

CONSULTANCY SERVICES AGREEMENT

THIS AGREEMENT is made as of this 1st day of July, 2010, by and between **MJ MANAGEMENT SERVICES, INC.**, a Michigan for-profit corporation ("MJ Management"), with offices located at 29435 Evergreen, Flat Rock, MI 48134, and **NEW BEDFORD ACADEMY**, a Michigan non-profit corporation ("the Academy").

BACKGROUND

The Academy operates a public school academy in the State of Michigan under a contract issued by the Ferris State University Board of Trustees ("the Contract"), pursuant to Part 6A of the Revised School Code. MJ Management provides business services, planning, board support, and staffing and personnel management services. The Academy, which typically does not directly employ its teachers, non-teaching professionals and support personnel, desires to contract with MJ Management for MJ Management to provide certain business, planning, board support, staffing and personnel management services to the Academy.

TERMS AND CONDITIONS

MJ Management will provide services to the Academy on the terms and conditions contained herein, and the parties agree as follows:

1. **MJ Management's Services.** MJ Management will provide the following services (the "Services") to the Academy during the Term, as hereinafter defined. The Services will be provided by independent contractors or employees of MJ Management, at the sole discretion of MJ Management, unless the Academy requires otherwise.

A. **Staffing and Personnel Management**

- i. **Provision of Qualified Personnel.** MJ Management will provide qualified and certified personnel, including, but not limited to: school administrators; certified or permitted teachers; support and custodial staff; accounting, bookkeeping and other business management personnel; all per the Academy's needs ("Staff Members"). MJ Management will ensure that all Staff Members receive timely criminal background and unprofessional behavior checks, and the Academy grants all necessary authority to MJ Management to have such inquiries accomplished. The Academy will determine staffing levels.
- ii. **Payroll, Salary, Wage and Benefits Administration Services.** MJ Management will provide payroll and other related accounting services relating to Staff Members. MJ Management will also provide salary, wage and benefits administration services to The Academy, including

management of COBRA benefits where applicable. MJ Management will determine the level of compensation and benefits for Staff Members.

- iii. Personnel Management and Records Management. MJ Management will provide personnel management and records management services for the Academy, including Staff Member disciplinary matters and compliance with Michigan Department of Education and Department of Labor requirements. MJ Management will maintain all necessary certification and 'highly qualified' status records.
- iv. Personnel Reporting. MJ Management will complete all required MDE personnel reporting for Staff Members during the term of the Agreement.
- v. Administrative Consulting. MJ Management will support and assist the Academy and MJ Management administrators, as needed, with respect to Staff Member discipline, improvement, separations, and other personnel issues.
- vi. Academy Control of Staffing Costs. The Academy acknowledges and agrees that determinations relating to staffing levels, compensation, and benefit levels under this paragraph 1(A) will directly impact the amount of the Operational Service Fee described in paragraph 2(B) of this Agreement.

B. Business Services

- i. Accounting Services. MJ Management will manage all of the Academy's accounts receivable and accounts payable, and will issue checks for Academy payroll and business as necessary. However, only Academy representatives will have the authority to handle and disburse Academy funds, which will not be commingled with MJ Management's funds or submitted to MJ Management's dominion or control. MJ Management will also reconcile all Academy bank statements and provide such reconciliations to the Academy's board of directors; manage the Academy's purchase order policy and purchasing process; and monitor and actively manage the Academy's cash flow. MJ Management will report to the Academy's board of directors at least monthly with respect to the Academy's financial status.
- ii. Assistance with Budgeting and State Aid. MJ Management will facilitate the development of annual budgets and periodic budget amendments for the Academy, and will assist in the Academy's preparation for annual independent audits. MJ Management will assist the Academy in preparing applications for state aid anticipation loans and/or state aid bridge loans.

C. Planning and Board Support

- i. Regulatory Compliance. MJ Management will assist the Academy in maintaining compliance with statutory requirements governing board activities and documentation. MJ Management will also facilitate compliance with the Michigan Freedom of Information and Open Meetings statutes, and with relevant Michigan Department of Education requirements.
- ii. Authorizer and Reporting Compliance. MJ Management will assist the Academy in maintaining compliance with all requirements promulgated by the Academy's authorizer, and will facilitate necessary communication between the Academy's board of directors and the Academy's authorizer. MJ Management will also monitor compliance with the Academy's educational reporting requirements.
- iii. Board Documentation and Consulting. MJ Management will assist in the preparation of appropriate materials to set forth items for consideration by the Academy's board of directors, and will produce meeting minutes. MJ Management will also provide a consultant to periodically appear at the Academy's board meetings and advise the board with respect to strategic planning, business planning, and market planning. The Academy will be solely responsible for recruitment of students and for any associated recruitment, marketing, or development costs.
- iv. M.E.G.S. Reporting. MJ Management will assist the Academy in preparing Michigan Educational Grant System reports as necessary.

