

## **EXTERNAL OPERATOR SERVICES AGREEMENT BETWEEN HILLSBOROUGH COUNTY SCHOOLS SUCCEED, LLC AND THE SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA**

This **EXTERNAL OPERATOR SERVICES AGREEMENT** (the “Agreement”), is made and entered into as of August 20, 2019 (the “Effective Date”), by and between **HILLSBOROUGH COUNTY SCHOOLS SUCCEED, LLC, a wholly owned subsidiary of MGT OF AMERICA CONSULTING, LLC**, with offices located at 4320 W. Kennedy Blvd Tampa FL 33609 “**Contractor**” and **The School Board of Hillsborough County, Florida** (the “**Board**” and “**Client**”), as the governing body of **Hillsborough County Public Schools, “HCPS”** a public school district and political subdivision organized under Section 4, Article IX, of the State Constitution and Florida Statutes, located at 901 East Kennedy Boulevard, Tampa, FL 33602, and sets forth Contractor and the Boards (parties)’ understanding pursuant to which Contractor shall be engaged by the Board.

### **I. SCOPE OF WORK**

The scope of work of Contractor’s services hereunder (the “Services”) shall be set out in an Appendix to this Agreement. The Appendix shall specify the services to be performed by Contractor, and the payment terms for such Services, as well as any other details specified by the parties. Should the Services as described in the Appendix change in any material way, for example, the addition or removal of a school, an adjustment to Contractor’s fees and the promised delivery dates for such Services may be required. Contractor undertakes to advise Client promptly should any such adjustment be necessary and to negotiate with Client in good faith to arrive at a mutually acceptable revision to the Appendix.

### **II. FEES AND DISBURSEMENTS**

All accounting and invoicing correspondence must reference an HCPS purchase order number. HCPS complies with the Local Government Prompt Payment Act (ss. 218.70-218.80, F.S.). Invoice payment is Net 45 days from the date of delivery or the receipt of a proper invoice, whichever occurs last, unless invoices specify early payment discounts. All payments due and not made within the time specified by this section bear interest from thirty (30) days after the due date at the rate of one (1%) percent per month on the unpaid balance.

### **III. CONTRACT TERM AND TERMINATION**

A. **Initial Term.** This initial term of this Agreement shall be for a period of 1 year following approval from the Board. The Agreement shall become effective August 20, 2019 through July 31, 2020.

B. **Renewals.** This Agreement may be renewed for two (2) additional, one (1) year periods provided all conditions remain unchanged and in full force and effect.

C. **Termination by the Board for Convenience.** The Board or Contractor shall have the right to terminate this Agreement without cause, upon written notice of such termination provided not less than thirty (30) days prior to the date that such termination is to be effective. If HCPS elects to terminate this Agreement without cause, HCPS shall compensate Contractor for all satisfactory goods and services provided prior to the date of termination. In the event that this Agreement is so terminated in advance of its scheduled completion, Client shall pay to Contractor, upon receipt of an invoice, the following:

1. The monthly payment which falls between the delivery of the Notice of Termination and the Termination Date, provided that, as the monthly payments under the Agreement are made "in advance," this monthly payment shall be reduced on a pro rata basis by the number of days during the month which fall after the Termination Date; and,

2. Any and all proper charges earned and/or incurred by Contractor in connection with the Services pursuant to this Agreement up to the Termination Date, provided that such charges shall not include any charges, the liability for which, was incurred after Contractor received the Notice of Termination and further provided that under no circumstances shall the total of such charges exceed one (1/2) half of the monthly payment which would have otherwise followed the Termination Date.

D. **Termination by Contractor or Board for Cause.** This Agreement may be terminated by Contractor or the BOARD for cause prior to the end of the term in the event of a failure to remedy a material breach within a period reasonable under the circumstances, which shall not be longer than sixty- (60) days after notice. A material breach may include, but is not limited to, a failure to carry out its responsibilities under this Agreement, such as a failure to make payments to Contractor as required by this Agreement; a failure to give consideration to the recommendations of Contractor regarding the operation of the partner school(s); or violating the applicable law. In order to terminate this Agreement for cause, each party is required to provide written notification of the facts it considers to constitute material breach and the period of time within which to remedy this breach. After the period to remedy the material breach has expired, the notifying party may terminate this Agreement by providing written notification of termination.

E. **Non-Appropriation of Funds.** HCPS payment obligations are conditioned upon the availability of funds that are appropriated or allocated for the payment of goods and services. If such funds are not allocated and available, HCPS may terminate this Agreement at the end of the period for which funds are available and shall notify Contractor at the earliest possible time before such termination. No penalty shall accrue to HCPS and shall not be obligated or liable for any future payments due or for any damages due to termination under this section.

F. **Change in Law.** If any federal, state, or local law, regulation, or court decision has a material adverse impact on the ability of either party to carry out its obligations under this Agreement, then either party, upon written notice to the other, may request renegotiation of the

Agreement. If the Parties are unable or unwilling to renegotiate the terms within ninety-(90) days after said notice, the party requesting the renegotiation may terminate this Agreement on ninety (90) days further written notice.

G. **Transition.** In the event of termination of this Agreement for any reason by either party prior to the end of the Agreement's term, Contractor shall provide the school(s) reasonable assistance for up to ninety (90) days after the effective date of the termination to allow a transition back to a regular school program or to transition to another education service provider. Contractor may charge a reasonable fee for such services, which shall be no higher on a per month basis than the average standard monthly fee paid during the regular term of this Agreement.

#### **IV. HCPS RESPONSIBILITIES**

A. **Access to District Central Office Services.** In support of the partner school(s) and partnership with CONTRACTOR, HCPS shall provide Contractor access to designated HCPS central office services.

