this Agreement, a nonexclusive, nontransferable, limited right to have access to and Use the Confidential Information during the Term. The School may grant its agents, subcontractors, vendors and consultants the right to have access to and Use the Confidential Information, solely as may be reasonably necessary in connection with the performance of this Agreement, and provided such agents, subcontractors, vendors and consultants agree in writing to comply with the terms of this Article 8.

- (c) **Use of Third Party Proprietary Information.** The School will not knowingly infringe upon, or permit any of its employees or agents to knowingly infringe upon, any rights of any third party or knowingly violate the patent, copyright, trademark, trade secret, or other proprietary right of any third party in connection with the performance of this Agreement, and if the School becomes aware of any such infringement or alleged instance of infringement, the School agrees to notify AF promptly in writing.
- (d) **Disclosure of Confidential Information.** The School acknowledges that prior to the Term, AF may have disclosed, and during the Term AF may disclose, Confidential Information to the School, including that information which is currently in existence as well as that which may be created in the future.
- (i) The School agrees that it will not at any time or in any manner, directly or indirectly, disclose any Confidential Information to any third party without the prior written consent of AF. AF agrees that it shall not unreasonably withhold such written authorization.
- (ii) The School shall treat all Confidential Information with the same degree of care as a reasonable and prudent person would accord his or her own confidential information, and shall use its best efforts to assure that it, its employees and its agents do not disclose or Use such Confidential Information, other than as may be reasonably necessary in connection with the performance of this Agreement.
- (iii) To the extent a final order from a Regulatory Authority requires the School to disclose any Confidential Information, the School shall not be considered in breach of this **Section 8.5(d)**; provided that the School provides prior notice to AF, if permitted by the Regulatory Authority.
- (e) **Return of Confidential Information.** Any and all Confidential Information and any Derivatives thereof, including all written and electronic copies, in the School's possession or control shall be returned to AF promptly upon termination or expiration of this Agreement or upon request by AF. All materials furnished by AF to the School in connection with any Confidential Information and any Derivatives thereof, including all written and electronic copies, shall be returned to AF promptly upon termination or expiration of this Agreement or upon request by AF. Upon such return, the School will not have any right to Use the AF Confidential Information, nor any Derivatives thereof, nor such materials.
- (f) **Rights to Confidential Information.** Except as required for the Parties' performance hereunder, nothing in this Agreement shall be construed to require AF to provide, or to entitle the School to obtain, any Confidential Information or any rights therein.

8.6 Specific Performance.

In addition to all of the remedies otherwise available to AF, including, but not limited to, recovery of damages and reasonable attorneys' fees incurred in the enforcement of this Article 8, AF shall have the right to injunctive relief to restrain and enjoin any actual or threatened breach of the provisions of this Article 8. All of AF's remedies for breach of this Article 8 shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedies. The School acknowledges and agrees that AF's rights under this Article 8 are special and unique and that any violation of this Article 8 by the School would not be adequately compensated by money damages alone.

9. INDEMNIFICATION

9.1 Representations and Warranties.

All representations and warranties hereunder shall be deemed to be material and relied upon by the Parties with or to whom the same were made, notwithstanding any investigation or inspection made by or on behalf of such Party or Parties.

9.2 Indemnification of the School.

AF shall hold the School and its trustees, officers, successors, assigns, and agents (the "School Indemnified Persons") harmless and indemnify each of them from and against any and all claims, losses, damages, liabilities, penalties, fines, expenses or costs ("Claims"), plus reasonable attorneys' fees and expenses incurred in connection with Claims and/or enforcement of this Agreement, plus interest from the date incurred through the date of payment at the prime lending rate of *The Wall Street Journal*, Midwest edition, from time to time prevailing (collectively, the "Indemnified Claims"), incurred or to be incurred by any School Indemnified Person resulting from or arising out of (i) AF's gross negligence or willful misconduct or (ii) any breach or violation of AF's representations, warranties, covenants, or agreements contained in this Agreement.

9.3 Indemnification of AF.

The School shall hold AF and its affiliates and the shareholders, directors, officers, partners, successors, assigns, and agents of each of them harmless and indemnify each of them from and against any and all Indemnified Claims incurred or to be incurred by any of them resulting from or arising out of (i) the School's gross negligence or willful misconduct or (ii) any breach or violation of the School's representations, warranties, covenants and agreements contained in this Agreement.

9.4 Limitation on Claims of the School.

Notwithstanding anything in this Agreement to the contrary, there shall be no liability for any Claim and AF shall have no obligations or liabilities pursuant to Section 9.2 :

- (a) until the aggregate of the Claims suffered or incurred by the School exceeds five thousand dollars (\$5,000) (the "Threshold Amount"). After the Threshold Amount has been met there shall be liability for the aggregate amount of all

Claims. In computing the amount of the Claims incurred by the School, the amount of any income tax savings actually realized by the School as a result thereof as well as the income tax cost arising out of such indemnity, if any, shall be taken into account;

- (b) to the extent such liabilities exceed the Service Fee paid to AF during the academic year in which the action or omission giving rise to the Claim occurred;
- (c) if such liabilities are covered by insurance, to the extent the amount of such liabilities exceeds the amount of any insurance proceeds received for the insured event (under insurance policies referenced in this Agreement) giving rise to the liabilities; and
- (d) if the claim for indemnification is made pursuant to Section 9.2, to the extent that AF can demonstrate that the School had, prior to the Closing, actual knowledge that the applicable representation or warranty was untrue or incomplete or had been breached or that the applicable covenant had been breached or was unfulfilled prior to the Closing.

9.5 Limitation on Claims of AF.

Notwithstanding anything in this Agreement to the contrary, there shall be no liability for any Claim and the School shall have no obligations or liabilities pursuant to Section 9.3:

- (a) until the aggregate of the Claims suffered or incurred by AF exceeds the Threshold Amount; provided, however, that the limitation in this clause (a) shall not apply to Claims relating to misuse of intellectual property (including breach of Article 8). After the Deductible has been met there shall be liability for the aggregate amount of all Claims. In computing the amount of the Claims incurred by AF, the amount of any income tax savings actually realized by AF as a result thereof as well as the income tax cost arising out of such indemnity, if any, shall be taken into account;
- (b) to the extent such liabilities exceed the Service Fee paid by the School during the academic year in which the action or omission giving rise to the Claim occurred; provided, however, that the limitation in this clause (b) shall not apply to Claims or other liabilities relating to misuse of intellectual property (including breach of Article 8);
- (c) if such liabilities are covered by insurance, to the extent the amount of such liabilities exceeds the amount of any insurance proceeds received for the insured event (under insurance policies referenced in this Agreement) giving rise to the liabilities; provided, however, that the limitation in this clause (c) shall not apply to Claims or other liabilities relating to misuse of intellectual property (including breach of Article 8); and

- (d) if the claim for indemnification is made pursuant to Section 9.3, to the extent that the School can demonstrate that AF had, prior to the Closing, actual knowledge that the applicable representation or warranty was untrue or incomplete or had been breached prior to the Closing.

