

DISTRICT TRANSFORMATION AGREEMENT

THIS AGREEMENT (the “Agreement”) is made effective as of the ~~5th~~ day of May, 2023 by and between, in the first part, FEF Arkansas, an Arkansas non-profit corporation (the “Foundation”), and an affiliate of Friendship Education Foundation, a non-profit corporation organized and existing under the laws of the District of Columbia and, jointly in the second part, the Commissioner, ADE Division of Elementary and Secondary Education (the “Commissioner”) on behalf of the Marvell-Elaine School District #22 (the “District”) a public school district and a political subdivision of the State of Arkansas organized and existing under the laws of the state of Arkansas and currently under authority of the State Board of Education.

WITNESSETH:

WHEREAS, District is a Local Education Agency (“LEA”) located in Marvell and Elaine, Arkansas and has been classified by the State Board of Education (“SBE”) as a district in need of Level 5 intensive support on or about November 28, 2022.

WHEREAS, Foundation was founded to improve public education by developing and providing an effective, innovative, K-12 educational model that includes comprehensive school district management, services and programs allowed (including waivers), or required by Arkansas law, standards of accreditation or the terms of this agreement including, but not limited to: administrative operation and management of the district, district schools, staff and personnel; educational programs and services; student accountability and safety; facility and motor-vehicle maintenance; school transportation programs; food service programs; special education support services; extracurricular programs and services; school safety services; fiscal management and accountability services; teaching and learning, and professional development programs and services; curriculum development and support; academic assessment and support services; parent and student engagement programs and support; student counseling support programs and services; career and technical educational programs; gifted and talented and other enrichment programs, and other services and programs as needed or necessary to comply with the terms of this Agreement and relevant provisions of Arkansas Standards of Accreditation, state laws and regulations.

WHEREAS, pursuant to the legal authority and jurisdiction vested in SBE by the Arkansas Educational Support and Accountability Act, Ark. Code Ann. § 6-15-2901 *et seq.* and the Arkansas Division of Elementary Education Rules Governing the Arkansas Educational Support and Accountability Act (collectively, the “Accountability Legislation”), the SBE ordered the District to be classified as in need of Level 5 Intensive Support and that the Commissioner conduct an analysis of all school district systems and make recommendations for additional action by the SBE.

WHEREAS, the Commissioner has completed analysis of all school district systems and has recommended to the SBE that pursuant to Ark. Code Ann. §6-15-2916, the Commissioner assume authority of the District, remove permanently all of the current District board of directors, and for the Commissioner to immediately assume all authority of the District board of directors necessary to operate the District.

WHEREAS, pursuant to the Arkansas LEARNS Act, AR LEGIS 237 (2023), 2023 Arkansas Laws Act 237 (S.B. 294) , to be codified at Ark. Code Ann. § 6-15-3201 *et seq.* (the “LEARNS Act”), the Commissioner acting as the District board of directors, requested letters of interest from entities willing to enter into a contract for school transformation with the District, and the Commissioner convened a panel of stakeholders to interview interested entities.

WHEREAS, after considering the information provided to the panel of stakeholders by the interested entities and the advice of the panel of stakeholders, the Commissioner acting as the District board of directors, on behalf of District, desires to enter into this contract for school transformation with Foundation pursuant to the LEARNS Act.

WHEREAS, in compliance with the LEARNS Act, Foundation has been approved by the SBE to enter into this contract for school transformation and has been determined to be in good standing; has not had a charter previously revoked in the State of Arkansas; for the preceding three (3) school years has an overall performance rating of “C” or higher; has had no significant findings on the prior year annual financial audit; and has not previously operated an open-enrollment charter school in which the charter expired or was revoked or surrendered.

WHEREAS, in compliance with the LEARNS Act, Foundation has been authorized by Commissioner on behalf of District to oversee, manage and operate the District and its respective K-12 schools and educational programs in accordance with the terms of this Agreement, applicable state law, rules and regulations.

WHEREAS, Foundation and Commissioner, on behalf of District and on its own behalf, mutually confirm and affirm their desire and intent to create a relationship that will be based on trust, mutual respect and common educational objectives resulting in the Foundation providing its comprehensive educational programs and expertise in public charter school start-up and operations to District pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby confirmed, Foundation and Commissioner, on behalf of District and on its own behalf, do hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 ~~“DESE” means the Arkansas Department of Education, Division of Elementary and Secondary Education, a state agency which provides leadership, support, and services to public schools, districts and educational entities serving students in grades k-12, and is overseen by the Commissioner of the Division of Elementary and Secondary Education.~~ “Authorizing Legislation” means the Accountability Legislation, the LEARNS Act, and other applicable state laws and regulations.

1.1.2 ~~“DESE” means the Arkansas Department of Education, Division of Elementary and Secondary Education, a state agency which provides leadership, support, and services to~~

public schools, districts and educational entities serving students in grades k-12, and is overseen by the Commissioner of the Division of Elementary and Secondary Education.

~~1.21.1 “Authorizing Legislation” means the Accountability Legislation, the LEARNS Act, and other applicable state laws and regulations.~~

1.3 “District” means the Marvell-Elaine School District, a public school district and political subdivision of the State of Arkansas organized and existing under the laws of the State of Arkansas

1.4 “Friendship School Design” is a comprehensive school design that Foundation developed in conjunction with Friendship Aspire Public Charter School Inc., an Arkansas based non-profit corporation with years of experience operating public charter schools serving low-income and disadvantaged students, providing school comprehensive school management services, and turning around persistently low-performing schools.