B. **Special Education Central Office Services.** HCPS acknowledges that it is the Local Education Agency, and that it shall be responsible for compliance with all duties and obligations that it has as the LEA under Applicable Law with respect to special education services, and that Contractor is not the LEA. HCPS shall provide special education staff and services in the same manner as HCPS provides such staff and services to other HCPS schools, and in compliance with applicable law. HCPS will provide such staff and services in a manner that, to the extent reasonably practicable, is consistent with the partner school(s) academic program and general operations. Upon request, HCPS shall provide Contractor with data relating to the manner in which it provides special education staff and services to other District schools.

1. HCPS' responsibility for providing such special education services shall include, without limitation, all administrative and procedural aspects of such special education services, including but not limited to referral process, evaluations, reevaluations, eligibility determinations, placement decisions, compliance with Child Find mandates, and development and implementation of the Individual Education placements ("IEPs") for students in the partner school(s) in accordance with applicable law.

2. The Parties shall cooperate, in good faith, with each other with respect to HCPS' provision of special education services to the school' s students.

C. **ESL Central Office Services.** HCPS shall provide English as a Second Language ("ESL") Services to the partner school(s) students in the same manner required by applicable law. Contractor shall cooperate with HCPS with respect to the District's provision of such services to the partner school(s) students.

D. **Alternative Education Programs Central Office Services.** Alternative education services and procedures for suspension and expulsion will follow HCPS procedure and availability as per other schools in the District.

E. **Applicable District Procedures.** As an external operator, Contractor shall operate under HCPS procedures. In partnership with HCPS, Contractor shall conduct a comprehensive needs assessment that may identify recommended changes to policies or procedures within schools that are deemed necessary to achieve desired outcomes of services, which Contractor shall then work with HCPS to implement. Any recommended changes shall not conflict with any state or federal law.

F. **Delegation of Partner School(s) Personnel Decisions to Contractor.** HCPS shall delegate and allow Contractor to assume authority for decision making on all school staffing decisions. Contractor shall endeavor to develop a collaborative candidate evaluation and decision-making process with HCPS to best serve partner school(s) and turnaround goals. Contractor agrees that the HCPS Superintendent of Schools reserves the right to final determination of school staffing decisions.

G. **Release of Ineffective Teachers.** HCPS shall ensure that teachers are not rehired at partner school(s), unless they are effective or highly effective instructors, as defined in HCPS' approved evaluation system, pursuant to section 1012.34, F.S.

## V. PERSONNEL AND TRAINING

A. **Personnel Responsibility.** While partner school(s) staff will remain employees of HCPS, Contractor is responsible for working collaboratively with HCPS in providing the school(s) with effective administrators and teachers, instructional support, pupil support, and other staff required to operate the partner school(s) within the staffing and compensation levels approved by the Board in its annual budget (the "School Employees"). In collaboration with HCPS, Contractor shall have the authority to select, evaluate, assign, discipline, transfer, and recommend for termination of employment of all partner school(s) Employees.

B. **Criminal Background Checks.** To comply with §§ 1012.465 and 1012.467, Florida Statutes, the "Jessica Lunsford Act", all Contractor s meeting any of the three (3) criteria, (i) be at school when students are present, (ii) have direct contact with students, or (iii) have access to or control of school funds, must be Level II fingerprinted and Florida Department of Law Enforcement (FDLE)/Federal Bureau of Investigations (FBI) screened by the HCPS Professional Standards. The only applicable exception is the "six-foot fence" rule where the Vendor shall perform work, and always remain, in an area separated from students by a chain link fence that is at least six (6) feet high. Those Contractor employees will be required to have the statewide JLA badge and the HCPS yellow badge to access HCPS sites. Site personnel will deny access to Contractor s violating this requirement.

C. **School Administrator.** Contractor will have the authority, consistent with applicable law, and in collaboration with HCPS leadership, to select and supervise the lead school administrator(s) and to hold that individual accountable for the success of the partner school(s). Contractor will review the performance of the school(s) administrators with designated HCPS leadership. Contractor agrees to provide the appropriate HCPS leadership an opportunity to meet with the school administrator prior to placement and to inform HCPS, in advance, prior to taking any action that would alter the employment status of the school administrator. The

school administrator shall have and maintain the appropriate state license to serve as principal of partner school(s). The employment agreement with the school administrator and the duties and compensation of the school administrator shall be determined in collaboration with HCPS and Contractor, but that individual must be assigned on a full-time basis to the partner school.

D. **Teachers.** As part of the annual budgeting process, Contractor shall make a recommendation to HCPS regarding the number of teachers and the applicable grade levels and subjects required for the operation of the school(s) pursuant to the turnaround plan. Contractor shall provide the school(s) with such teachers, qualified in the grade levels and subjects required, as are required by the partner school(s). Such teachers may, at the discretion of Contractor, work at the school(s) on a full or part-time basis. If assigned to the school(s) on a part-time basis, such teachers may also work at other partner schools managed by Contractor in the same city. Each teacher assigned to or retained by the school(s) shall be an effective teacher with a valid teaching certificate or temporary special permit issued by the Florida Department of Education under the Code, to the extent required under the Code and the Every Student Succeeds Act.

E. **Support Staff.** As part of the annual budgeting process, Contractor shall make a recommendation to HCPS regarding the number of support staff required for the operation of the school(s) pursuant to the turnaround plan. Contractor shall provide the school(s) with such support staff, qualified in the areas required, as are required by the partner school(s). Such support staff may, in the discretion of Contractor, work at the school(s) on a full or part-time basis. If assigned to the school(s) on a part-time basis, such support staff may also work at other partner schools managed by Contractor in the same city. Each support staff employee assigned to or retained by the school(s) shall have received the training and hold the certificates, degrees, or licenses legally required for the position to which they are assigned under the Code and the Every Student Succeeds Act.