9.6 Indemnification of Third-Party Claims.

The obligations and liabilities of any Party to indemnify the other under this Article 9 with respect to a Claim relating to or arising from third parties (a "Third Party Claim") shall be subject to the following terms and conditions:

- (a) Notice and Defense. The Party to be indemnified (the "Indemnified Party") will give the Party from whom indemnification is sought (the "Indemnifying Party") prompt written notice of any such Claim, and the Indemnifying Party may undertake the defense thereof by representatives chosen by it. Failure to give notice shall not affect the Indemnifying Party's duty or obligations under this Article 9 except to the extent the Indemnifying Party is prejudiced thereby. If the Indemnifying Party undertakes the defense of a Third Party Claim, then the Indemnifying Party shall be deemed to accept that it has an indemnification obligation under this Article 9 with respect to such Third Party Claim, unless it shall in writing reserve the right to contest its obligation to provide indemnity with respect to such Third Party Claim. So long as the Indemnifying Party is defending any such Third Party Claim actively and in good faith, the Indemnified Party shall not settle such Claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials required by them and in the possession or under the control of the Indemnified Party, for the use of the Indemnifying Party and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense.
- (b) Failure to Defend. If the Indemnifying Party, within thirty (30) days after notice of any such Claim, fails to dispute the obligation of the Indemnifying Party with respect to such Claim and fails to defend such Claim actively and in good faith, then the Indemnified Party will (upon written notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Claim or consent to the entry of a judgment with respect to such Claim, on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall thereafter have no right to challenge the Indemnified Party's defense, compromise, settlement or consent to judgment therein.
- (c) Indemnified Party's Rights. Anything in this Article 9 to the contrary notwithstanding, (i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, compromise or settle such Claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not

include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such Claim.

9.7 Payment.

The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Article 9. Upon judgment, determination, settlement or compromise of any third party claim, the Indemnifying Party shall pay promptly on behalf of the Indemnified Party, and/or to the Indemnified Party in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other Claims of the Indemnified Party with respect thereto, unless in the case of a judgment an appeal is made from the judgment. If the Indemnifying Party desires to appeal from an adverse judgment, then the Indemnifying Party shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. Upon the payment in full by the Indemnifying Party of such amounts, the Indemnifying Party shall succeed to the rights of such Indemnified Party, to the extent not waived in settlement, against the third party who made such third party claim.

9.8 Adjustment of Liability.

In the event an Indemnifying Party is required to make any payment under this Article 9 in respect of any damages, liability, obligation, loss, claim, or other amount indemnified hereunder, such Indemnifying Party shall pay the Indemnified Party an amount which is equal to the sum of (i) the amount of such damages, liability, obligation, loss, claim or other amount, minus (ii) the amount of any insurance proceeds the Indemnified Party actually receives with respect thereto, minus (iii) any third party payments actually received by the Indemnified Party with respect to such damages, liability, obligation, loss, claim or other amount after demand or notice to such third party from the Indemnifying Party (with the consent of the Indemnified Party which will not be unreasonably withheld).

9.9 Loans from AF to the School.

Any loan or advance made by AF to the School shall not be subject to the foregoing provisions of this Article 9, and shall instead be subject to the terms of such loan or advance.

10. TERM AND TERMINATION

10.1 Term.

This Agreement shall have an initial term commencing on the Effective Date and ending on the later of (i) June 30 following the fifth anniversary of the Effective Date or (ii) the expiration of the initial term of the Charter Contract (the "Initial Term"), and, beginning on June 30, 2011, shall automatically be renewed for additional renewal terms ending on the later of June 30 of each year or the expiration of any renewal term of the Charter Contract (each a "Renewal Term" and collectively with the Initial Term the "Term") unless written notice of intent to terminate or renegotiate is given by either Party not later than the December 31 prior to the end of the Initial Term or the December 31 prior to the end of any Renewal Term. In no

event shall any such renewal or renegotiations extend beyond the effective date of any subsequent Charter Contract granted by the Authorizer.

10.2 Termination by the School.

The School may terminate this Agreement in accordance with the following provisions:

- (a) **Termination for Cause.** Subject to the provisions of subparagraph (b) below, the School may terminate this Agreement for cause at any time during the Term. For purposes of this Section 10.2, the term “for cause” shall mean:
- (i) AF becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors;
 - (ii) AF has been found by an arbitrator to have been grossly negligent in the use of funds to which the School is entitled; provided however, that an unconditional offer by AF to pay the School an amount of money equal to the amount so found to have been used in a grossly negligent manner shall extinguish the School’s right to terminate;
 - (iii) a Regulatory Authority has revoked any license which may be required for AF to carry on its business and perform its obligations and functions under this Agreement;
 - (iv) the School fails to make reasonable progress toward achievement of the goals and objectives outlined in the “Goals and Objectives” section of the charter application, which section is attached hereto as Exhibit B, after a period of at least three years from the Effective Date of this Agreement;
 - (v) subject to Section 5.7, AF violates any material provision of law with respect to the School from which the School was not specifically exempted and which results in material adverse consequences to the School;
 - (vi) AF materially breaches any of the material terms and conditions of this Agreement;
 - (vii) the Authorizer revokes its Charter Contract with the School;
 - (viii) the State revokes the Charter Contract between the Authorizer and the School pursuant to State statute; or
 - (ix) subject to Section 5.7, the enactment or repeal of any federal, State or local law, the promulgation or withdrawal of any regulation, or the issuance of any court or administrative decision or order (any such enactment, repeal, promulgation, withdrawal, or issuance being an

“Action”), where the substance or consequence of such Action is that this Agreement, the operation of the School in conformity with this Agreement, or the School’s Charter Contract with the Authorizer materially violates the School’s, the Authorizer’s or the State’s responsibilities, duties or obligations under the federal or State constitutions, statutes, laws, rules or regulations, or materially violates any contract or agreement to which the School was a party on the Effective Date.

- (b) AF Right to Cure. Prior to exercising its right to terminate this Agreement pursuant to Section 10.2(a), the School shall give AF written notice of its basis for terminating the Agreement (a “Termination Notice”). The Termination Notice shall specify the section of this Agreement upon which the School is relying on for the termination and the requirements for correction of the breach. Upon receipt of the Termination Notice, AF shall have 60 business days to remedy the breach (the “Cure Period”). If the breach is not corrected within the Cure Period, the School may immediately terminate the Agreement.
- (c) Deferral of Termination for Waivers. Notwithstanding the foregoing provisions of this Section 10.2, in the event that federal or State rules or regulations, existing as of the Effective Date or thereafter enacted, interfere with the AF School Model, the School’s termination right under Section 10.2(b) shall be deferred for a period of time as may be reasonably required to apply for and support a waiver as contemplated by Section 5.7. Upon either (i) failure of the Parties’ good faith efforts to obtain such a waiver or (ii) the determination of AF, in its sole discretion, that such waiver is (a) unnecessary, (b) highly unlikely to be obtained or (c) not in the best interests of AF and the School, the School’s right to terminate, and AF’s right to cure, will be restored as set forth in Section 10.2(a) and Section 10.2(b).