2. Service Fees and Reimbursement. As consideration for the Services described in paragraph 1, the Academy will pay to MJ Management an "Annual Fee" and an "Operational Service Fee." The Academy will also reimburse MJ Management for certain expenses, as described below:

- A. Annual Fee. The Academy will pay to MJ Management an Annual Fee equal to Seventy-Six Thousand (\$76,000.00) U.S. Dollars. The Annual Fee will be payable in monthly installments on the first business day of each calendar month.
- B. Operational Service Fee. The Academy will pay to MJ Management an Operational Service Fee equal to the total cost of Staff Member salaries, fringe benefits and local, state and federal taxes incurred by MJ Management in providing the Services under this Agreement, as well as the cost of insurance premiums paid by MJ Management when said insurance relates directly to the services provided to The Academy by MJ Management, and any audit fees related to the Academy's business functions, personnel and/or payroll. The Academy will pay an estimated Operational Service Fee monthly on the first business day of each month. Within twenty-five (25) days after the close of each

month, MJ Management will reconcile its actual costs for that month with the estimated Operational Service Fee paid by the Academy at the beginning of that month. Any adjustments resulting from such reconciliations will be settled no less than three business days prior to the end of the month. Upon expiration of this Agreement, any adjustments resulting from reconciliation of MJ Management's final month providing services will be paid to or invoiced to the Academy at the time the next Operational Service Fee payment would otherwise have been due.

- C. Reimbursement of Expenses. The Academy Board may approve the reimbursement of reasonable expenses incurred by MJ Management. Reimbursement will only be permitted under this Agreement for actual and direct expenses that are pre-approved by the Academy Board and paid by MJ Management to unrelated parties, provided MJ Management submits an itemized accounting of all such expenses to the Academy Board, along with any relevant documentation.
- D. Additional Services. MJ Management may, at the request of The Academy, provide additional services. Should the Academy request additional services from MJ Management, the parties will negotiate an appropriate fee/compensation prior to the time such services are rendered.

3. Payment of Salaries. The Academy will be responsible for the payment of salaries, fringe benefits, workers' compensation, unemployment compensation, and local, state and federal taxes for all individuals directly employed by The Academy, if any. MJ Management will be responsible for payment of the salaries, fringe benefits, workers' compensation, unemployment compensation, liability insurance, and local, state and federal taxes for all individuals employed by MJ Management and provided to the Academy as Staff Members under this Agreement.

4. Unusual Events. Both parties agree to notify each other immediately of any known health, safety or other violations and of any anticipated labor, employee or funding problems or any other problems or issues that could adversely affect MJ Management or the Academy in complying with its responsibilities hereunder. The Academy agrees to notify MJ Management immediately of any threatened revocation or non-renewal of the Contract.

5. Confidential Information and Proprietary Rights. The Academy Board of Directors hereby agrees and acknowledges that in the course of the performance of this Agreement, the Academy may be exposed to certain confidential information or trade secrets of MJ Management including, but not limited to, know-how, technical information, computer software, training materials, training methods and practices and related information, all of which will be considered to be confidential in nature (the "Confidential Information"). The Academy agrees, subject to the limitations of MCL 380.505(3), the Freedom of Information Act, any other law, and the Academy's Contract with its authorizer, that any Confidential Information communicated to or received or

observed by the Academy will be held in confidence and not disclosed to others without MJ Management's prior written consent. All Confidential Information disclosed to or observed or received by the Academy will at all times remain the property of MJ Management and all documents together with any copies or excerpts thereof will be promptly returned to MJ Management upon request. The provisions of this Section 7 will survive the termination or expiration of this Agreement. The provisions of this Section 7 will not apply to curriculum or other materials developed and paid for by the Academy or developed by MJ Management at the direction of the Academy or its Board with Academy funds or to any information subject to disclosure under the law. The Academy will own all proprietary rights to curriculum or educational materials that (1) are both directly developed and paid for by the Academy; or (2) were developed by MJ Management at the direction of the Academy Board with Academy funds dedicated for the specific purpose of developing such curriculum or materials.