F. **Training.** The school administrators, teachers, paraprofessionals, and other support staff employees shall receive such training as Contractor determines is reasonable and necessary under the scope of services.

## VI. INDEMNIFICATION

A. **Indemnification of Contractor.** Contractor 's officers, directors, and employees shall not be responsible for any claims, demands, suits, or other forms of liability that may arise out of, or by reason of, employment of former employees, prior relationships with vendors and any noncompliance by the school(s) with any agreements, covenants, warranties, or undertakings of the school(s) contained in or made pursuant to this Agreement; and any misrepresentation or breach of the representations and warranties of the Board contained in or made pursuant to this Agreement.

Contractor and its present and former officers, directors, employees and agents (collectively, "Indemnitees") shall not be responsible for any claim, suit or proceeding made or brought against such Indemnitee or in which Indemnitee is asked to participate, based upon any materials Contractor prepares, publishes or disseminates for Client and based upon information provided or approved by Client prior to its preparation, publication or dissemination, as well as any claim or suit arising out of the nature or use of Client's products or services or any

indemnitee's relationship with Client, except for losses or expenses that result from any party's negligence or willful misconduct.

**B. Limitations of Liabilities.** The school(s) may assert all immunities and statutory limitations of liability in connection with any claims arising under this Agreement. Subject to the limitations of § 768.28, Florida Statutes, HCPS shall not be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by HCPS arising out of the same incident or occurrence, exceeds the sum of \$300,000.

**C. Indemnification of the School(s).** Contractor shall indemnify and hold the school(s) (which term for purposes of this Paragraph C, includes the school(s)'s officers, directors, agents, and employees) harmless against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of, any noncompliance by Contractor with any agreements, covenants, warranties, or undertakings of Contractor contained in or made pursuant to this Agreement and any misrepresentation or breach of the representations and warranties of Contractor contained in or made pursuant to this Agreement. In addition, Contractor shall reimburse the school(s) for any and all reasonable legal expenses and costs associated with the defense of any such claim, demand, or suit. The indemnification requirements of this paragraph may be met by the purchase of insurance in a form and amounts acceptable to the school(s).

**D. Indemnification for Negligence.** Contractor, and Contractor's Owners, Board of Directors, partners, officers, employees, agents, and representatives, will not be responsible for the negligence or intentional activity of the school(s)'s directors, officers, employees, agents, or representatives. Contractor shall indemnify and hold harmless the school(s), and the school(s)'s Board, officers, employees, agents, and representatives, from any and all claims and liabilities which the school(s) may incur and which arise out of the negligence or intentional activity of Contractor's owner, directors, officers, employees, agents, or representatives.

## **VII. INSURANCE**

**A. Insurance for the School(s).** The school(s) shall secure and maintain such policies of insurance as required by HCPS. This coverage shall include the building and related capital facilities if they are the property of the school(s). The school(s) shall maintain such insurance in amounts and on such terms as required law and relevant Board policies. The school(s) shall, upon request, present evidence to Contractor that it maintains the requisite insurance in compliance with the provisions of this paragraph. Contractor shall comply with any information or reporting requirements applicable to the school(s) under its policy with its insurer(s), to the extent practicable.

**B. Insurance for Contractor.** Contractor shall secure and maintain policies of insurance as follows, with Client listed as Certificate Holder and Additional Insured.

- Contractor will carry and maintain as a minimum the following coverage from insurance carriers that maintain a rating of "A-" or better and a financial size

category of "VI" or higher according to the A. M. Best Company: (a) general liability (b) automobile.

- (a) Commercial General Liability. Commercial general liability coverage which includes broad form commercial general liability, including premises and operation, products and complete operations, personal injury, fire damage (minimum \$100,000) for limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per general aggregate.
- (b) Automobile Liability Insurance. The automobile liability insurance coverage shall include coverage for business automobile liability with limits not less than \$1,000,000.00 combined single limit or \$1,000,000.00 per person/\$1,000,000.00 per accident bodily injury, and \$1,000,000.00 per accident property damage. Coverage must include all owned, non-owned and hired vehicles.
- Contractor shall, upon request, present evidence to the school(s) and HCPS that it maintains the requisite insurance in compliance with the provisions of this paragraph. The school(s) shall comply with any information or reporting requirements applicable to Contractor under Contractor R' s policy with its insurer(s), to the extent practicable. Any policy of insurance maintained by Contractor must include coverage for sexual molestation or abuse, must name the Client as an additional, named insured, and shall not be changed, revoked, or modified absent thirty-(30) days' notice to HCPS.

C. **Self-Insurance.** Contractor understands that pursuant to the authority granted by Florida Statutes 768.28 and 234.03, HCPS maintains a formal program of self-insurance for general liability, property damage, and automobile liability and workers' compensation coverages. The HCPS funded self-insurance program provides coverage of \$200,000 per person and \$300,000 each occurrence.

D. **Workers' Compensation Insurance.** Each party shall maintain workers' compensation insurance when and as required by law, covering their respective employees

## VIII. GENERAL PROVISIONS

A. **Modification, Cancellation or Suspension of Work.** Upon consultation with Contractor, Client shall have the right to modify, cancel or suspend any and all plans, schedules or work in progress, and, in such event, Contractor shall immediately take proper steps to carry out such instructions.

B. **Copyright and Proprietary Information.** All instructional materials, training materials, curriculum, lesson plans, and any other materials developed by Contractor, its employees, agents, or subcontractors, or by any individual working for or supervised by Contractor, which (i) were directly developed and paid for by the school(s), or (ii) were

developed by Contractor at the direction of the Board using school(s) funds, shall be considered "work made for hire" as such term defined in Section 101 of the Copyright Act, 17 U.S. Code, Section 101 and the school(s) shall own all copyright and other proprietary rights to such instructional materials, training materials, curriculum, lesson plans and any other materials. Contractor shall defend, indemnify, and hold HCPS and its successors and assigns harmless from and against all third-party claims, suits and proceedings, and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) incurred because of (i) infringement by Contractor of any third-party patent, copyright or trademark, or (ii) misappropriation by Contractor of any third-party trade secret relating to any of the foregoing.

C. **Required Disclosure.** The school(s) shall be permitted to report any new teaching techniques or methods of significant revisions to known teaching techniques or methods to HCPS and to the Florida Department of Education, which teaching techniques or methods may thereafter be made available to the public.

D. **Access to Records.** Contractor shall keep accurate financial records pertaining to its operation of the school(s), together with all the school(s) financial records prepared by or in the possession of Contractor (the "Records"), and retain all of these records in accordance with applicable state and federal law and the ESP Requirements. Financial, educational, operational, and student records that are now or may in the future come into the possession of Contractor remain the school(s)'s records and are required to be returned by Contractor to the school(s) upon demand, provided that Contractor may retain copies of records necessary to document the services provided to the school(s) and its actions under the Agreement. The Parties shall maintain the proper confidentiality of personnel, student, and other records as required by law. All school(s) records shall be physically or electronically available, upon request, at the school(s)'s physical facilities.

The financial, educational, operational, and student records pertaining to the school(s) are public documents subject to disclosure in accordance with the provisions of applicable law. This Agreement shall not be construed to restrict HCPS' or the public's access to these records under applicable law.

E. **Public Records Laws.** If, under this Agreement, the Contractor is providing services and is acting on behalf of HCPS as provided under Section 119.011(2), F.S., the Contractor, subject to the terms of Section 287.058(1)(c), F.S., and any other applicable legal and equitable remedies, shall:

- keep and maintain public records that ordinarily and necessarily would be required by HCPS to perform the service; and
- provide the public with access to public records on the same terms and conditions that HCPS would provide the records and at a cost that does not exceed the cost provided in Chapter 119 F.S. or as otherwise provided by law; and
- ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- meet all requirements for retaining public records and transfer, at no cost, to HCPS all public records in possession of the Contractor upon termination of the contract and destroy any duplicate Public Records that are exempt or confidential and exempt from

public records disclosure requirements. All records electronically must be provided to HCPS in a format that is compatible with the information technology systems of HCPS.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE HILLSBOROUGH COUNTY PUBLIC SCHOOLS OFFICE OF COMMUNICATIONS AT 901 E. KENNEDY BOULEVARD, TAMPA, FLORIDA 33602. PHONE: (813) 272-4060, EMAIL: PRR@SDHC.K12.FL.US.

F. **Audit Report Information.** Contractor will make all of the school(s) Records available to the independent auditor selected by the Board. Contractor's staff will fully cooperate with said independent auditor.

G. **Modification, Cancellation or Suspension of Work.** Upon consultation with Contractor, Client shall have the right to modify, cancel or suspend any and all plans, schedules or work in progress, and, in such event, Contractor shall immediately take proper steps to carry out such instructions.

H. **Non-Solicitation.** For a period of three years after the Term of this Agreement, Client shall not, without CONTRACTOR's prior written consent, hire, engage or solicit the employment or services of any person who is or was during the term of this Agreement employed by or an independent director of CONTRACTOR. Client acknowledges that the specialized nature of CONTRACTOR's proprietary information, trade secrets and other intellectual property are such that a breach of the foregoing covenant would necessarily and inevitably result in disclosure, misappropriation and/or misuse of such proprietary information, trade secrets and other intellectual property and, accordingly, Client acknowledges and agrees that such breach would impose unique and irreparable harm upon CONTRACTOR and that CONTRACTOR shall be entitled, in addition to its other rights and remedies, to require, by injunction or decree of specific performance, satisfaction in full of Client's obligations hereunder.

I. **Force Majeure.** Neither party shall be liable to the other party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife or any other cause beyond a party's reasonable control.

J. **Governing Law, Submission to Jurisdiction and Consent to Suit.** This agreement shall be governed by and construed and interpreted in accordance with the laws of the state of Florida (irrespective of the choice of laws principles of the state of Florida) as to all matters, including matters of validity, construction, effect, enforceability, performance and remedies. Client submits itself and its property in any legal action or proceeding relating to this

agreement to the exclusive jurisdiction of any state or federal court within Hillsborough County, Florida, and Client hereby accepts venue in each such court.

**K. Dispute Resolution Procedure.** In the event of a dispute, controversy or claim by and between Client and Contractor arising out of or relating to this Agreement or matters related to this Agreement, the parties will first attempt in good faith to resolve through negotiation any such dispute, controversy or claim. Either party may initiate negotiations by providing written notice in letter form to the other party setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five (5) business days with a statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then senior management representatives of each party will meet at a mutually agreeable time and place within fifteen (15) business days of the date of the initial notice in order to exchange relevant information and perspectives and to attempt to resolve the dispute.

If the dispute is not resolved by these negotiations, the matter will be submitted to a mutually agreeable mediator for mediation. The mediation shall take place in Hillsborough County, Florida, and shall be conducted under Sections 44.401-44.406, Florida Statutes, the "Mediation Confidentiality and Privilege Act." The parties understand that none of the above offers made on behalf of the Client can be binding as the Client is governed by a board which is subject to Florida's sunshine law. Therefore, the parties understand that should any such offers be made, such offers are made subject to the consideration and possible approval or disapproval by the governing board of the Client at a public meeting and in accordance with Florida's sunshine law.

Except as provided herein, no civil action with respect to any dispute, controversy or claim arising out of or relating to this Agreement may be commenced until the matter has been submitted for mediation. Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate in selecting a mediator and in scheduling the mediation proceedings. The parties will participate in the mediation in good faith and will share equally in its costs. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this clause may be enforced in court.

In addition, should the dispute under this Agreement involve the failure to pay funds owed to Contractor, and the matter proceeds to litigation, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party all of the prevailing party's costs of such litigation including reasonable attorneys fees.

Notwithstanding anything else herein to the contrary, both parties mutually and forever waive the right to recover any consequential, incidental, indirect, special or punitive damages, including, without limitation, loss of future revenue, income or profits, in any legal proceeding(s) arising out of or relating to this Agreement. This waiver shall apply to legal actions sounding in both contract and tort and shall apply whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen. This provision shall not be interpreted to mean that, absent this provision, either party would have the right to recover any such damages.

L. **Public Entity Crimes.** Per the provisions of Florida Statute 287.133 (2) (a), "a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a vendor, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute 287.017 for category two for a period of 36 months from the date of being placed on the convicted vendor list." Contractor certifies, by submission and signature of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction per the provisions of Florida Statute 287.133 (2) (a).

M. **Federal Debarment.** Contractor certifies, by submission and signature of this Agreement, that the Vendor complies fully with the Federal Debarment Certification regarding debarment suspension, ineligibility, and voluntary exclusion as required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR, part 85, as defined at the 34 CFR part 85, sections 85.105 and 85.110-(ed80-0013).

N. **Assignment.** Neither party may assign any of its rights or delegate any of its duties or obligations under this Agreement without the express written consent of the other party. Notwithstanding the foregoing, Contractor, or its permitted successive assignees or transferees, may assign or transfer this Agreement or delegate any rights or obligations hereunder without consent: (i) to any entity controlled by, or under common control with, Contractor, or its permitted successive assignees or transferees; or (ii) in connection with a merger, reorganization, transfer, sale of assets or change of control or ownership of Contractor, or its permitted successive assignees or transferees.

O. **Severability.** In the event that any provision of this Agreement shall be declared illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be interpreted and enforced as if such illegal or invalid provision had never been included herein.

P. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be deemed given, if and when personally delivered, delivered by fax, with receipt confirmed, or courier or by overnight mail delivery, in writing to the party or its designated agent or representative at the addresses below.

If to Contractor:  
Hillsborough County Schools Succeed, LLC  
4320 W. Kennedy Blvd  
Tampa FL 33609  
Attn: Louise Lopez  
Llopez@MGTconsulting.com

If to Client:

Corey A. Murphy, General Manager  
Procurement Services  
Hillsborough County Public Schools  
901 East Kennedy Boulevard,  
Tampa, FL 33602  
Phone: (813) 272-4327  
Email: corey.murphy@sdhc.k12.fl.us

**Q. Counterparts and Execution**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original and all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed by electronic signature and delivered by facsimile, scanned signature, or other electronic means by any of the parties to any other party and the receiving party may rely on the receipt of this Agreement so executed and delivered as if the original had been received.

**R. Survival.** Sections II, III, and V of this Agreement and the payment obligations shall continue notwithstanding the termination or expiration of the agreement.

**S. Entire Agreement.** This Agreement and attached appendix constitute the entire and only agreement between the parties respecting the subject matter hereof. Each party acknowledges that in entering into this Agreement it has not relied on any representation or undertaking, whether oral or in writing, save such as are expressly incorporated herein. Further, this Agreement may be changed or varied only by a written agreement signed by the parties. Any purchase order provided by the Client will be limited by, and subject to, the terms and conditions of this Agreement. Additional or contrary terms, whether in the form of a purchase order, invoice, acknowledgement, confirmation or otherwise, will be inapplicable, and the terms of this Agreement will control in the event of any conflict between such terms and this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this **EXTERNAL OPERATOR SERVICES AGREEMENT** as of the dates written below>

**AGREED TO AND ACCEPTED:**

**HILLSBOROUGH COUNTY  
SCHOOLS SUCCEED, LLC**

**THE SCHOOL BOARD OF  
HILLSBOROUGH COUNTY, FL**



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**Signature**

A. Trey Traviesa

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**Name**

President & CEO

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**Title**

August 13, 2019

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**Date**

4320 W. Kennedy Blvd  
Tampa FL 33609

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**FEIN:** 81-0890071

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**Signature**

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**Name**

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**Title**

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**Date**

901 East Kennedy Boulevard,  
Tampa, FL 33602

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**FEIN:** 59-6000660

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Appendix  
 External Operator Services Agreement  
 Between Hillsborough County Schools Succeed, LLC  
 And Hillsborough County School Board

Hillsborough County Schools Succeed (“HCSS”) will be contracted to provide External Operator services to four schools in the Hillsborough County Public Schools district. The following four schools will be identified as "turnaround schools" for the proposed contract:

1. James Elementary School K-5 (4302 E. Ellicott Street, Tampa, FL 33610)
2. Kimbell Elementary School K-5 (8406 N. 46th Street, Tampa, FL 33617)
3. Robles Elementary School Pre.K-5 (4405 E. Sligh Ave, Tampa, FL 33610)
4. Sulphur Springs K-8 Community School Headstart – 8 (8412 13th Street, Tampa, FL 33604)

## STAFFING

Turnaround services will include on-site days as well as off-site planning and reporting days by a team of coaches and education transformation specialists, with oversight provided by one of HCSS’ Education Transformation Directors, Dr. Babette Moreno or Dr. Simmie Raiford.

Project Role	Qualifications for Role	Number Required for Hillsborough	Primary Responsibility
Education Transformation Director	Proven record in successful large-scale education leadership and operations such as superintendent, Turn Around leader. Masters or Doctorate in Education leadership, Curriculum or Supervision.  Key competency: Large Scale Project Management, State and District Understanding.	.25	Oversight of all project activities and staff. Assist with state reporting and presentations. Regular progress monitoring.
Education Transformation Specialists	Proven record in successful education leadership such as superintendent, Turn Around leader. Successful leadership and coaching experience with specific focus on school turn around.  Key competency: Understanding of school system and building level management of all aspects of education  Masters or Doctorate in Education Leadership, Curriculum or Supervision  Masters or Doctorate in Education Leadership, Curriculum or Supervision.	2 FTEs (1 specialist per two schools)	Manages additional staff and consultants onsite.  Provides leadership training to administrators and coaches.  Manages all communication with state and district, additional staff and consultants onsite.  Progress monitoring and assessments.
Content Coaches	Expertise in curriculum, instruction, teaching & learning. Extensive experience in coaching and professional development. Deep understanding of content and standards. Instructional background as teacher, coach, instructional leadership.	4 FTE  (Example: 2 Math and 2 ELA)	Provide content coaching to district coaches and teachers.
Community Engagement specialist	School communication expert. Ability to communicate and engage diverse populations, provide native language support when possible, design opportunities to increase family and community engagement. Must be Spanish speaking.	.25 FTE	Works with district communications director to communicate EO plans and progress to stakeholders.

## SCOPE OF SERVICES

The following services will be included:

### COMPREHENSIVE NEEDS THREE DAY ASSESSMENT (CNA) & TURNAROUND PLAN

- Each school will receive a comprehensive needs assessment to fully develop turnaround plan
  - The guided school needs assessment will be completed with school administration and will include the analysis of current FSA scores correlated to assessment progress
  - Includes classroom visits to assess instruction
  - Identification of groups or areas of focus for the SY2020
  - Identification of strengths of the school to use as building blocks
  - Develop baseline data for the SY2020 including distribution of students and their ESSA categories, teacher quality attributes (ratings, FSA results, tenure in school/grade level, etc.),
  - HCSS shall provide to the Superintendent with a complete copy of the comprehensive needs assessment report
  - Detailed Turnaround plan developed with school leadership
  - Quarterly reports to HCPS Superintendent or designee to include key performance indicators with recommendations for further school improvements.
  - The parties may agree to allow HCPS to provide school readiness assessment report.

### WEEKLY SUPPORT FROM TURNAROUND TEAM

- Collaborative management of school/progress
  - Teacher evaluations
  - Teacher Placement
  - Scheduling
  - Meetings (Leadership /Staff)
  - Data Meetings
  - PD
  - Monthly progress reports
  - TAP (Teacher Assistance Plan)
- Creation of month to month leadership tasks
  - Calendaring tasks
  - Facilitating roll out of classroom expectations, data analysis, coaching by leadership
- Facilitate team at school and plan implementation
- Guide/model for admin feedback, coaching, monitoring instruction
  - Constructive/Crucial Conversations
  - Plan out what needs to be looked for in walkthroughs
  - Match plan to what is happening in the classroom
  - Provides coaching to administrators
  - analysis of data and monitoring progress
- Develop and support leadership team
  - Create interactive and collaborative leadership teams
  - Decision making strategies and processes
  - Roles and responsibilities

- Communication plan
- Utilize Administrator leadership rubric to determine current status and areas of growth
- Create professional growth plans for admin and provide support
- Develop and co-present parent workshops/community opportunities
- Facilitate development and delivery of staff meetings, lead meetings, professional development meetings
  - Understanding the content
  - Deciding on what needs to be presented
- Collaborate with district to support district initiatives
  - Performance Management of administration
  - Professional Development

**PROVIDE SUPPORT FOR DISTRICT COACHES (IN COLLABORATION WITH DISTRICT PERSONNEL) TARGETED CURRICULUM PEDAGOGY**

- Instruction aligned to standards and scope of FSA
- Collaboration meetings for planning, formative assessments, professional development
- One on one coaching/ modeling for teachers
- Identify key areas of support in both ELA and Math
- Provide technical assistance and coaching on Math and ELA curriculum
- Provide guidance in planning and pacing instruction utilizing pacing guides and student data

**PRINCIPAL COHORT LEADERSHIP SUPPORT**

- Principals
  - Provide self-assessment and conduct workshop to review and utilize results
  - Develop leadership role through ongoing workshops each month
    - Sample topics
      - Coaching and feedback
      - Managing data
      - Structures for teaming and collaboration
  - Provide onsite peer coaching and feedback sessions to principals.
  - Develop process to monitor and support teachers using pacing guides and vertical alignment of standards
  - Classroom culture and climate
  - Ensuring rigor and relevance in the classroom
  - EL instruction
  - CO-teaching models

**QUANTITY/FREQUENCY OF SUPPORT**

The following table represents the frequency of supports and costs associated with each of the primary functions outlined above. Note that the pricing provided is the average cost per school estimated to provide services. There is expected to be variation between schools based on volume and acuity of need that will be further defined through findings of the Comprehensive Needs Assessment.

	School Support Function	Detail	Frequency
1	Comprehensive Needs Assessment	Analysis of school data correlation of formative assessment data /FSA; completion of needs assessment and recommendations. <i>The guided school needs assessment will be completed with school administration by September 20 and will include the analysis of current FSA scores correlated to formative assessment data progress, identification of groups or areas of focus for the SY2020 and identification of strengths of the school to use as building blocks. The analysis will provide baseline data for the SY2020 year including distribution of students and their ESSA categories, teacher quality attributes (ratings, FSA results, tenure in school/grade level, etc.)</i>	1 CNA/year
2	School Transformation Director Oversight	HCSS School Transformation Director provides oversight and progress monitoring throughout course of project to: <i>Ensure school turnaround plan is executed with fidelity and according to HCSS's standards</i> <i>Compliance with state reporting requirements</i> <i>Progress monitoring and assessment</i>  Provide Cohort Leadership Support Days	5
3	On-Site Coaching Days	School leadership and teacher support, curriculum planning, onsite professional development to leadership and coaching.  <i>This school-based support will provide ongoing, personalized coaching to school administrators and teachers. Each administrator will complete update their self-analysis of their progress on the Florida Principal Leadership Standards. This analysis will be used for bi-monthly coaching sessions. Teacher support will include classroom visits and feedback, Individual and grade level coaching sessions based on the areas of need as determine with teacher and administration. Professional development will be developed based on school need as determined through data analysis, walk throughs and coaching sessions. Expected topics for the SY2020 based on SY 2019 data include:</i> <b>Teacher Clarity-</b> ensuring learning expectations are visible; <b>High Yield instructional strategies</b> for reading, math and writing; <b>Student engagement strategies</b> to increase student discourse; <b>Assessing for Learning</b> sing manipulatives and anchor charts; and <b>Scaffolding instruction</b> to meet the students' needs and reach the expectations of the standard.  <i>These professional development topics can be provided at the whole school, grade level or district level.</i>	160
4	School Transformation Specialist	On-site leadership and execution of school turnaround plan ensuring fidelity of execution, supervision, monitoring, and mentoring of administrative staff and faculty including: <i>Administrative Expectations, Development of School Plans, Leadership Development Cohort Leadership Support days - These sessions include cohort-wide professional development / administrator training provided to all administrators in cohort This is estimated at 1-2 days a month</i> <i>State reporting, presentations, and attendance</i> <i>Curriculum and Coaching Support - Development and delivery of monthly professional development and training for school coaches. This can also be collaborative with district personnel for all district coaches.</i>	80
5	Virtual support and off-site planning	Video/phone/Skype/conferencing for support as needed. <i>We have allocated 12 days (96 hours) to off-site work includes planning, district communication, virtual support, and any other activities required to fully support the success of the District.</i>	12
6	Family/Community Support and Communication	On-site support, Cohort family and community engagement activities, Collaboration with district on district wide events. Spanish Speaking Required.	10

## COMPENSATION

The average base price per school for the service outlined in the preceding section is **\$365,000**, inclusive of all services and estimated expenses. In addition to the base fee, HCSS would be able to earn incentives for achievement of defined performance goals or, alternately, discounts for failing to meet certain performance goals, as described in the tables below (Year 1 Fees, Year 2 Fees, Year 3 Fees). The total not-to-exceed compensation, covering all four schools and both base and incentive elements, and thus contingent upon achievement of all performance goals, would be **\$2,060,000** for year 1, **\$2,160,000** for year 2, and **\$2,060,000** for year 3.

Performance goals are based on “Total Points Earned” and associated letter grades as established by the Florida Department of Education within the Florida School Accountability grading system. If this performance grading system changes materially during the term of the contract, HCSS and HCPS will renegotiate specific standards of performance within any revised accountability system to best approximate the benchmarks established below.

### 2019-20 State of Florida Department of Education (FDOE) School Performance Grading Scale

Grade	Score
F	31 and below
D	32 to 40
C	41 to 53
B	54 to 61
A	62 and above

### YEAR 1 FEES BASED ON FDOE 2019-20 ASSESSMENTS

1-YEAR ACHIEVEMENT vs. 2018-19 Scores	\$ Incentive per School	TOTAL FEES BY SCHOOL PERFORMANCE*					Performance Thresholds by School (1)			
		James	Kimbell	Robles	Sulphur	SUM	James	Kimbell	Robles	Sulphur
Static or Decline	(\$50,000)	\$289,120	\$211,286	\$356,997	\$402,597	\$1,260,000	Up to 22	Up to 31	Up to 34	Up to 32
<b>+1 to +5 Score</b>	<b>Base</b>	<b>\$339,120</b>	<b>\$261,286</b>	<b>\$406,997</b>	<b>\$452,597</b>	<b>\$1,460,000</b>	<b>23-31</b>	<b>32-36</b>	<b>35-39</b>	<b>33-37</b>
At least D (32) and +6 to +10 Score	\$50,000	\$389,120	\$311,286	\$456,997	\$502,597	\$1,660,000	32	37-41	40-44	38-42
+11 to +18 Score	\$100,000	\$439,120	\$361,286	\$506,997	\$552,597	\$1,860,000	33-41	42-49	45-52	43-50
At least C (41) and +19 Score	\$150,000	\$489,120	\$411,286	\$556,997	\$602,597	\$2,060,000	42+	50+	53+	51+

\*Includes Comprehensive Needs Assessment (CNA) fees by school as follows: \$36,341 James; \$28,000 Kimbell; \$43,615 Robles; and \$48,502 Sulphur.

(1) Scores for 2019-20 Academic Year.