10.3 Termination by AF.

AF may terminate this Agreement in accordance with the following provisions:

- (a) Termination For Cause. Subject to the provisions of subparagraph (b) below, AF may terminate this Agreement for cause at any time during the Term. For purposes of this Section 10.3, the term “for cause” shall mean that:
 - (i) the School materially breaches any of the material terms and conditions of this Agreement;
 - (ii) the School fails to comply with a material provision of its Bylaws;
 - (iii) subject to Section 5.7, the School violates any material provision of law with respect to the School from which the School was not specifically exempted and which results in material adverse consequences to AF or to the School;

- (iv) the School takes any action which materially interferes with the ability of AF to perform under this Agreement;
 - (v) the School refuses or willfully fails to follow any material direction of AF related to implementation of the AF School Model;
 - (vi) the Authorizer revokes its Charter Contract with the School;
 - (vii) subject to Section 5.7, the State revokes the Charter Contract between the Authorizer and the School pursuant to State statute; or
 - (viii) the enactment or repeal of any federal, State or local law, the promulgation or withdrawal of any regulation, or the issuance of any court or administrative decision or order (any such enactment, repeal, promulgation, withdrawal, or issuance being an "Action"), where the substance or consequence of such Action is that this Agreement, the operation of the School in conformity with this Agreement, or the School's Charter Contract with the Authorizer materially violates the School's, the Authorizer's or the State's responsibilities, duties or obligations under the federal or State constitutions, statutes, laws, rules or regulations, or materially violates any contract or agreement to which AF was a party on the Effective Date.
- (b) School Right to Cure. Prior to exercising its right to terminate this Agreement pursuant to Section 10.3(a), AF shall give the School a Termination Notice specifying the Section of this Agreement upon which AF is relying for the termination and the requirements for correction of the breach. Upon receipt of the Termination Notice, the School shall have 60 business days to remedy the breach. If the breach is not corrected within the cure period, AF may immediately terminate the Agreement.
- (c) Deferral of Termination for Waivers. Notwithstanding the foregoing provisions of this Section 10.3, in the event that federal or State rules or regulations, existing as of the Effective Date or thereafter enacted, interfere with the AF School Model, AF's termination right under Section 10.3(b) shall be deferred for a period of time as may be reasonably required to apply for and support a waiver as contemplated by Section 5.7. Upon either (i) failure of the Parties' good faith efforts to obtain such a waiver or (ii) the determination of AF, in its sole discretion, that such waiver is (a) unnecessary, (b) highly unlikely to be obtained or (c) not in the best interests of AF and the School, the AF's right to terminate, and the School's right to cure, will be restored as set forth in Section 10.2(a) and Section 10.2(b).

10.4 Termination Upon Agreement of the Parties.

This Agreement may be terminated upon written agreement of the Parties.

10.5 Avoidance of Disruptions to Students.

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Notwithstanding the foregoing provisions of this Article 10, each Party shall use its good faith best efforts to avoid a termination of the Agreement that becomes effective during the school year because of the disruption of such termination to the educational program and the students. Therefore, in the event this Agreement is terminated by either Party prior to the end of the Term, absent unusual and compelling circumstances, the termination will not become effective until the end of the school year.

10.6 Payment of Service Fee.

Upon termination of this Agreement, the School shall pay AF any previously unpaid portion of the Service Fee for services performed by AF until the time of termination.

10.7 Assistance Following Termination by AF.

In the event of termination of this Agreement by AF, AF shall provide reasonable assistance to the School for the shorter of the remainder of the current School year or 90 days after the effective date of termination of the Agreement (the "Termination Assistance Period"), to assist in the transition to another plan for management of the School, whether by the School itself or with another charter management organization. During the Termination Assistance Period, AF will be entitled to receive and the School shall continue to pay AF's Service Fee and shall reimburse AF for all expenses incurred by AF in providing such transition assistance.

10.8 Records upon Termination.

Upon termination or expiration of this Agreement for any reason, AF shall give to the School all student, fiscal and other School records.

11. GOVERNING LAW, DISPUTE RESOLUTION, JURY WAIVER, AND VENUE

11.1 Governing Law.

This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of Connecticut, without giving effect to the principles of conflict of laws thereof; provided, however, that the *Federal Arbitration Act*, to the extent applicable and inconsistent, will supersede the laws of Connecticut and shall govern.

11.2 Alternative Dispute Resolution.

- (a) Good Faith Negotiation of Disputes. The parties agree to cooperate in good faith in all actions relating to this Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes. If, nevertheless, a dispute should arise in connection with this Agreement, either Party may give notice to the other Party of intent to negotiate, and the parties agree to use their best efforts to resolve such dispute in a fair and equitable manner. In the event any dispute or Claim arising out of or relating to this Agreement or the relationship resulting in or from this Agreement (a "Dispute"), except for a Claim by AF relating to its intellectual property rights (including under Article 8), is unable to be resolved by the Parties

(or if one of the Parties refuses to participate in such negotiations) within twenty calendar days from delivery of the notice of intent to negotiate, either Party may give written notice to the other of a demand for arbitration, whereupon the Dispute shall be resolved in accordance with the following alternative dispute resolution procedure.

- (b) **Binding Arbitration Except With Respect to Intellectual Property and Loans from AF to the School.** Any Dispute, except for a Claim by AF relating to its intellectual property rights (including under Article 8) or the School's repayment of a loan or advance from AF to the School, will be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of The American Arbitration Association (the "Arbitration Rules"), except as stated below in this clause (b). A Claim by AF relating to its intellectual property rights (including under Article 8) or the School's repayment of loan or advance from AF to the School shall not be subject to arbitration absent further agreement by the parties. Within seven calendar days following the giving by either Party of a written notice of a demand for arbitration, (1) each Party shall designate its panel representative and (2) the Party giving such notice shall also give notice to the Connecticut City Center for Charter Excellence ("NYCCCE"), requesting that they designate the third panel member, who shall serve as the Chairperson. If the NYCCCE is unwilling or unable to designate a third panel member within seven calendar days of being requested to do so, the Party representatives shall do so within seven additional calendar days. The arbitrators shall convene a hearing as soon as possible thereafter. Each Party may present witnesses, documentary, and other evidence on its behalf, but strict rules of evidence shall not apply. The arbitrators may permit the filing of briefs upon request of either Party. The arbitrators shall issue a written opinion concerning the Dispute, together with their award, within 30 days following the close of the hearing.
- (c) **Notices.** All notices, demands, claims, responses, requests and documents will be sufficiently given or served if delivered in the manner described in Article 12 of this Agreement.
- (d) **No Punitive Damages** Notwithstanding anything to the contrary in the Arbitration Rules or otherwise, the arbitrators are not empowered to award punitive damages.
- (e) **Expense Shifting For Arbitration Avoidance.** Notwithstanding anything to the contrary in the Arbitration Rules or otherwise, and except for a Claim by AF relating to its intellectual property rights (including under Article 8) or the School's repayment of a loan or advance from AF to the School, which Claim is not subject to arbitration, no Party may seek judicial relief regarding any Dispute. In the event a Party violates this provision by bringing any action for judicial relief in the first instance without pursuing arbitration prior thereto, such Party will be liable to the other Party for, among other things, all of the other Party's costs and expenses (including, without limitation, court costs and attorneys' fees) incurred to stay or dismiss such judicial action and/or remove or remand it to

arbitration. It shall not be a violation of this arbitration provision for the Party entitled to collect such costs and expenses to seek to have them included in a judicial order of dismissal, removal, or remand. In the alternative, such Party may seek an immediate and separate award of such costs and expenses at the outset of the arbitration, which the arbitrators must grant, and the Party may seek immediately to confirm such award of costs and expenses. In addition, if either Party brings any judicial action to vacate or modify any award rendered pursuant to arbitration, or opposes a judicial action to confirm such award, and the Party bringing such action to vacate or modify or opposing confirmation of such award does not prevail, the Party bringing such action will pay all of the costs and expenses (including, without limitation, court costs and attorneys' fees) incurred by the other Party in defending against the action to vacate or modify such award or in pursuing confirmation of such award. The cost-shifting provisions of the preceding sentence shall apply equally to appeals of judicial decisions to which the preceding sentence applies. It shall not be a violation of this arbitration provision for the Party entitled to collect such costs and expenses to seek to have them included in a judicial order dealing with confirmation, vacation, or modification of an award, or any order on an appeal to which the preceding sentence applies.