6. Insurance. MJ Management will procure and carry a policy of worker's compensation insurance and any other policies of insurance that may be required by the Contract or applicable law, and will provide evidence thereof to the Academy upon the Academy's written request.

7. Term and Termination. This Agreement will commence on July 1, 2010 and will expire on June 30, 2013.

8. Condition Precedent. The parties expressly agree and acknowledge that the effectiveness of this Agreement is expressly contingent on the continued validity of the Contract or the issuance, prior to expiration of the Contract, of a new contract by a new authorizer such that the Academy is able to continue operations without violating Michigan laws governing public school academies and without losing any necessary sources of funding. The Academy agrees to inform MJ Management in writing within three days after any failure of this condition, and that any failure to do so will constitute a material breach of this Agreement. If this condition fails at any time, and for any reason, the parties agree that this Agreement will become immediately terminable by either party upon written notice to the other, and that the Academy will remain responsible for payment for any services rendered by MJ Management up to the date of such termination.

9. Records and Reporting Requirements. MJ Management personnel and Staff Members will maintain proper confidentiality of personnel, student and other records as required by applicable law. MJ Management will, upon receiving a written request from the Academy, provide within a reasonable time period detailed statements of all costs incurred in providing the Services under this Agreement. MJ Management will, upon written request from the Academy, make available to the Academy within a reasonable time period all finance and other records related to the Services provided under this Agreement.

10. Dispute Resolution. MJ Management and The Academy agree to act immediately and in good faith to mutually resolve any disputes involving any alleged

breach of this Agreement, or arising out of or relating to the interpretation of this Agreement or the parties' performance of their respective obligations under this Agreement.

11. No Agency. The Academy and MJ Management each are entering into this Agreement and acting hereunder solely as independent contractors, and not as agents or representatives of the other.

12. Miscellaneous Provisions.

- A. Section Headings. The section headings used herein are for reference and convenience only and will not enter into the interpretation hereof.
- B. No Waiver. No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance, violation or default by the other party with respect to any of the terms of this Agreement will impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements to be performed by the other will not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained.
- C. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan.
- D. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains the entire understanding of the parties with respect to its subject matter, and supersedes all prior and contemporaneous agreements, understandings and negotiations. No change, waiver, modification or discharge hereof will be valid unless it is in writing and is executed by the party against whom such change, waiver, modification or discharge is sought to be enforced.
- E. Notices. Under this Agreement, if one party is required to give notice to the other, such notice will be deemed given if hand delivered or mailed by U. S. registered mail, return receipt requested, first-class, postage pre-paid and addressed as follows:

If to MJ Management: President
MJ Management Services, Inc.
29435 Evergreen
Flat Rock, MI 48134

With a copy to: Ian M. Williamson
Mantese and Rossman, P.C.
1361 E. Big Beaver Road
Troy, MI 48083

If to the Academy: Board President
New Bedford Academy
6315 Secor Road
Lambertville, MI 48144

- F. No Assignment. Neither party may, without the prior written consent of the other party, assign or transfer this Agreement nor any obligation incurred hereunder. Any attempt to do so in contravention of this Paragraph will be void and of no force and effect.
- G. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions of this Agreement will nonetheless continue in full force and effect without being impaired or invalidated in any way. In addition, if a court of competent jurisdiction may modify any provision of this Agreement such that it may be fully enforced, then that provision will be so modified and fully enforced as modified.
- H. Force Majeure. Notwithstanding any other provision of this Agreement, neither party will be liable for any delay in performance or inability to perform due to acts of God, or due to war, riot, embargo, fire, explosion, sabotage, flood, accident, labor strike or other acts beyond its reasonable control.

IN WITNESS WHEREOF, The Academy and MJ Management have caused this Agreement to be signed and delivered by their duly authorized representatives as of the date first set forth above.

NEW BEDFORD ACADEMY

MJ MANAGEMENT SERVICES, INC.

By: Jennifer L. Cherry
Its: Board President

By: Kathleen Utterback
Its: President

Dated: 10/12/10

Dated: 10/12/10