### YEAR 2 FEES BASED ON FDOE 2020-21 ASSESSMENTS

2-YEAR ACHIEVEMENT vs. 2018-19 Scores	Incentive per School	TOTAL FEES BY SCHOOL PERFORMANCE*					Performance Thresholds by School (2)			
		James	Kimbell	Robles	Sulphur	SUM	James	Kimbell	Robles	Sulphur
+7 Score or Less	(\$100,000)	\$239,120	\$161,286	\$306,997	\$352,597	\$1,060,000	Up to 29	Up to 38	Up to 41	Up to 39
<b>+8 to +11 Score</b>	<b>Base</b>	<b>\$339,120</b>	<b>\$261,286</b>	<b>\$406,997</b>	<b>\$452,597</b>	<b>\$1,460,000</b>	<b>30-40</b>	<b>39-42</b>	<b>42-45</b>	<b>40-43</b>
At least C (41) and +12 to +18 Score	\$50,000	\$389,120	\$311,286	\$456,997	\$502,597	\$1,660,000	41-53	43-53	46-53	44-53
Low B (54-57)	\$100,000	\$439,120	\$361,286	\$506,997	\$552,597	\$1,860,000	54-57	54-57	54-57	54-57
High B (58-61)	\$125,000	\$464,120	\$386,286	\$531,997	\$577,597	\$1,960,000	58-61	58-61	58-61	58-61
Low A (62-65)	\$150,000	\$489,120	\$411,286	\$556,997	\$602,597	\$2,060,000	62-65	62-65	62-65	62-65
High A (66+)	\$175,000	\$514,120	\$436,286	\$581,997	\$627,597	\$2,160,000	66+	66+	66+	66+

\*Includes Comprehensive Needs Assessment (CNA) fees by school as follows: \$36,341 James; \$28,000 Kimbell; \$43,615 Robles; and \$48,502 Sulphur.

(2) Scores for 2020-21 Academic Year.

### YEAR 3 FEES BASED ON FDOE 2021-22 ASSESSMENTS

3-YEAR ACHIEVEMENT	INCENTIVE PER SCHOOL	TOTAL FEES BY SCHOOL PERFORMANCE*					Performance Thresholds by School (3)			
		James	Kimbell	Robles	Sulphur	SUM	James	Kimbell	Robles	Sulphur
D (40) or Lower	(\$150,000)	\$189,120	\$111,286	\$256,997	\$302,597	\$860,000	Up to 40	Up to 40	Up to 40	Up to 40
<b>Low C (41-46)**</b>	<b>Base</b>	<b>\$339,120</b>	<b>\$261,286</b>	<b>\$406,997</b>	<b>\$452,597</b>	<b>\$1,460,000</b>	<b>41-46</b>	<b>41-46</b>	<b>43-46</b>	<b>41-46</b>
High C (47-53)	\$50,000	\$389,120	\$311,286	\$456,997	\$502,597	\$1,660,000	47-53	47-53	47-53	47-53
Low B (54-57)	\$75,000	\$414,120	\$336,286	\$481,997	\$527,597	\$1,760,000	54-57	54-57	54-57	54-57
High B (58-61)	\$100,000	\$439,120	\$361,286	\$506,997	\$552,597	\$1,860,000	58-61	58-61	58-61	58-61
Low A (62-65)	\$125,000	\$464,120	\$386,286	\$531,997	\$577,597	\$1,960,000	62-65	62-65	62-65	62-65
High A (66+)	\$150,000	\$489,120	\$411,286	\$556,997	\$602,597	\$2,060,000	66+	66+	66+	66+

\*Includes Comprehensive Needs Assessment (CNA) fees by school as follows: \$36,341 James; \$28,000 Kimbell; \$43,615 Robles; and \$48,502 Sulphur.

\*\*Improvement over prior year Base target also required, necessitating Robles score of 43.

(3) Scores for 2021-22 Academic Year.

HCPS shall compensate the Contractor in payments as indicated in the invoicing schedules below. The holdback/incentives payments shall be retained by HCPS until notification of school letter grade by the State of Florida. If applicable, Contractor shall provide remainder of discounts owed to HCPS within 45 days of notification of the State of Florida assigned school grade.

**YEAR 1 INVOICING SCHEDULE**

INVOICING PERIOD*	AMOUNT
Initiation and onboarding/Due upon contract execution	\$121,666.67
September 2019	\$121,666.67
October 2019	\$121,666.67
November 2019	\$121,666.67
December 2019	\$121,666.67
January 2020	\$121,666.67
February 2020	\$121,666.67
March 2020	\$121,666.67
April 2020	\$121,666.67
May 2020	\$121,666.67
June 2020	\$121,666.67
July 2020	\$121,666.67
Holdback/Incentive	Up to \$599,999.96
<b>TOTAL NOT-TO-EXCEED YEAR 1</b>	<b>\$2,060,000.00</b>

\*Invoices to be sent by third business day of month and cover services rendered the month or period of term prior.

**YEAR 2 INVOICING SCHEDULE**

INVOICING PERIOD*	AMOUNT
August 2020	\$121,666.67
September 2020	\$121,666.67
October 2020	\$121,666.67
November 2020	\$121,666.67
December 2020	\$121,666.67
January 2021	\$121,666.67
February 2021	\$121,666.67
March 2021	\$121,666.67
April 2021	\$121,666.67
May 2021	\$121,666.67
June 2021	\$121,666.67
July 2021	\$121,666.67
Holdback/Incentive	Up to \$699,999.96
<b>TOTAL NOT-TO-EXCEED YEAR 2</b>	<b>\$2,160,000.00</b>

\*Invoices to be sent by third business day of month and cover services rendered the month or period of term prior.

**YEAR 3 INVOICING SCHEDULE**

INVOICING PERIOD*	AMOUNT
August 2021	\$121,666.67
September 2021	\$121,666.67
October 2021	\$121,666.67
November 2021	\$121,666.67
December 2021	\$121,666.67
January 2022	\$121,666.67
February 2022	\$121,666.67
March 2022	\$121,666.67
April 2022	\$121,666.67
May 2022	\$121,666.67
June 2022	\$121,666.67
July 2022	\$121,666.67
Holdback/Incentive	Up to \$599,999.96
<b>TOTAL NOT-TO-EXCEED YEAR 3</b>	<b>\$2,060,000.00</b>

\*Invoices to be sent by third business day of month and cover services rendered the month or period of term prior.