11.3 Waiver of Jury Trial.

The Parties knowingly and willingly waive the right to a jury trial with respect to any Dispute, whether or not subject to the foregoing arbitration provision, and including any Dispute within the foregoing arbitration provision but found not to be subject to arbitration for any reason.

11.4 Venue When Judicial Resort is Authorized.

Any action to confirm an arbitral award rendered pursuant to Section 11.2 shall be brought in the courts of Connecticut located in the School's county or the courts of the United States serving Connecticut City. The Parties agree that this Agreement concerns transactions involving commerce among the several states and, except as otherwise provided in Section 11.2(e), hereby irrevocably waive any objection which either may now or hereafter have to personal jurisdiction or the laying of venue for confirmation of an arbitral award in the courts referred to in the preceding sentence. The Parties hereby further irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall limit the right of either Party, following the confirmation of an arbitral award, to seek to enforce such award in any appropriate state or federal court. Nothing herein shall limit the right of either Party to seek redress with respect to any Dispute not subject to the foregoing arbitration provision (including any Dispute within the foregoing arbitration provision but found not to be subject to arbitration for any reason) in any state or federal court.

12. NOTICE

All notices, demands, consents or other communications ("notices") which either Party may be required or desire to give to the other Party shall be in writing and shall be deemed delivered when (a) personally delivered, (b) if mailed, five business days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, (c) if delivered by a reputable overnight carrier, one business day after delivery to such carrier, or (d) if delivered by facsimile, on the date the facsimile transmission is confirmed, provided that, on such date, a separate copy is also delivered pursuant to clause (b) or (c). Delivery by mail, overnight carrier or facsimile shall be addressed to the Parties as follows:

AF:

Dacia Toll
Achievement First, Inc.
403 James Street
New Haven, CT 06513
Tel: (203) 773-3223 (ext. 18)
Fax: (203) 773-3221]

The School:

Alex Troy
[Address]
[Address]
New Haven, CT 06513
Tel: (718) [XXX-XXXX]
Fax: (718) [XXX-XXXX]

Any Party may change its address for notice by notice given in accordance with the foregoing provisions. Notwithstanding the manner of delivery, whether or not in compliance with the foregoing provisions, any notice, demand or other communication actually received by a Party shall be deemed delivered when so received.

13. INTERPRETATION AND CONSTRUCTION; AMENDMENT

13.1 Recitals and Exhibits.

The recitals and exhibits to this Agreement are hereby incorporated herein as an integral part of this Agreement. In the event of a conflict between the terms and provisions of this Agreement and the terms and provisions of any exhibit, the terms and provisions of this Agreement shall control.

13.2 Defined Terms and Use of Terms.

All defined terms used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular and/or plural, in each instance as the context and/or particular facts

may require. Use of the terms "hereunder," "herein," "hereby," and similar terms refer to this Agreement.

13.3 Section Headings.

The headings in this Agreement are for the convenience of the parties only, and shall have no effect on the construction or interpretation of this Agreement and are not part of this Agreement.

13.4 Counterparts.

This Agreement may be executed in Counterparts, each of which shall be deemed to be an original and both together shall be deemed to be one and the same Agreement.

13.5 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein, as of the Effective Date, and there are no understandings of any kind except as expressly set forth herein. Further, any and all prior understandings and agreements between the Parties, expressed or implied, written or oral, including the Term Sheet that forms a part of the Charter Contract, are superseded by this Agreement.

13.6 Modifications and Amendments; No Parol Evidence.

This Agreement may be altered, changed, added to, deleted from or modified only by agreement in writing approved by the Board of Trustees and by AF's Board of Directors. Accordingly, no course of conduct or custom shall constitute an amendment to or modification of this Agreement, and any attempt to amend or modify this Agreement orally, or in a writing not so approved, shall be void. This Agreement may not be modified, supplemented, explained, or waived by parol evidence.

13.7 Severability.

In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision or part of a provision of this Agreement in such jurisdiction, but this Agreement shall be reformed and construed in any such jurisdiction as if such invalid or illegal or unenforceable provision or part of a provision had never been contained herein and such provision or part shall be reformed so that it would be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.

13.8 Negotiated Agreement.

The provisions of this Agreement were negotiated by the Parties and this Agreement shall be deemed to have been drafted by both of the Parties, notwithstanding any presumptions at law to the contrary.

14. MISCELLANEOUS

14.1 Breach and Waiver.

No failure on the part of any Party to enforce the provisions of this Agreement shall act as a waiver of the right to enforce any provision. Further, no waiver of any breach of this Agreement shall (a) be effective unless it is in writing and executed by the Party charged with the waiver, or (b) constitute a waiver of a subsequent breach, whether or not of the same nature. All waivers shall be strictly and narrowly construed. No delay in enforcing any right or remedy as a result of a breach of this Agreement shall constitute a waiver thereof. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressly stated.

14.2 No Third Party Beneficiary Rights.

With the exception of the Authorizer, no third party, whether a constituent of the School, a member of the community, a student or parent of a student of the School or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, the School or AF in this Agreement. This Agreement is not intended to create any rights of a third party beneficiary.

14.3 Inspection and Access to Records.

Upon reasonable notice, the Parties shall make available to each other and to the Authorizer for inspection and copying, all books, records, and documents relating to the Parties' obligations and performance under this Agreement.

14.4 Assignment.

This Agreement, including without limitation, the rights granted herein, may not be assigned, delegated, transferred, pledged, or hypothecated by either Party, whether voluntarily or involuntarily without the prior written consent of the other Party; provided, however, that AF may assign its rights and obligations under this Agreement to a State not-for-profit organization that is (1) related to AF by legal, beneficial or equitable ownership or other means of control (such as parent/subsidiary or corporations under common control) and (2) dedicated to managing charter schools in the State. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors and assigns, and the name of a Party appearing herein shall be deemed to include the name of such Party's successors and assigns to the extent necessary to carry out the intent of this Agreement.

14.5 No Partnership.

This Agreement does not constitute, and shall not be construed as constituting, a partnership or joint venture between the Parties.

14.6 Further Assurances.

The Parties agree to execute and deliver, or cause to be executed and delivered from time to time such other documents and will take such other actions as the other Party reasonably may require to more fully and efficiently carry out the terms of this Agreement.

15. SURVIVAL

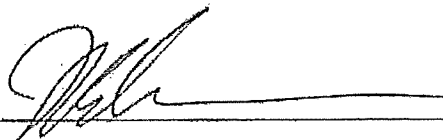
The provisions of Articles 2, 8, 9, 11, 12, 13 and this Article 15, Sections 3.3, 3.4, 10.6, 10.7, 10.8, 14.1, 14.2, 14.3, 14.4 and 14.5, and any other sections or exhibits to this Agreement that by their nature extend beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement; provided that any provision that is stated to extend for a specified period of time shall survive only for such specified period of time.