1.5 “LEARNS Act” means the Arkansas LEARNS Act, AR LEGIS 237 (2023), 2023 Arkansas Laws Act 237 (S.B. 294), to be codified at Ark. Code Ann. § 6-15-3201 *et seq.*

1.6 “SBE” means the Arkansas State Board of Education, an administrative board established pursuant to Ark. Code Ann. §6-11-101 *et seq.*, with specific powers and duties as set forth in Ark. Code Ann. §6-11-105 and other sections of state law.

1.7 “Term” means the aggregate of the Transition Term and the Initial Term, as further described in Article 2.

ARTICLE 2 TERM

2.1 Transition Term. The Transition Term shall begin on May __, 2023 and continue through June 30, 2023. During the Transition Term, the Foundation shall focus on assessing current teaching faculty, administrative personnel and other District employees and personnel and recruiting additional faculty, administrative personnel and other employees as the Foundation determines to be necessary and appropriate to the operations and management of the District. Foundation, on behalf of the District, may begin entering into employment and teaching contracts with teachers, principals and other District personnel as it determines to be necessary and appropriate. The Commissioner hereby delegates its authority to enter into such employment contracts to the Foundation. Foundation shall provide copies of such contracts to the Commissioner. If the Commissioner does not object to any such contract within five (5) business days of receipt, the contract shall be deemed approved by the Commissioner. Additionally, the Foundation shall begin a facility assessment for the purpose of determining necessary repairs and improvements in order to provide a safe and secure educational environment that facilitates student success. During the Transition Term, the Foundation shall have full access to all necessary and appropriate information and records of and relating to the District. District shall retain other operational controls during the Transition Term.

2.2 Initial Term. The Initial Term shall commence on July 1, 2023, and continue for a period of three (3) fiscal school years, ending on June 30, 2026. During the Initial Term, the Foundation shall have full oversight, management and operation of the District as set forth in this Agreement. During the 2025-26 fiscal school year the parties hereto shall determine if it is in the best interest of the District to extend the Term of this Agreement, and if so determined, the District and the Foundation shall negotiate in good faith to determine renewal terms and an extension of the Term for a period of time that is consistent with applicable law that are mutually agreeable to the District, the Foundation and SBE.

ARTICLE 3 FOUNDATION'S PERFORMANCE AND DELIVERY OF SERVICES

3.1 Contracting Relationship. Foundation is authorized by the Commissioner on behalf of District and pursuant to the Authorizing Legislation and the LEARNS Act, Ark. Code Ann. § 6-15-3201, *et seq.* to oversee, manage, and operate the District. Foundation is vested with all powers necessary or desirable for carrying out its program and operating the District on a day-to-day and on-going basis, including, but not limited to, oversight, management and operation of District facilities and personnel, contracting for the services, equipment and educational program to be supplied by Foundation pursuant to this Agreement, in accordance with applicable sections of the LEARNS Act and other applicable statutes, rules and regulations, to the extent permitted by law, subject to the terms and conditions set forth in this Agreement and further subject to the oversight of Commissioner on behalf of District and SBE, as provided for in this Agreement and by the LEARNS Act. It is mutually agreed and intended that the Commissioner's role shall be one of ~~periodic~~ oversight and governance, ~~but~~ not approval of day-to-day operations or management of the District, but that Foundation shall consult with the Commissioner concerning the operation and management of the District. The Foundation is responsible solely for the administration, management and operations of the District including without limitation, ensuring the provision of all required services as specified in this Agreement, subject to any~~except for the~~ specific limitations or exceptions set forth in this Agreement.

3.2 Authority. Foundation, in performing its duties and obligations under this Agreement, shall have the sole power and authority, consistent with federal and state law and subject to the other terms and conditions of this Agreement and the oversight of Commissioner on behalf of District and SBE, as provided for herein and in the LEARNS Act, to carry out the responsibilities outlined in this Agreement. Foundation shall have the same authority and autonomy granted herein for the Term of this Agreement regardless of the District's classification pursuant to ~~the~~ Accountability Legislation.

3.3 Educational Program and Curriculum.

3.3.1 The School Design. Foundation shall provide District with an educational program based on the Friendship School Design but adapted to the specific circumstances and programs for students in the District. Foundation shall provide the management and administrative services necessary to implement and operate the Friendship School Design at District. The parties agree that an essential principle of the Friendship School Design is its

flexibility, adaptability and capacity to change in the interests of continuous improvement and efficiency, and further, that the parties are interested in results, not inflexible prescriptions.

3.3.2 Arkansas Curriculum Requirements. Foundation shall implement its educational program in a manner that is consistent with Arkansas law, including requirements regarding content and subjects of instruction, unless any such requirement has been waived by Arkansas authorities.

3.3.3 Non-Discrimination. The educational program of the Foundation shall be nonreligious and nonsectarian and shall not illegally discriminate against any student on the basis of race, creed, color, sex, national origin, religion, ancestry, or disability or special need.

3.4 Professional Development. Foundation shall provide the management and administrative services necessary to implement and operate a professional development program for instructional and administrative personnel and for other school support and District staff. Such program may include, but not be limited to, student teacher residency programs, year-round school leader and teacher professional development, teacher certification support, and summer teacher bootcamp.

3.5 Extended Learning and School Support. Foundation shall provide the management and administrative services necessary to implement and operate extended learning programs and school support services for students in the District. Such programs and services may include, but not be limited to, before, after, and summer school programs, art programs, civic and occupational clubs, athletic programs, gifted and talented programs, AP programs, college and career readiness programs, and vocational training programs.

3.6 Community Relations and Engagement. Foundation shall provide the management and administrative services necessary to implement and operate community relations and engagement services for parents and community members in the District. Such programs and services may include, but not be limited to, resource centers and job fairs.