- SIGNATURES ARE ON THE FOLLOWING PAGE -


IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by their duly authorized representatives.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

ACHIEVEMENT FIRST, INC.

By: 
Title: CFO
Date: 7/17/07

ELM CITY COLLEGE PREPARATORY

By: 
Title: Treasurer
Date: 7/17/07

**AMENDMENT TO
ACADEMIC AND BUSINESS SERVICES AGREEMENT**

THIS AMENDMENT TO ACADEMIC AND BUSINESS SERVICES AGREEMENT (this "Amendment") is entered into as of June __, 2011 by and between Achievement First, Inc., a Connecticut not for profit corporation ("AF"), and Elm City College Preparatory, Inc., a Connecticut nonstock corporation (the "School").

RECITALS

WHEREAS, AF and the School are parties to that certain Academic and Business Services Agreement, effective July 1, 2007 (the "Agreement"), pursuant to which AF agreed to provide certain specified services to the School in exchange for the Service Fee;

WHEREAS, in addition to the specified services, AF has provided certain other services to the School which were not required under the Agreement and which have added value to the School;

WHEREAS, in recognition thereof, AF and the School desire to amend the Agreement to (i) incorporate the additional services performed by AF into the Agreement as required services and (ii) increase the Service Fee accordingly; and

WHEREAS, the School desires that AF provide, and AF desires to provide, the Ancillary Services to the School in exchange for the Ancillary Fee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AF and the School agree as follows:

1. **Definitions**. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Agreement.

2. **Amendments**.

(a) **Section 1** of the Agreement is hereby amended to add the following terms and definitions:

"**Ancillary Service Fee**" has the meaning set forth in **Section 7.6**.

"**Ancillary Services**" means, but is not limited to, the following services:

- **Bookkeeping**: AF will execute accounts payable, accounts receivable and payroll processing on behalf of the School, while also providing a quality control function in identifying and fixing errors in financial information.
- **Facilities acquisition and management support**: AF will identify, secure and, if necessary, improve a facility suitable for the use of the School, with the School's

approval. AF will design and implement systems for facility management for use by the School. AF will be a resource for the School in facility management expertise.

- Special education delivery support: AF will provide oversight, implement systems and processes, and be a resource for the School in serving all students with special needs at a level of quality consistent with the AF educational program. AF will also assist the School in ensuring it receives all public special education funding for which it is eligible.
- Data analysis and management support: AF will assist the School in analyzing student and staff data so that it becomes an integral part of the School's planning processes. AF will also design and implement systems and processes so that data can be captured, analyzed, shared and acted upon as efficiently and quickly as possible.
- Tutoring program support: AF will assist the School in the design, implementation, recruiting and management of a Saturday tutoring program.

"Excess Cost Aid" means the funding received from the State of Connecticut for students whose individual education programs mandate special education services for more than twenty percent (20%) of the day.

"E-Rate Funding" means the funding and discounts provided to the School under the Schools and Libraries Program of the Universal Service Fund, administered by the Universal Services Administration Company under the direction of the Federal Communications Commission.

"Host District" mean the City of New Haven.

"Public Revenue" means, with respect to any school year, an amount equal to the sum of: (i) the average number of students enrolled during such school year multiplied by the Approved Per Pupil Operating Expense, *plus* (ii) Title Funds, *plus* (iii) E-Rate Funding, *plus* (iv) Special Education Funding *plus* (v) all other public entitlement funding from a Public Source, excluding in-kind contributions (e.g., transportation services, food services), start-up funding (e.g., Federal Public Charter School Program Planning and Implementation Grant), funding for School meals and funding for competitive grants.

"Public Source" means any federal, State or local government, or political subdivision thereof, or any federal, State or local authority, agency or commission.

"Reduced Service Fee" has the meaning set forth in Section 7.4(e).

"Special Education Funding" means the funding provided by any Public Source to the School for full-time and part-time special education services, including, but not limited to, funds granted to the School pursuant to the Individuals with Disability Education Act of 2004, as amended, and Excess Cost Aid.

“Title Funds” means the funding granted to the School by the federal government pursuant to the *Elementary and Secondary Education Act of 1965*, as amended.

(b) The beginning of Article 4 of the Agreement (i.e., all of the text prior to Section 4.1 (Curriculum) is hereby amended in its entirety to read as follows:

“In exchange for the Service Fee and the Ancillary Service Fee described in Sections 7.4 and 7.6, respectively, and paid by the School to AF, AF will provide the services described in this Article 4. In fulfilling its duties and obligations pursuant to this Article 4, AF shall meet the requirements of the Authorizer, the State of Connecticut and the Charter Schools Law of Connecticut. AF may perform functions off-site, except as prohibited by State law. AF may utilize web-based systems to provide support and counsel to the School.

In addition to any duties and obligations expressly attributed to AF as set forth in Article 5, AF shall have the following duties and obligations:”

(c) The second sentence of Section 4.4 of the Agreement is hereby amended in its entirety to read as follows:

“The annual budget of the School shall provide for payment of (i) the Service Fee, (ii) the Ancillary Service Fee, and (iii) all operating expenses related to the opening and operation of the School, including, but not limited to: teacher salaries; curriculum materials; reimbursement to AF of certain expenses for purchases made on behalf of the School which are included in the Board’s approved budget (e.g., computers, insurance and other purchases which AF can purchase more efficiently than if the School made such purchases individually); the Principal’s compensation, including his or her salary and benefit costs; debt payments owing and owed to AF by the School; marketing and public relations costs; supplies; maintenance; staff development; curriculum materials; assessment materials and consulting fees; other third party consulting expenses; accountability plan costs; transportation and travel; printing and duplicating; postage; legal fees; and accounting fees.”

(d) The following is hereby added to the Agreement as Section 4.11:

“4.11 Additional Services.

In addition to the foregoing, AF shall also provide the following services to the School:

- Leadership Development: Identify and develop future School leaders from existing School staff.
- Human Capital Management: Provide oversight and support to the School in execution of human capital functions to ensure best practice in talent development and manage potential liability exposure.
- Professional Development: Share best practices across all of the schools in the AF network in an effort to enhance professional development for all teachers.
- Principal Support: Conduct monthly School visits to observe and coach the Principal(s).”

(e) The following is hereby added to the Agreement as Section 4.12:

“4.12 Ancillary Services.

As requested by the School, AF shall provide Ancillary Services to the School. To the extent reasonable and necessary, AF may perform Ancillary Services off-site, except as prohibited by State law. AF may utilize web-based systems to provide Ancillary Services to the School.”

(f) The first sentence of Article 5 of the Agreement is hereby amended in its entirety to read as follows:

“In addition to any duties and obligations expressly attributed to the School as set forth in Article 4, the School shall have the following duties and obligations:”

(g) Section 7.4 of the Agreement is hereby amended in its entirety to read as follows:

“7.4 Service Fee.

(a) For each school year covered by this Agreement (those school years being five successive 12-month periods, each beginning on July 1, and the first beginning on July 1, 2010), the School shall pay AF a service fee equal to ten percent (10%) of all Public Revenues received by the School during or for that school year (the “Service Fee”).

(b) For the avoidance of doubt, all Public Revenues received by the School that are earmarked for a particular purpose (e.g., Special Education Funding) shall be used by the School solely for such purpose. The amount of such earmarked Public Revenues shall be used solely for the purpose of calculating the amount of the Service Fee. By way of example, if the total Public Revenues received by the School for a particular month is \$80,000, of which \$10,000 is Special Education Funding, the amount of the Service Fee owed by the School to AF would be \$8,000 (i.e., 10% of \$80,000). However, the School would have access to, and the right to utilize, the entire \$10,000 in Special Education Funding it received that month solely for the School’s special education needs.

(c) Within fifteen (15) days of the end of each month, AF shall provide the School with an invoice detailing the amount of the Service Fee due and owing by the School to AF for the previous month based on the actual Public Revenues received by the School. Subject to Section 7.4(d), the School shall pay all amounts due within thirty (30) days of receiving such invoice. In the event the School is required to return any Public Revenues to a Public Source, AF shall reimburse the School for ten percent (10%) of such returned Public Revenues. In the event the School receives additional Public Revenues not accounted for by AF in the monthly invoices during any fiscal year, the School shall pay AF ten percent (10%) of such additional Public Revenues within thirty (30) days of the School’s receipt of such Public Revenues.

(d) If AF fails to meet its obligation to raise the dollar amount of private funds to which it agreed as part of the School's approved budget for any school year and if the School's budgeted expenses exceed its revenue for that year, AF shall allow the School to defer a portion of the Service Fee and the Ancillary Service Fee owed to AF until the School obtains sufficient resources to meet the budgeted expenses for that year. The amount deferred pursuant to this Section 7.4(d) shall equal the difference between the amount of private funds AF agreed to raise as part of the School's approved budget and the amount of private funds AF actually raised; provided, however, that in no event shall the amount deferred exceed the difference between the School's budgeted expenses and the School's revenue for that school year."

(e) Notwithstanding the foregoing, in the event the Approved Per Pupil Operating Expense granted to the School is significantly less than the annual per pupil amount of State funds granted to traditional public schools in the Host District in any year, which determination shall be made by AF, AF may, in its sole discretion, reduce the Service Fee due for that school year such that the School shall pay AF a fee equal to ten percent (10%) of the Approved Per Pupil Operating Expense multiplied by the average number of students enrolled in the School during such school year (the "Reduced Service Fee"). The School hereby acknowledges that whether or not AF charges the School a Reduced Service Fee, AF shall be responsible for raising and using additional private funds as part of the School's approved budget for the school year.

(h) The following is hereby added to the Agreement as Section 7.6:

"7.6 Ancillary Service Fee.

(a) The School shall pay AF a fee for the provision of Ancillary Services (the "Ancillary Service Fee"). AF and the School agree to negotiate the amount of the Ancillary Service Fee in good faith. No Ancillary Services shall be provided until the School and AF agree on the fee for such Ancillary Services.

(b) Within fifteen (15) days of the end of each month, AF shall provide the School with an invoice detailing the amount of the Ancillary Service Fee due and owing by the School to AF for the previous month. Subject to Section 7.4(d), the School shall pay all amounts due within thirty (30) days of receiving such invoice."

3. **Choice of Law.** The validity of this Amendment, its construction, interpretation and enforcement, and the right of the parties hereunder, shall be determined under, governed by, and construed in accordance with the laws of the State of Connecticut without regard to conflict of laws principles.

4. **Counterparts; Facsimile; PDF.** This Amendment may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, when taken together, shall constitute one in the same instrument. Any facsimile or portable document format copies hereof or signatures hereon shall, for all purposes, be deemed originals.

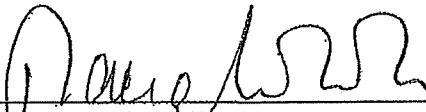
5. **Headings.** Section headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

6. **Full Force and Effect.** Except as otherwise expressly provided herein, the Agreement is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof all references in the Agreement to "this Agreement", "hereto", "hereof", "hereunder" or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendment.

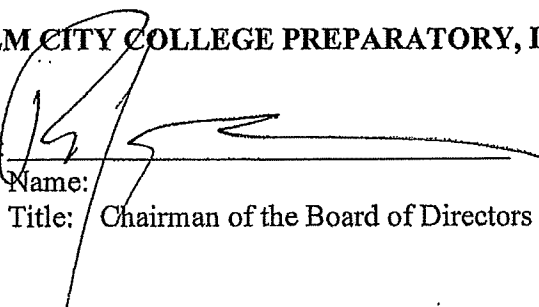
[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

ACHIEVEMENT FIRST, INC.

By: 
Name: Dacia Toll
Title: Co-Chief Executive Officer

ELM CITY COLLEGE PREPARATORY, INC.

By: 
Name:
Title: Chairman of the Board of Directors

**AMENDMENT TO
ACADEMIC AND BUSINESS SERVICES AGREEMENT**

THIS AMENDMENT TO ACADEMIC AND BUSINESS SERVICES AGREEMENT (this "Amendment") is entered into as of _____, 2016 by and between Achievement First, Inc., a Connecticut non-stock corporation ("AF") and ~~Achievement First Hartford Academy~~ Elm City College Preparatory, Inc., a Connecticut non-stock corporation (the "School").

RECITALS

WHEREAS, AF and the School are parties to that certain Academic and Business Services Agreement, effective July 15, 2007, as first amended by that certain Amendment to Academic and Business Services Agreement dated on or around June 14-28, 2011 (as amended, the "Agreement");

WHEREAS, AF and the School desire to amend the Agreement to, among other things, make the Agreement consistent with the requirements of Connecticut Public Law No. 15-239, An Act Concerning Charter Schools, which took effect on July 1, 2015;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AF and the School agree as follows:

1. **Definitions**. Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the Agreement.
2. **Amendments**. AF and the School hereby agree to amend the Agreement as follows:
 - A. The seventh sentence of Section 1 is hereby deleted in its entirety and replaced with the following:

“Authorizer’ means the Connecticut State Board of Education.”
 - B. Section 2.1(a) of the Agreement is hereby amended to add the following sentence at the conclusion of Section 2.1(a):

“AF has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and shall at all times maintain such tax-exempt status.”
 - C. Section 2.1(e) of the Agreement is hereby amended to add the following sentence at the conclusion of Section 2.1(e):

“AF shall ensure compliance with Section 10-66uu of the Connecticut General Statutes, effective July 1, 2015.”
 - D. The following section is hereby added to the Agreement as Section 2.1(f), which shall follow amended Section 2.1(e):

“(f) Background Checks. AF agrees that prior to (i) hiring an applicant for a position at AF that will work with the School who performs a service involving direct student contact, or (ii) appointing or electing a director to AF’s Board, AF shall require the individual to submit to a records check of the Department of Children and Families child abuse and neglect registry, established pursuant to Section 17a-101k of the Connecticut General Statutes, and to state and national criminal history records checks, with such criminal history records checks conducted in accordance with Section 29-17a of the Connecticut General Statutes.”

E. Section 2.2(f) of the Agreement is hereby amended to add the following sentence at the conclusion of Section 2.2(f):

“The Board shall ensure compliance with Section 10-66uu of the Connecticut General Statutes, effective July 1, 2015.”