3.7 Shared Services. Foundation shall negotiate and manage third-party school support service providers for the provision of services for the District, including but not limited to, transportation, custodial, maintenance, security, food services, professional development, extended day programs, information technology, co-op agreements, university partnerships, and extracurricular programs.

3.8 Subcontracting and Location of Performance.

3.8.1 Subcontracting. Foundation reserves the right to subcontract any and all services specified in this Agreement to public or private subcontractors, as permitted by law; however, Foundation shall not subcontract the management, oversight or operation of the teaching and instructional program of District, except as specifically permitted herein, or as expressly agreed to in writing by the parties. Nothing herein shall prohibit Foundation from subcontracting certain financial, operational, and administrative services.

3.8.2 Location of Performance. Foundation reserves the right to perform services, off-site from District, unless prohibited by federal or state laws, rules, or regulations.

3.9 Performance Standards, Evaluation, and Assessment.

3.9.1 Evaluation. Foundation shall be responsible for the performance of students who are enrolled in the District. Said performance shall be measured in accordance with the performance evaluation systems developed in accordance with the objectives of the Friendship School Design, the LEARNS Act, other applicable state law, rules and regulations, and performance measures established pursuant to this Agreement. The parties shall mutually agree upon yearly performance measures to be incorporated into this Agreement. Such measures shall reflect, without limitation, academic improvement and outcomes, growth and performance as measured by state assessments, and an increase in educator licensure.

3.9.2 Reports. Commencing at a time mutually agreeable to the Foundation and the Commissioner, Foundation shall provide to Commissioner, DESE and/or SBE, in a timely manner, information reasonably requested or required to enable Commissioner, DESE and/or SBE to monitor the educational performance and efficiency of the operation of the District by Foundation during the school year. Such reports shall be delivered no more frequently than monthly and shall include information related to the items identified on Appendix A attached hereto. Foundation voluntarily may provide such additional information and reports as it deems informative on a one-time or recurring basis.

3.9.3 Assessment of Success. The success of the Foundation and District shall be measured pursuant to the LEARNS Act, to be codified at Arkansas Code Annotated §6-15-3203(b)(1) & (b)(2), and performance measures established and mutually agreed upon pursuant to this Agreement.

ARTICLE 4
FOUNDATION'S AND DISTRICT'S RESPONSIBILITIES

4.1 Foundation's Responsibilities.

4.1.1 Foundation shall have the responsibility and associated authority, to: (i) prepare a budget; (ii) perform the services set forth herein; (iii) manage any third party for the renovation and maintenance of District's buildings; (iv) assist District in the purchase, lease or rental of furniture, equipment and supplies; (v) support District in raising funds, donations or grants of any kind in accordance with such conditions prescribed by the donor as are consistent with law and not contrary to any of the terms of this Agreement. Any funds, donations or grants that are obtained by Foundation for Foundation, not raised directly on behalf of District, shall remain Foundation property whether or not Foundation expends said funds, donations or grants for the benefit of District; (vi) perform or subcontract the business administration of District; (vii) establish and conduct an educational program and curriculum for District provided for herein; (viii) conduct or subcontract professional development for all principals and instructional personnel; (ix) select and recommend instructional materials, equipment and supplies; (x) exercise such other powers as provided for elsewhere in this Agreement to the extent consistent

with this Agreement; and (xi) generally, take such other actions as may be necessary or desirable properly and efficiently to operate District in accordance with this Agreement.

4.1.2 Curriculum Materials and Other Property. Foundation shall be responsible for selecting high quality instructional materials to be used at District.

4.1.3 Foundation, shall have primary responsibility for: (i) direct communication with state agencies; (ii) parental appeals of discipline decisions; and (iii) employee grievance hearings.

4.1.4 Foundation shall have the authority to make purchases and subcontract for the services it is obligated to provide, oversee and manage pursuant to this Agreement without further compliance with procurement laws that would otherwise be applicable to the District and without the approval of the District or the Commissioner unless the District is a party to such contract or District funds will be used for the purchase or payment. With respect to commodities and services not provided by Foundation, the Commissioner hereby delegates its authority to make purchases and enter into contracts for services equal to or below the bidding threshold amount set forth in Arkansas Code Annotated § 6-21-304. Foundation shall provide copies of such contracts to the Commissioner. If the Commissioner does not object to any such contract within five (5) business days of receipt, the contract shall be deemed approved by the Commissioner.

4.1 District and/or Commissioner Responsibilities.

4.2.1 Staff Responsibilities. District shall employ a staff, ~~at the direction of~~after consultation with Foundation, that shall fulfill the legal responsibilities for financial and educational performance of District.

4.2.2 Use by Third Parties of School Facilities. Administrators may permit third parties to use the school facility provided a building use agreement is signed addressing insurance coverage and the payment of costs for custodial, security and other building services. Such building use agreement shall be subject to the approval of the building principal(s). Such use may include the use of the school facility, ancillary property and technology for purposes other than the regular school instructional program during after-school, evening and weekend hours, provided that such use is consistent with the policies of District.

4.2.3 Furniture and Fixtures. District, ~~after consultation with~~ ~~at the direction of~~ Foundation, shall equip the school facility with such desks and other furniture and furnishings appropriate to the enrollment size and grade levels to be served at the site. Foundation shall have no ownership interest in such furniture and furnishings provided or purchased by District hereunder.

4.2.4 Termination of Existing Contracts. At the request of Foundation, District may terminate existing service contracts that Foundation does not determine to be useful to and in the best interest of the District's on-going operation and maintenance if District determines that such termination will not create a financial penalty or other detriment to the District.

4.2.5 The District shall have sole responsibility for capital financing and long-term maintenance and renovation or disposal of buildings.

4.2.6 Annual Audits. District shall continue to submit to and participate in annual audits of District finances.

4.2.7 Compliance with the Arkansas LEARNS Act. District, DESE, and SBE shall comply with the provisions set forth in the LEARNS Act, Ark. Code Ann. § 6-15-3201, *et seq.*

4.2.8 Availability of Grants and Funding. The Commissioner confirms and agrees that DESE and the Arkansas Department of Education shall make Foundation aware of any grants and funding opportunities available as a result of this Agreement to support the operations of the District, through communication used to share information with all school districts.

4.2.9 Records and Information. The Commissioner and District shall provide access to any and all relevant or helpful information and records relating to the District to Foundation throughout the Term of this Agreement.

ARTICLE 5 CONDITIONS PRECEDENT RE FACILITIES

5.1 Facilities. It is understood that District's obligation to provide school facilities that are suitable and appropriate for use as a school by the student populations to be served by District which are in compliance with all federal, state and local fire, safety, and building codes and requirements applicable to public schools, including but not limited to the abatement of environmental hazards and the requirements of the Americans with Disabilities Act, shall be a condition precedent to Foundation's performance of any obligation under this Agreement. Foundation shall have the authority to analyze all District properties to determine the usefulness and necessity of properties in educating District students. Foundation may make recommendations to Commissioner on behalf of District to repurpose, sell, lease or otherwise dispose of District properties not needed for or hindering the education of District students. District may sub-contract for the maintenance and operation of any District properties not currently being used by the Foundation to directly educate District students.

ARTICLE 6 STUDENTS, ADMISSION AND STANDARDS

6.1 Admission Standards. Admission to the District as a Transformation Public School Campus (as defined by the LEARNS Act) shall be open first to all resident students of the District public school zone as it existed the day before the execution of this Agreement and second for students that are not residents of the District public school zone as it existed the day before the execution of this Agreement but are otherwise permitted by law to attend the District. Students shall be admitted on a nondiscriminatory basis without regard to race, color, religion, national origin, creed, sex, ethnicity, sexual orientation, behavior, age, ancestry, special need, or proficiency in the English language, income or academic achievement.

6.2 Services to Disabled Students and Those with Other Special Needs; Special Education. The District and Foundation will ensure compliance with the requirements of IDEA, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

6.3 Bilingual and ESOL Education. District and Foundation shall cooperate to provide appropriate education services to the limited English proficient students in the District through programs consistent with requirements of federal and state laws and the Friendship School Design.

6.4 Rules and Regulations. Foundation shall propose ~~and adopt~~ student policies including student conduct and discipline, student attendance and the school calendar, ~~subject to approval for adoption~~ by the Commissioner acting in place of a board of directors. Foundation shall be authorized to ~~propose refine~~ such policies, regulations and procedures applicable to District that ~~align conflict~~ with the Friendship School Design, federal or state laws, rules, regulations or policies ~~that have not been waived~~.

6.5 Due Process. Foundation and District shall provide students due process hearings in compliance with state and federal laws, rules, and regulations regarding discipline, special education, confidentiality and access to records and other areas where such is required by federal or applicable state or local law, applicable regulation or policy. The District principal(s) shall have the authority to suspend or recommend the expulsion of a student as provided for by law, subject to appeal to the Commissioner on behalf of the District. All expulsions shall be approved by the Commissioner on behalf of the District. The Foundation and Commissioner on behalf of the District shall approve a complaint resolution process to be followed by District.

ARTICLE 7 POLICIES AND OTHER OBLIGATIONS

7.1 School Policies. District and Foundation are committed to the successful implementation of the Friendship School Design at the District.

7.2 Records. Except to the extent expressly waived by Arkansas authorities, Foundation shall comply with all applicable federal and Arkansas laws concerning the maintenance and disclosure of student records, including the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g.

7.3 Family Educational Rights and Privacy Act. District hereby designates employees of Foundation as having a legitimate educational interest such that they are entitled to access to education records under 20 U.S.C. §1232g, the Family Educational Rights and Privacy Act. Foundation, its officers, employees and sub-contractors shall comply with the Family Educational Rights and Privacy Act at all times.

7.4 Arkansas Waivers. District shall, with Foundation's assistance apply for and support the waiver of any state laws, rules, and Standards for Accreditation that interfere with or are beneficial to the implementation of the Friendship School Design. Initial waivers shall be sought from the SBE prior to July 1. Any additional waivers may be sought, when necessary,

from the SBE at the discretion of the District and Foundation. Any waiver granted by the SBE will be subject to the terms specified in the Order of the SBE.

7.5 Notification of Meetings. District and Foundation shall give reasonable notice of all regular and special meetings as required by Arkansas law, rules and regulations.

ARTICLE 8 FINANCIAL ARRANGEMENTS

8.1 Application for State and Other Public Funds. District, with the support of Foundation and the campus principal(s), shall comply with the requirements, terms, and conditions of the state law for the purpose of receiving or maintaining District's eligibility to receive the per pupil allowance for each student enrolled and in attendance in District. The Commissioner, on behalf of the District, with the support of Foundation shall also comply with the requirements, terms, and conditions of any external public funding (e.g., federal and state funds designated for particular purposes such as Title I and special education) to which the District or its students may be entitled. Foundation shall provide such assistance to District staff in the preparation or review of funding applications for and reports regarding District. In conjunction with such assistance by Foundation, District shall permit Foundation to review and comment on any such applications and reports prior to their submission. District shall promptly supply to Foundation copies of any communications received in relation to such external public funds.

8.2 Budget Development and Approval. The annual budget for the District shall be developed by Foundation. As required by law, the budget for each school year shall be provided to the Commissioner on behalf of District for approval.

8.3 Monthly Payment to Foundation. Within ten (10) business days of its receipt of an invoice by Foundation, District shall remit to Foundation all fees due. Foundation is not required to advance and does not intend to advance any of its funds to pay or satisfy obligations of the District, but if Foundation does advance funds, then the District shall reimburse the Foundation for such funds within ten (10) business days of receiving an invoice from the Foundation for such reimbursement.

If District does not remit to Foundation payment when due, Foundation shall notify the Commissioner that the District is in default of this Agreement and shall give District fifteen (15) days to cure such default. After such time, Foundation shall have the right to terminate this Agreement without any liability or penalty to District, DESE or SBE. In the event of termination of this Agreement pursuant to this Section, such termination shall be effective at the end of the school year in which the default by District occurs, but any amounts remaining due and payable to Foundation at the termination of the Agreement shall remain payable to Foundation.

8.4 Foundation Compensation. For the Transition Term, the Foundation shall be compensated a total of \$50,000 payable on a monthly basis on the dates agreed to by the parties. For the Initial Term, the Foundation shall receive as compensation, \$200,000 on an annual basis, payable monthly, for administration of the District, including without limitation employment of

staff specified herein, day-to-day operation of the District, and the preparation of all necessary budgets and applications required to be completed by the District for the receipt of state and federal funds. Foundation may receive compensation for all other services provided by Foundation pursuant to amendments to this Agreement, or any additional agreement, entered into by Foundation and District for services provided to the District. Nothing in this Agreement shall be construed to limit the amount of compensation Foundation may receive, which it is lawfully entitled to receive. See Appendix B for an estimate of the scheduled monthly payments to be payable to Foundation.

8.6 Grant Applications. The parties recognize that the Friendship School Design may provide programs and services that are supplemental to the prevailing area public schools' educational programs. Foundation and District may solicit and receive grants and donations for use consistent with the mission of Foundation and District provided that in the case of any grants or donations that require implementation in the District, District acts in consultation with Foundation and the District principal(s). Foundation shall provide technical assistance for the preparation of the applications for such funds in a timely manner. If Foundation identifies a grant that would be useful to District, Foundation shall notify District and collaborate with District to submit a joint proposal for such grant. Any funds, donations or grants that are obtained by Foundation for Foundation, and not raised directly for or in the name of the District, shall remain Foundation property whether or not Foundation expends said funds, donations or grants for the benefit of District so long as said funds, donations or grants are not comingled with District funds, or donations.

8.7 Financial and Business Records. Foundation shall, on behalf of District, maintain accurate financial and business records pertaining to the operation of the District. Foundation agrees to maintain such records at all times during the Term of this Agreement. Upon the termination or expiration of this Agreement, Foundation agrees to transfer or transfer control of such records to District. Foundation also agrees that, consistent with applicable federal and State laws and rules and regulations concerning the maintenance and disclosure of such records, the District's financial records shall be made available to the Commissioner on behalf of District, DESE or SBE upon request, or any appropriate regulatory agency entitled by law to review such records. Foundation also acknowledges that all financial statements and records pertaining to the District are subject to an independent annual audit. Foundation agrees to cooperate fully with the independent auditor and to make available all financial and other records pertaining to District to such independent auditor as requested in a timely manner.

8.8 Quarterly Financial Reports. Upon reasonable advance request, but no less frequently than quarterly, Foundation shall provide reports on District finances to the Commissioner on behalf of District which shall include statements of all revenues received, from whatever source, with respect to District and statements of all direct expenditures for services rendered to or on behalf of the District and students who attend the District, whether incurred on-site or off-site. Quarterly financial reports shall be prepared no later than 60 days following the close of the quarter; and annual financial reports shall be prepared no later than 180 days following the close of the fiscal year, or earlier if otherwise required

8.9 Provisions Applicable to Indigent Students. Foundation shall comply with applicable laws, rules, regulations and policies regarding indigent students, including waiver or reduction of fees. Foundation shall survey District's student population for eligibility for free and reduced lunches or other subsidies under federal guidelines.

ARTICLE 9 PERSONNEL & TRAINING

9.1 Personnel. District shall be the employer of all District employees unless noted below or otherwise agreed by Foundation and District. Foundation shall have the sole responsibility to recommend staffing levels, and to select, evaluate, assign, discipline and recommend termination of District personnel consistent with federal and state laws, rules, and regulations (unless waived by appropriate authorities), consistent with this Agreement. The following positions shall be considered employees of Foundation regardless of whether the position would normally be considered a District employee or an employee embedded in District: Superintendent, Director of Facilities, and Director of Operations.

9.2 School Principal. Because the responsibility of the principal(s) at District is critical to its success, Foundation shall have the authority, consistent with State law, in consultation with District, to recruit and supervise the principal(s) and to hold them accountable for the success of District. Foundation may select the principal(s) from among qualified candidates that Foundation provides to District. The terms of the employment contract with the principal(s), and the duties and compensation of the principal(s) shall be determined by Foundation. The principal(s) may also be terminated by the Foundation. A formal evaluation of each principal(s) must be presented to Commissioner on behalf of District annually; the evaluation shall evaluate principal(s) according to the principles of accountability in the Friendship School Design.

9.3 Selection of Teachers and ~~other District Classified~~ Employees. The principal(s) and Foundation, in turn, shall have the authority to select and hold accountable the certified and classified teachers and the non-instructional staff in District.

9.4 Training. Foundation shall provide training in its methods, curriculum, program, and technology to all teaching personnel on a regular and continual basis. After the first year of operation, Foundation shall provide training to new teaching personnel prior to the commencement of each school year. Such training may be held on-site or off-site, at locations selected by Foundation. Foundation shall also provide ongoing professional development programs throughout the school year. Non-instructional personnel shall receive such training as Foundation determines.

9.5 Employee Salaries and Benefits. District shall pay for the salaries, fringe benefits, and employment taxes for all employees of District, as the employer, ~~with the exception of and shall not be responsible for the salaries or fringe benefits of the~~ Foundation employee positions noted above in sub-section 9.1. District employees will be eligible to participate in employee benefits programs subject to the terms of such benefit plans and applicable state law, rules and regulations.

9.6 Personnel Policies. Foundation shall ~~adopt~~ recommend policies consistent with the Friendship School Design and in compliance with federal and state law, concerning the recruitment, assignment, promotion, discipline and termination of personnel and the methods and standards for evaluating performance, ~~subject to approval~~ for adoption by the Commissioner acting in place of a board of directors. Foundation shall not illegally discriminate against any employee or applicant for employment on the basis of race, creed, color, sex, national origin, religion, ancestry, age, disability, marital status, citizenship, veteran status, or sexual orientation in its recruitment, selection, training, utilization, termination or other employment-related activities.

9.7 Background Checks. All Foundation employees or contractors who have direct, daily contact with students of the District shall be subject to background checks to the same extent as District employees.

ARTICLE 10 PROPRIETARY INFORMATION

10.1 Proprietary Information. Foundation shall own all copyright and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans, and any other materials developed by Foundation. Unless otherwise agreed to in writing, Foundation shall own all copyrights and other proprietary rights to all instructional materials, training materials, curriculum and lesson plans and any other materials developed by Foundation and its employees, agents or subcontractors or by District employees working for or supervised by Foundation, which is developed during the operation of District under the Friendship School Design. District shall take all measures reasonably necessary to ensure that no District personnel disclose, copy, transmit, modify, alter or utilize Foundation's proprietary information without the written consent of Foundation. Nothing in this paragraph shall be construed to prevent a teacher from using lesson plans or other instructional material which he or she has developed for his or her own use either within or outside District, provided that such materials do not incorporate any Foundation proprietary materials or violate the intellectual property rights of third parties. Further, nothing herein contained shall be construed in a manner that would cause District to act or fail to act in a manner that would cause District to be in violation of any open records law.

ARTICLE 11 WARRANTIES AND REPRESENTATIONS

11.1 Certification by District as to Pending Claims. District certifies that, as of the date of this Agreement, there are no pending actions, claims, ongoing legal situations or circumstances, suits or proceedings, to the knowledge of District, threatened or reasonably anticipated against or affecting District, which if adversely determined, would have a material adverse affect on the ability of District to perform its obligations under this Agreement. Further, District warrants that the information it has furnished Foundation concerning the District's finances, revenues, student enrollment and representations provided in this Agreement is accurate and the latest information available at the time of the execution of this Agreement.

11.2 Organization and Authority of Foundation. Foundation represents and warrants that it is a corporation duly organized and existing under the laws of the District of Columbia, and that it has the authority under District of Columbia law to execute, deliver and perform this Agreement.

11.3 Representation and Warranties of Foundation. Foundation represents and warrants that this Agreement constitutes a legal, valid and binding obligation of Foundation enforceable in accordance with its terms.

11.4 Certification by Foundation as to Pending Claims. Foundation certifies that, as of the date of this Agreement, there are no pending actions, claims, suits or proceedings, to the knowledge of Foundation, threatened or reasonably anticipated against or affecting Foundation, which if adversely determined, would have a material adverse affect on the ability of Foundation to perform its obligations under this Agreement.

ARTICLE 12 RISK MANAGEMENT; INSURANCE

12.1 Legal Representation and Costs.

12.1.1 Except as expressly provided herein or in connection with insurance coverage in place or required to be provided in this Agreement by one party for the benefit of the other, each party shall be responsible for its own legal representation and legal costs. Legal costs for District will be covered by insurance or by an item in District budget.

12.1.2 Except where there is an actual or potential conflict of interest, District and Foundation shall fully cooperate with legal counsel for one another in connection with any legal claim asserted against either of them.

12.2 Insurance. District shall require that its contractors, if any, providing services to the District shall name Foundation and its facilities manager as additional insureds under their respective commercial general liability and automobile liability insurance policies for personal injury and property damage.

12.3 Coordination of Risk Management. Foundation and District shall coordinate risk management activities with one another. This will include the prompt reporting of any and all pending or threatened claims, filing of timely notices of claim, cooperating fully with one another in the defense of any claims and complying with any defense and reimbursement provisions of governmental immunity laws and applicable insurance policies. Foundation shall give Commissioner on behalf of District prompt written notice of each legal claim made against it arising out of its operation of District. Similarly, District shall promptly notify Foundation in writing of any claim against District arising out of or relating to District, and shall cooperate fully with Foundation in the defense of any claims. No party shall compromise, settle, negotiate or otherwise affect any disposition of any claim or potential claims asserted against it to the

extent such claims are insured by or through the other party without the approval of the other party.

12.4 Immunity. To the extent permitted by law and to the extent that this Agreement is construed as a delegation of authority and activity from the Commissioner, acting as the board of directors of the District to the Foundation, it is agreed that the Foundation is operating in place of the District as authorized by applicable law and by this Agreement, and the Commissioner and the District do not object to extending to the Foundation, and cloaking the Foundation in, applicable government immunity protections, including but not limited to sovereign immunity as guaranteed by the Arkansas Constitution, statutory immunity doctrines such as those available to schools in Ark. Code Ann. § 6-19-103, Ark. Code Ann. § 6-17-1401, Ark. Code Ann. § 6-17-1113, etc., as well as any kind of applicable limitations of liability available under Arkansas law, to the extent that such extension does not in any way limit or deprive the Commissioner, DESE, or the District of such immunity protections.

12.5 No Waiver. The foregoing provisions are subject to and shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability to third parties provided or available to any of the parties under applicable governmental immunities laws.

ARTICLE 13 TERMINATION

13.1 Termination.

13.1.1 Mutual Agreement. This Agreement may be terminated prior to its expiration by mutual written agreement of the Parties, which agreement shall state the effective date of termination.

13.1.2 Commissioner on behalf of District Termination For Cause. Commissioner on behalf of District may terminate this Agreement for cause prior to the end of the Term, in accordance with the procedures set forth in subsection 13.1.3 below, for any of the reasons set forth in paragraphs (A), (B), and (C) below.

(A) If, at any time after the first academic year during the term of this Agreement, Foundation has failed to make reasonable progress toward growth in student academic achievement; provided that the Commissioner has advised Foundation in writing that its performance has been deficient and has allowed Foundation a reasonable time from the time such notice is given in which to remedy such failures;

(B) If Foundation substantially breaches any of the material terms and conditions of this Agreement and fails to remedy such breach within 90 days after receipt of written notice of such breach from District; or

(C) If there occurs an enactment, repeal, promulgation or withdrawal of any federal, state, or local law, regulation, or court or administrative decision or order which, after all possible appeals, results in a final judgment or finding that this Agreement or

the operation of District in conformity with this Agreement violates District's responsibilities, duties or obligations under state or federal constitutions, statutes, laws, rules or regulations.

13.1.3 The following procedures shall apply to any termination pursuant to this Section.

(A) District shall give Foundation written notice of its intent to terminate this Agreement at least ninety (90) days prior to the effective date of termination stated in the notice. Notwithstanding the foregoing, any termination will not become effective until the end of a school year unless there are unusual and compelling circumstances which justify the disruption to the educational program and the students which would be caused by a mid-year termination.

13.2 Foundation Termination for Cause.

13.2.1 Foundation may terminate this Agreement for cause prior to the end of the initial term or extended term of this Agreement, in accordance with the procedures set forth in subsection 13.2.2 below, for any of the reasons set forth in subparagraphs (A), (B), or (C) below.

(A) As a result of a failure of any precondition to its obligations hereunder as set forth in Article 5.

(B) If District substantially breaches any of the material terms and conditions of this Agreement and fails to remedy such breach within 90 days after receipt of written notice of such breach from Foundation.

(C) The enactment, repeal, promulgation or withdrawal of any federal, state, or local law, regulation, or court or administrative decision or order which has a material adverse effect on Foundation's ability to operate the District in accordance with its budget or the Friendship School Design.

13.2.2 The following procedures shall apply to any termination pursuant to this Section.

(A) Foundation shall give District, DESE, and SBE written notice of its intent to terminate this Agreement at least 90 days prior to the effective date of the termination stated in the notice. Notwithstanding the foregoing, any termination will not become effective until the end of a school year unless there are unusual and compelling circumstances which justify the disruption to the educational program and the students caused by a mid-year termination.

13.3 Disposition of Assets upon Termination. Upon expiration or termination of this Agreement for any reason, District shall maintain ownership of its assets, and Foundation shall maintain ownership of its assets.

13.4 Remedies. Termination of this Agreement in accordance with Sections 13.1 and 13.2 shall be the sole remedy for breaches of this Agreement except for any breach of any obligation to make monetary payments to the other party.

ARTICLE 14 AMENDMENT

14.1 Amendments. This Agreement may be altered, amended, changed or modified only by agreement in writing executed by all of the parties hereto and to the extent required by law, with the approval of SBE.

14.2 Supplements. The parties hereto acknowledge that this Agreement is the first such agreement authorized by newly enacted legislation. All parties agree and confirm that it is their intent to review, revise, and supplement this Agreement as necessary to document terms and conditions that are informed by the implementation of this Agreement and the LEARNS Act during its Term.

ARTICLE 15 ALTERNATE DISPUTE RESOLUTION PROCEDURE

15.1 Alternate Dispute Resolution. 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 in connection with this Agreement. If, nevertheless, a dispute should arise in connection with this Agreement, the parties agree to use their best efforts to resolve such dispute in a fair and equitable manner and without the need for expensive and time-consuming litigation.

ARTICLE 16 MISCELLANEOUS

16.1 Exclusivity. District agrees that Foundation shall be the sole education service provider for District.

16.2 Time of Essence. Time is of the essence with respect to performance of this Agreement. The parties shall make every reasonable effort to perform expeditiously (subject to limitations as described herein), and the parties acknowledge that the successful performance of this Agreement requires their continued cooperation.

16.3 Force Majeure. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that any failure or delay in the performance of its obligations under this Agreement arising out of or caused by, directly or indirectly, from a Force Majeure event shall not be a violation of this Agreement. As used herein, the term “Force Majeure” means, any failure or delay in performance of a party’s obligations under this Agreement arising out of circumstances beyond its control, including, without limitation: acts of God; earthquakes; fires; floods; civil or military disturbances; accidents; acts of war or terrorism; nuclear or natural

catastrophes; sabotage; strikes; work stoppages; epidemics, pandemics, quarantines or stay-at-home orders; riots; power failures; interruptions, loss, malfunctions or failures of utilities, communications or computer (hardware or software) services; accidents; labor disputes; or governmental actions.

16.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

16.5 Recitals Part of Agreement. The representations and recitation set forth in the recitals are material to this Agreement and are hereby incorporated into and made part of this Agreement as though they were fully set forth in this Section.

16.6 Joint Preparation. This Agreement shall be deemed to have been prepared jointly by the parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement but shall be interpreted according to the application of the general rules of interpretation for arm's length agreements.

16.7 No Joint Venture or Partnership. This Agreement shall not be considered to create any type of joint venture, partnership, or any other legal relationship between the parties where either party shall share or be responsible for the debts or liabilities of the other party. In addition, except to the extent expressly provided in and limited by this Agreement, this Agreement shall not be construed (i) as making either party an agent of the other party or (ii) as giving the right of one party to legally bind the other in any manner so as to permit the incurrence of debts and liabilities on behalf of the other party.

16.8 Limitation of Rights; No Third Party Beneficiary Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto as provided herein. No third party, whether a constituent of District, Foundation or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of District or Foundation in this Agreement.

16.9 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas.

16.10 Entire Agreement. This Agreement and any Appendices and Exhibits hereto shall constitute the full and complete agreement between the parties hereto. All prior representations, understandings and agreements are merged herein and are superseded by this Agreement.

16.11 Section Headings. The section headings shall not be treated as part of this Agreement or as affecting the true meaning of the provisions hereof. The reference to section numbers herein shall be deemed to refer to the numbers preceding each section.

16.12 Severability. If any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

16.13 Nondiscrimination. Foundation covenants and agrees that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex, ancestry, physical handicap, marital status or national origin in the operation of District. Foundation shall comply with federal and state laws, rules, and regulations pertaining to nondiscrimination of hiring and employment and as to admission of and treatment of students.

16.14 Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, provided that Foundation may, without consent of District, delegate the performance but not responsibility for such duties and obligations of Foundation as specifically set forth herein.

16.15 No Waiver. 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.

16.16 Survival. All representations, warranties and indemnities made herein shall survive termination of this Agreement.

16.17 Notices. All notices required or permitted by this Agreement shall be in writing and shall be either personally delivered or sent by nationally-recognized overnight courier, electronic transmission, or by registered or certified U.S. mail, postage prepaid, addressed as set forth below. A notice shall be effective on the date personally delivered, on the date delivered by a nationally recognized overnight courier, on the date set forth on the electronic transmission receipt, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth calendar day after mailing or transmission.

<u>To Foundation at:</u>	FEF Arkansas
	Attention: CEO

300 S. Izard Street
Little Rock, Arkansas 72201
E-mail: jharris@friendshipusa.org and
ptran@friendshipusa.org

With a copy to: Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
Attention: Michele Allgood
425 W. Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201
E-mail: mallgood@mvlaw.com and
dbates@mvlaw.com

To District at: Marvell-Elaine School District #22
Attention: Commissioner
Four Capitol Mall
Little Rock, Arkansas 72201
E-mail: Jacob.Oliva@ade.arkansas.gov

With a copy to: Arkansas Department of Education
Attention: Courtney Salas-Ford
Four Capitol Mall
Little Rock, Arkansas 72201
E-mail: Courtney.salas-ford@ade.arkansas.gov

TO ADE at: Arkansas Department of Education
Attention: Secretary
Four Capitol Mall
Little Rock, Arkansas 72201
E-mail: Jacob.Oliva@ade.arkansas.gov

With a copy to: Arkansas Department of Education
Attention: Courtney Salas-Ford
Four Capitol Mall
Little Rock, Arkansas 72201
E-mail: Courtney.salas-ford@ade.arkansas.gov

TO SBE at: Arkansas State Board of Education
Attention: Chair
Four Capitol Mall
Little Rock, Arkansas 72201
E-mail: Ouida.Newton@ade.arkansas.gov
Sarah.B.Moore@ade.arkansas.gov

With a copy to: Arkansas Department of Education
Attention: Courtney Salas-Ford
Four Capitol Mall

Little Rock, Arkansas 72201
E-mail: Courtney.salas-ford@ade.arkansas.gov

Duplicate copies of each notice, request, or other instrument or document given hereunder by any party to one or more of the others also shall be given to all of the above. Any notice required to be given hereunder in writing may be given by any form of electronic transmission (including email or facsimile) capable of making a written record and such notices shall be deemed effective when sent. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

FEF Arkansas

By: _____
Name: Joe H. Harris III
Title: CEO

MARVELL-ELAINE SCHOOL DISTRICT #22

By: _____
Name: Jacob Oliva
Title: Commissioner, ADE Division of
Elementary and Secondary Education

Secretary, Arkansas Department of
Education

Acknowledged and Approved on May ____, 2023.

STATE BOARD OF EDUCATION

By: _____
Name: Ouida Newton
Title: Chair

APPENDIX A

SUBJECT OF REPORTS DELIVERED TO COMMISSIONER

[To be inserted]

[consider information included in e-school]

APPENDIX B

ILLUSTRATIVE SCHEDULE OF PAYMENTS

May 2023	\$25,000.00
June 2023	25,000.00
July 2023, 2024, and 2025	16,667.00
August 2023, 2024, and 2025	16,667.00
September 2023, 2024, and 2025	16,667.00
October 2023, 2024, and 2025	16,667.00
November 2023, 2024, and 2025	16,667.00
December 2023, 2024, and 2025	16,667.00
January 2024, 2025 and 2026	16,667.00
February 2024, 2025 and 2026	16,667.00
March 2024, 2025 and 2026	16,667.00
April 2024, 2025 and 2026	16,667.00
May 2024, 2025 and 2026	16,667.00
June 2024, 2025 and 2026	16,663.00