F. The following section is hereby added to the Agreement as Section 2.2(g), which shall follow amended Section 2.2(f):

“(g) Background Checks. The School agrees that prior to (i) hiring an applicant for a position at the School, (ii) hiring any contractor doing business with the School who performs a service involving direct student contact, or (iii) appointing or electing a director to its Board, the School shall require the individual to submit to a records check of the Department of Children and Families child abuse and neglect registry, established pursuant to Section 17a-101k of the Connecticut General Statutes, and to state and national criminal history records checks, with such criminal history records checks conducted in accordance with Section 29-17a of the Connecticut General Statutes.”

G. Section 3.2 of the Agreement is hereby is hereby deleted in its entirety and replaced with the following:

“INTENTIONALLY LEFT BLANK.”

H. Section 3.3 of the Agreement is hereby is hereby deleted in its entirety and replaced with the following:

“3.3 Conflict with Charter.

To the extent there are any conflicts between the terms of the Charter Contract and the terms of this Agreement, the terms of the Charter Contract shall control.”

I. Section 4.3 of the Agreement is hereby amended by deleting the word “reasonably” from the first sentence of Section 4.3.

J. The second paragraph of Section 4.4 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The budget shall grant certain levels of discretion to the Principal (including, but not limited to, teachers’ salaries and the Principal’s discretionary fund, as allocated in the budget) within parameters established by the Board of Trustees.”

K. The second, third and fourth paragraphs of Section 4.5 of the Agreement are hereby deleted in their entirety and replaced with the following:

“When a vacancy arises in one of the three Principal positions (elementary, middle, high school) AF shall nominate one or more candidates to become the new Principal. The Board of Trustees shall vote on whether to accept one of the candidates nominated by AF. If the Board of Trustees votes not to accept any candidates so nominated, AF shall nominate additional candidates until the Board of Trustees and AF agree that a candidate so nominated meets their shared standards of excellence.

AF shall present the proposed terms of the Principal’s employment to the Board of Trustees, including therein the duties and compensation of the Principal. Prior to voting on the terms of the Principal’s employment, the Board of Trustees may amend such proposed terms or request that AF amend such proposed terms. Prior to offering the Principal candidate employment with the School, the Board of Trustees shall approve the terms of the Principal’s employment, as amended by the Board of Trustees or AF, as applicable.

The Principal shall serve pursuant to a year-to-year contract, which contract shall be renewed at the election of the Board of Trustees. If the Board of Trustees elects not to renew a Principal’s contract, AF shall nominate one or more candidates to become the new Principal and shall present the Board of Trustees with the proposed terms of the Principal’s employment, in accordance with the procedures set forth above, until the Board of Trustees selects a new Principal and approves the terms of such new Principal’s employment.”

L. Section 4.5 of the Agreement is hereby amended to add the following sentence at the conclusion of the sixth paragraph of Section 4.5:

“The Principal is responsible for reporting on the condition of the School to the Board of Trustees on an ongoing basis or as the Board of Trustees directs.”

M. The first sentence of Section 4.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

“AF will manage the School’s start-up process and facilitate the School’s purchase of desks and other furniture, equipment, library and media materials, and other similar materials and furnishings integral to the operation of a school, which purchases shall be made in accordance with the School’s budget and fiscal policies and procedures, at the School’s sole cost and expense.”

N. The second sentence of Section 4.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

“AF will facilitate the School’s purchase and procurement of information technology (“IT”) equipment and services, which purchases and procurement shall be made in accordance with the School’s budget and fiscal policies and procedures, at the School’s sole cost and expense.”

O. The second and third sentences of Section 4.9 of the Agreement are hereby deleted in their entirety and replaced with the following:

“Monies raised from AF fundraising activities specifically for the School or otherwise directed for the use of the School by a donor or grant agreement shall be given to or used for the benefit of the School. Unrestricted funds derived from general AF fundraising activities shall be used or distributed as AF deems appropriate, in its sole discretion, including but not limited to use for the benefit of, or distribution among, the charter schools that AF manages.”

P. Section 4.10 of the Agreement is hereby deleted in its entirety and replaced with the following:

“4.10 Marketing and Publicizing.

AF will market and publicize the School.”

~~Section 5.1 of the Agreement is hereby amended by deleting the words “New Haven” and replacing them with the word “Hartford”.~~

Q. The last sentence of Section 5.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“The annual audit shall be performed by a certified public accountant selected by the Board of Trustees of the School.”

R. Section 5.6 of the Agreement is hereby amended by deleting the last sentence of Section 5.6 in its entirety.

S. Section 5.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

“5.7 Annual Performance Review. The Board shall develop an annual charter management evaluation program to be conducted by the School under the oversight of the Board. The evaluation will be designed to evaluate the performance of AF and its fulfillment of its obligations outlined in this Agreement. The School will conduct such evaluation on an annual basis no later than June 15 or as otherwise directed by the Board, and in the course of such evaluation will analyze a wide variety of data, review AF work samples, meet with a sampling of staff, and engage in other activities designed to obtain a detailed picture of AF’s performance. The results of such evaluation shall be presented to the Board by the Principal of the School and shall be used by the Board of Trustees in determining whether to renew this Agreement. A term sheet setting forth the performance evaluation measures related to evaluating AF is attached as Exhibit C hereto.”

~~Section 6.2 of the Agreement is hereby amended by deleting the references to “New Haven” and replacing them with “Hartford”.~~

T. Section 7.6(a) of the Agreement is hereby amended to add the following sentences at the conclusion of Section 7.6(a):

“AF will bill the School for Ancillary Services by an invoice which details each Ancillary Service, the amount billed for each Ancillary Service, and the basis for the amount billed, i.e., hourly rate, or other basis for determining the amount billed. Such invoices will be available for review by representatives of the State Board of Education.”

U. Section 8.1(b) of the Agreement is hereby deleted and replaced in its entirety with the following:

“any instructional materials, training materials, curriculum and lesson plans, and any other materials developed by AF, its employees, or agents, any individual working for or supervised by AF, or any individual employed by the School working primarily at the School;”

V. Section 9.9 of the Agreement is hereby deleted in its entirety.

W. Section 10.6 of the Agreement is hereby deleted and replaced in its entirety with the following:

“10.6 Payment of Service Fee.

Within forty-five (45) days of the effective date of termination of this Agreement, the School shall pay AF any previously unpaid Ancillary Fees and any unpaid portion of the Service Fee for services performed by AF until the date of termination.”

X. Section 11.2(b) of the Agreement is hereby amended by deleting the third and fourth sentences and replacing them with the following:

“Within fourteen (14) calendar days following the giving by either Party of a written notice of a demand for arbitration, (1) each Party shall designate its panel representative and (2) the panel representatives shall mutually agree upon and designate a third panel representative, who shall serve as the chairperson of such panel.”

Y. Section 13.5 of the Agreement is hereby amended by deleting the phrase “including the Term Sheet that forms a part of the Charter Contract,” from the second sentence of Section 13.5.

Z. Section 13.6 of the Agreement is hereby amended by deleting the first sentence of Section 13.6 in its entirety and replacing it with following sentence:

“This Agreement may be altered, changed, added to, deleted from or modified only by agreement in writing approved by the Board of Trustees, AF’s Board of Directors and the Authorizer.”

AA. The following section is hereby added to the Agreement as Section 14.7, which shall follow Section 14.6:

“14.7 Connecticut Freedom of Information Act.

The Board of Trustees shall be entitled to receive a copy of all records and files related to the administration of the School, including the compensation paid to AF and any expenditures of such compensation. Such records and files are subject to the Connecticut Freedom of Information Act and may be disclosed by the Board of Trustees in accordance with the Connecticut Freedom of Information Act, except that the Board of Trustees may redact such records and files to remove personally identifiable information of a contributor of a bona fide and lawful contribution pursuant to a written request from such contributor.”

BB. Exhibit A attached hereto is hereby added as “Exhibit C” to the Agreement, and such Exhibit C shall be incorporated therein by reference as an integral part of the Agreement.

3. **Choice of Law.** The validity of this Amendment, its construction, interpretation and enforcement, and the right of the parties hereunder, shall be determined under, governed by, and construed in accordance with the laws of the State of Connecticut without regard to conflict of laws principles.

4. **Counterparts; Facsimile; PDF.** This Amendment may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered shall be deemed an original, and all of which, when taken together, shall constitute

one in the same instrument. Any facsimile or portable document format copies hereof or signatures hereon shall for all purposes be deemed originals.

5. **Headings.** Section headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

6. **Full Force and Effect.** Except as otherwise expressly provided herein, the Agreement is, and shall continue to be in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof all references in the Agreement to “this Agreement”, “hereto”, “hereof”, “hereunder” or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the day and year first above written.

ACHIEVEMENT FIRST, INC.

By: _____
Name: Dacia Toll
Title: Co-Chief Executive Officer

~~ACHIEVEMENT FIRST HARTFORD~~
~~ACADEMYELM CITY COLLEGE~~
PREPARATORY, INC.

By: _____
Name:
Title: Chair of the Board of Trustees

EVALUATION TERMS FOR ACHIEVEMENT FIRST, INC.

<u>Criterion</u>	<u>Rating</u>	<u>Frequency of Evaluation</u>	<u>Comments</u>
<p>Curriculum</p> <ul style="list-style-type: none"> • Supports implementation of curriculum • Provides information and systems for implementation of curriculum • Provides initial staff training with respect to implementation of curriculum 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	Annual	
<p>Student Evaluations</p> <ul style="list-style-type: none"> • Implements student performance evaluation systems • Assists in ensuring students take required standardized tests • Assists in maintaining detailed statistical information on performance of (i) School as a whole, (ii) each individual student and (iii) each grade. • Assists in identifying and measuring other measures of and goals for student and School performance 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	Annual	
<p>Audit</p> <ul style="list-style-type: none"> • Cooperates with and provides School with information needed to complete School's annual audit 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	Annual	
<p>Budget and Financial Systems</p> <ul style="list-style-type: none"> • Provides annual projected budget that accounts for School's operating expenses for next fiscal year • Assists School's Director of Operations with preparation of bimonthly financial statements 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	Annual	

EVALUATION TERMS FOR ACHIEVEMENT FIRST, INC.

<ul style="list-style-type: none"> • Provides initial training to School's Director of Operations in the use of financial management software • Provides support as to payment of invoices, payroll, monthly reconciliation of bank statements, debt and credit entries and procurement. 			
<p>Principals</p> <ul style="list-style-type: none"> • Assists with recruitment of new Principals when necessary • Assists with evaluation of Principals • Provides leadership training for Principals • Provides ongoing coaching and training for Principals 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	
<p>Teachers and Other School Personnel</p> <ul style="list-style-type: none"> • Supports effort to recruit of teachers, administrators and other School personnel • Conducts preliminary screens of candidates and forwards resumes of promising candidates to Principals • Determines staff levels and responsibilities in conjunction with Principals • Provides counsel, in conjunction with Principals, as to the evaluation and discipline of personnel • Provides initial teacher training in AF's methods, curriculum, program and technology • Provides training to administrative staff in consultation with Principals • Assists School develop the internal capacity to deliver ongoing teacher training • Sponsors professional development days for teachers 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	

EVALUATION TERMS FOR ACHIEVEMENT FIRST, INC.

<p>Equipment and Information Technology</p> <ul style="list-style-type: none"> • Facilitates School's purchase of desks, furniture, equipment, library and media materials and other materials and furnishings integral to operation of School • Facilitates School's purchase and procurement of information technology equipment and services • Maintains and provides training in use of a central file server containing electronic curricular and school administration resources • Provides training in use of student information system • Recommends and ensures effective implementation of data back-up protocol • Creates and maintains a link from AF's website to a page specific to School 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	<p>Annual</p>	
<p>Fundraising</p> <ul style="list-style-type: none"> • Conducts fundraising activities on behalf of School 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	<p>Annual</p>	
<p>Marketing and Publicizing</p> <ul style="list-style-type: none"> • Markets and publicizes for School 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	<p>Annual</p>	
<p>Leadership Development</p> <ul style="list-style-type: none"> • Identifies and develops future School leaders from existing School staff 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	<p>Annual</p>	

EVALUATION TERMS FOR ACHIEVEMENT FIRST, INC.

<p>Human Capital Management</p> <ul style="list-style-type: none"> • Provides oversight and support to School in execution of human capital functions to ensure best practice in talent development and managing potential liability exposure 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	
<p>Professional Development</p> <ul style="list-style-type: none"> • Shares best practices across all of the schools in AF network 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	
<p>Principal Support</p> <ul style="list-style-type: none"> • Conducts monthly School visits to observe and coach Principals 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	
<p>Facilities</p> <ul style="list-style-type: none"> • Assists in identification of new facilities as needed 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	
<p>School Policies</p> <ul style="list-style-type: none"> • Makes recommendations concerning School calendar, policies, rules, regulations, procedures, personnel and budget 	<p>___ Exceeds expectations ___ Satisfactory ___ Needs improvement ___ Unsatisfactory</p>	<p>Annual</p>	

EVALUATION TERMS FOR ACHIEVEMENT FIRST, INC.

<p>Funding Eligibility</p>	<ul style="list-style-type: none"> Assists upon request with the preparation and/or review of State aid applications and reports 	<p>Exceeds expectations <input type="checkbox"/> Satisfactory <input type="checkbox"/> Needs improvement <input type="checkbox"/> Unsatisfactory</p>	<p>Annual</p>	
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Rating	Rating Description
Exceeds Expectations	AF exceeds the expectations of School by providing an excellent level of service, e.g., producing reports ahead of schedule, anticipating problems and responding immediately to urgent requests, working extraordinarily flexible hours to meet the School's needs, or providing supplementary detail or support "beyond the call of duty". AF consistently advances the School's mission.
Satisfactory	AF consistently meets all performance expectations in timeliness, accuracy, responsiveness, efficiency, and integrity. In the rare event of failing to meet expectations, AF acknowledges the deficiency and takes clear and decisive action to address it.
Needs Improvement	AF has occasionally failed to meet the School's expectations, or has made a material error but otherwise has performed satisfactorily. In response to such failure, AF is slow to respond or challenges the facts rather than focusing on solving the problem proactively.
Unsatisfactory	AF consistently fails to meet the School's expectations, is inflexible when urgent or ad hoc requests are made, does not respond quickly to calls or emails, subverts the School's mission by its actions and behaviors, and does not embody the values of the School.

General Comments and Feedback: