

MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement (the “Agreement”) is made and entered into as of July 1, 2016 by and between Drexel Foundation for Educational Excellence, Inc. d/b/a Thea Bowman Leadership Academy, an Indiana non-profit corporation (“TBLA”) and Phalen Leadership Academy-Indiana, Inc., an Indiana based non-profit corporation (“PLA”).

RECITALS

WHEREAS, TBLA has been granted a Charter School Contract (the “Charter School Contract”) from the Indiana Charter School Board (the “Sponsor”) for the operation of a charter school and pursuant to the Charter School Contract and in accordance with Indiana Code § 20-25.5-1, et seq., seek to enter into an agreement with PLA, an Educational Service Provider (“ESP”) to operate the Thea Bowman Leadership Academy (the “School”) as a charter school;

WHEREAS, TBLA has determined that it is in its best interest to contract with a qualified and competent ESP to manage the School; and

WHEREAS, PLA offers leadership, business, administrative, educational support, and human resource services relative to the operation, management, and maintenance of public charter schools. PLA has the expertise, training, capacity, and qualifications to perform the services contemplated under this Agreement and such other subcontracting arrangements as PLA may deem appropriate from time to time; and

WHEREAS, PLA and TBLA desire to create an enduring educational alliance through which PLA and TBLA will work together to promote educational excellence and innovation. To facilitate the organization, the parties desire to establish this arrangement for the operation, management, and maintenance of the network schools; and

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

ARTICLE I CONTRACTING RELATIONSHIP

1.1 **Authority.** The Board of Directors of TBLA (the “Board”) represents that it is authorized by law to contract with an ESP and for ESP to provide educational management services to TBLA’s charter schools. The Board is authorized by the Charter School Contract to supervise and control the Charter School, and is invested with all powers necessary or desirable for carrying out the educational program contemplated in this Agreement. The Board shall be structurally independent of the ESP and shall set and

approve broad school policies, such as the budget, curriculum, student conduct, school calendars, and dispute resolution procedures.

1.2 **Agreement.** TBLA hereby contracts with PLA, to the extent permitted by law, for the leadership, management, operation and maintenance of the charter schools in accordance with the educational goals, curriculum, methods of pupil assessment, admission policy and criteria, school calendar and school day schedule, age, grade range of pupils to be enrolled, educational goals, and methods to monitor compliance with performance of targeted educational outcomes, as provided in the Charter Application School Contract and as adopted by the Board. The obligations of PLA to TBLA shall be only as expressly set forth in this Agreement. Duties required to be carried out for the operation of the school, which are not expressly set forth herein as being the responsibility of PLA shall remain the sole responsibility of TBLA. The intent of the parties is that this Agreement, and the implementation thereof, shall be consistent with PLA's status as a tax-exempt entity under the Internal Revenue Code, including but not limited to the provisions prohibiting or restricting private benefit or inurement.

1.3 **Compliance with Charter School Contract.** PLA agrees to perform its duties and responsibilities under this Agreement in a manner that is consistent with the Thea Bowman Leadership Academy's obligations under the Charter School Contract issued by the Sponsor. The provisions of the Charter School Contract shall supersede any competing or conflicting provisions contained in this Agreement.

1.4 **Status of the Parties.** TBLA is an Indiana based non-profit company, and is not related to, or controlled by, PLA. PLA is an Indiana based corporation with an Internal Revenue Code Section 501(c)(3) designation and is not related to, or controlled by TBLA. The parties to this Agreement intend that the relationship created by this Agreement is that of an independent contractor and does not create an employer/employee relationship. Except as expressly provided in this Agreement, no agent or employee of PLA shall be deemed to be the agent or employee of TBLA. PLA shall be solely responsible for its acts and the acts of its agents, employees and subcontractors. The relationship between TBLA and PLA is based solely on the terms of this Agreement, and the terms of any other written agreements between TBLA and PLA.

1.5 **Retained Authority.** The Board shall retain the authority to, be responsible for, setting and approving reasonable rules, regulations, policies and procedures relative to broad school policies, including the budget, curriculum, student conduct, special education, school calendars, student recruitment and dispute resolution procedures.

1.6 **Mutual Warranties.** Each party to the Agreement warrants to the other that there are no pending actions, claims, suites or proceedings, to its knowledge, threatened or reasonably anticipated against or affecting it, which if adversely determined, would have a material adverse effect on its ability to perform its obligations under this Agreement.

1.7 **School Records.** TBLA hereby grants permission to PLA to access the financial, educational, and student records pertaining to the School (the "School Records") for

purposes related to the provision of services under this Agreement. The School Records are the property of TBLA, and such records are subject to provisions of the Access to Public Records Act (“APRA”) and applicable state law. Except as prohibited under the Sponsorship Agreement and applicable law, all TBLA records shall be physically or electronically available for inspection at the School upon reasonable request consistent with applicable federal and state laws. PLA shall otherwise comply with all applicable federal and state laws relating to the maintenance of all such records including the Family Educational Rights and Privacy Act (“FERPA”).

ARTICLE II TERM

2.1 **Term.** The initial term of this Agreement shall begin on July 1, 2016 (the “Effective Date”) and end on August 31, 2023 (the “Initial Term”).

2.2 **Extension of Term.** The Term of this Agreement may be extended at the option of the parties upon expiration of the Term. Either party may provide a notice of intent to extend the Agreement no less than thirty (30) days prior to expiration of the Term.

2.3 **Further Assurance.** The School and TBLA shall do and cause to be done all such acts, matters and things and shall execute and deliver all such documents and instruments as shall be required to enable the parties to perform their respective obligations under, and to give effect to the transactions contemplated by this Agreement. Notwithstanding the foregoing, neither party shall have an obligation to agree to any changes, which (a) materially increase that party’s obligations or materially reduce its rights under this Agreement or (b) materially alter any terms of the Agreement, including without limitation the economic terms.

2.4 **Termination of Agreement.** This Agreement shall be terminable (i) at any time by the mutual written agreement of TBLA and PLA; (ii) by PLA upon nonpayment of compensation as specified in Section 5.5; (iii) by PLA upon any material breach of the Agreement by TBLA; (iv) by TBLA upon PLA’s failure to remedy a material breach within 30 days after written notice from TBLA; or (v) by TBLA upon such grounds as are specified by the Charter School Contract.

2.5 **Change in Applicable Law.** If any change in Applicable Law is enacted after the Effective Date will have a material adverse effect on the ability of any Party to carry out its obligations under this Agreement, such Party may, at its election and upon written notice to the other Party, terminate this Agreement or request renegotiation of this Agreement for purposes of complying with such changes in Applicable Law, with any such renegotiation to be undertaken in good faith. If the Party elects renegotiation and the Parties are unable to renegotiate and agree upon revised terms within 30 days after such notice of renegotiation, then this Agreement will be terminated effective at the end of the school year in which such notice was given.

2.6 **Effect of Termination.** In the event of termination under this Agreement, each Party's obligations to the other with respect to the School shall terminate, except that any obligations that are imposed by Applicable Law, contemplated as surviving termination, or reasonably necessary to wind down the Parties' relationship created by this Agreement, including without limitation finalizing any reporting requirements imposed by Applicable Law or this Agreement, record retention requirements, reimbursement for damaged furniture or equipment, and payment owed for time periods prior to termination but not yet paid, shall survive termination. Termination of this Agreement shall not amount to a waiver of any cause of action, for breach of this Agreement or otherwise, that either Party may have against the other.

ARTICLE III PLA PROVIDED SERVICES

3.1 **Services.** PLA agrees to provide the following business and human resource services related to the management and operation of the charter school (the "Services") in a manner that is consistent with the Charter School Agreement and applicable law.

3.2 **Business Services.** PLA shall be responsible for the financial management of the School, including the accounting operations, general ledger management, financial reporting, payroll, employee benefits, payroll tax compliance, spending and administering any grant funding, participating in any audits, and preparing the School Budget for presentation to the Board for modification, amendment, or approval. This information shall be prepared in accordance with generally accepted accounting principles and as required by applicable law.

3.3 **Budgeting.** Beginning with the 2016-2017 School Year, PLA will prepare a proposed annual budget (the "School Budget") for submission and approval to the TBLA Board. The School Budget shall contain detail as required by the Charter School Agreement and applicable law, including without limitation the requirements set forth in Indiana law and federal law and regulations. The School Budget shall include all projected expenses and costs including, but not limited to, the projected cost of the services to be provided by PLA and/or subcontractors pursuant to the terms of this Agreement. The School Budget shall be prepared in accordance with generally accepted accounting principles and as required by applicable law.

3.4 **School Budget Submission.** PLA shall submit to the Board for its review and approval a preliminary School Budget, on or before _____ of the current fiscal year. The Board must notify PLA in writing that it approves the School Budget within thirty (30) days of submission by PLA approval shall not be unreasonably withheld or delayed. If the Board does not approve the School Budget, the Board shall specify in writing why it does not approve. PLA will respond to the Board's written comments within ten (10) days, at which time the Board shall have additional ten (10) days to either approve or to not approve the School Budget. If the Board does not notify PLA in writing that it either approves or does not approve the School Budget within thirty (30) days of submission by PLA, the Board shall be deemed to have approved the School Budget.

3.5 **Maintenance of Financial Records.** PLA shall keep accurate financial records pertaining to its operation of the School, together with all the School financial records prepared by PLA and retain all such records for a period of time as may be required by the Charter School Contract and applicable law. All financial records retained by PLA pertaining to the School will be available to the School, the Authorizer or the Indiana Department of Education for inspection and copying within two weeks of a written request to the extent practicable.

3.6 **Education Program and Goals.** Subject to oversight by TBLA, PLA agrees to implement the Education Programs and Goals as set forth in the Charter School Contract. PLA shall be responsible for: implementing and administering the educational program, day-to-day management, leadership, and operations, including the selection of instructional materials, personnel, equipment, technology, supplies necessary to implement the educational program, as well as the administration of extracurricular activities and program, selection, hiring, management and supervision of all employees assigned to perform services at the School. Operation and maintenance of the school building, to the extent consistent with any and all leases pertaining to School properties, subject to TBLA approval where necessary, and any other function necessary or expedient for the administration of this Agreement.

3.7 **Human Resource Management.** All school personnel (“PLA Staff”) shall be employees of PLA, unless as otherwise agreed to by TBLA and PLA; except that, for the purposes of the Indiana Worker’s Compensation Act, TBLA and PLA agree that both entities are “employers”, as defined by the Act, of the personnel at the School. PLA shall have the sole responsibility and authority to determine staffing levels; to select, evaluate, assign, discipline, transfer and terminate personnel at the School; to administer leaves, investigate and respond to any internal complaints related to employment matters (when advised of such complaints by TBLA), and respond to requests for accommodations by personnel at the School; and to otherwise make decisions related to employment of personnel at the School, all of which will be consistent with state and federal law.

- a. **Teachers.** PLA shall determine the number of teachers, qualified in the grade levels and subjects required, as are required by the School. The curriculum taught by such teachers shall be consistent with the educational program specified in the Charter School Contract. Each teacher shall have the credentials, certifications and experience as required under their contract, the Charter School Contract and applicable laws.
- b. **Support Staff.** PLA shall determine the number and the functions of qualified support staff required to efficiently operate the School.

3.8 **Payroll Matters.** The compensation of all PLA Staff working at the School shall be included in the School Budget. PLA shall administer the payroll and pay, out of the Operating Account, all salaries, wages, benefit premiums and costs, and payroll and other taxes to or on account of PLA Staff working at the School. PLA acknowledges and agrees that it is the sole and exclusive responsibility of PLA to make the requisite tax

filings, deductions and payments to the appropriate federal, state and local tax authorities on behalf of the School for and on behalf of all persons employed at the School to provide services under this Agreement. PLA Staff, contractors, and agents are not entitled to receive any compensation, benefits or other amenities in any form from TBLA, including but not limited to, mileage, conference fees and other expenses.

3.9 **Criminal Background Checks.** All applicants for employment with the School or PLA who intend to provide services to the School and who will have direct, ongoing contact with children within the scope of the individuals' employment shall be subject to an expanded criminal background check, within fourteen (14) days of hire. School volunteers who have direct, ongoing contact with children are also subject to the criminal background check.

3.10 **Training.** PLA shall provide (or contract to provide) training in its methods, curriculum, program and technology to all PLA Staff on a regular basis. PLA Staff shall receive at least the minimum hours of professional development required by applicable laws, where applicable. PLA shall pay all expenses related to training.

3.11 **Place of Performance.** PLA reserves the right to perform functions other than instruction, such as purchasing, professional development, and administrative functions, off-site, unless prohibited by the Charter School Contract or applicable law. The School will provide PLA with necessary and reasonable temporary office space at the School's facilities to perform the Services.

3.12 **Purchases.** Purchases made by PLA on behalf of the School, or with School funds will be the property of the School. PLA certifies that it will not markup the costs of any supplies, materials or equipment which may be procured by PLA on the School's behalf and that any and all supplies, materials and equipment procured by PLA on behalf of the School will be properly inventoried and maintained by PLA, in a manner which clearly identifies which property belongs to the School.

3.13 **PLA Staff Benefits.** The benefits provided to PLA Staff and the cost related thereto, will be incorporated and provided for within the School Budget through the budgeting processes provided in this Agreement as an expense of the School.

ARTICLE IV INTELLECTUAL PROPERTY

4.1 **Intellectual Property.** The Board acknowledges and agrees that in the course of the performance of this Agreement, the Board may be exposed to certain confidential information or trade secrets of PLA (or of one or more of PLA's licensors, subcontractors or agents), including but not limited to, know-how, technical information, systems, processes, computer software, training materials, training methods and practices, courseware and related information, trade name, trademark, websites, emails, email addresses, and any rights and privileges that PLA has acquired under licensure agreements, all of which shall be considered to be confidential in nature (the "Intellectual

Property”). The Board agrees, subject to the limitations of applicable Indiana law, that any Intellectual Property communicated to, or received or observed by, the Board shall at all times remain the property of PLA (or the licensor, subcontractor or agent holding the proprietary rights) and the Board understands and agrees that neither TBLA nor the School acquire any independent right under this Agreement to use the Intellectual Property. All such Intellectual Property, together with all copies or excerpts of such Intellectual Property, shall be promptly returned to PLA (or the applicable licensor, subcontractor or agent) upon request. The provisions of this section shall survive the termination or expiration of this Agreement.

ARTICLE V FINANCIAL ARRANGEMENTS

5.1 **Revenues.** All monies received by TBLA for operation of the School (the “Operational Expenses”) shall be deposited in a separate depository account (“Operating Account”) with a financial institution that is approved by the Board and acceptable to PLA, within three (3) business days of receipt, provided however, upon receipt of notice from PLA, the Board agrees to pay all such funds owing under this Agreement directly to the account or party specified in such notice. The signatories on the Operating Account shall be limited to specifically designated members of the Board or to those individuals specifically designated by the Board. Interest income earned on the Operating Account shall accrue to the Operating Account. The term “Revenues” shall include all funds received by or on behalf of the School.

5.2 **Selection of Auditor.** The Board shall have the sole responsibility and authority to select and retain an independent auditor for the School. Subject to applicable law, all finance and other records of PLA related to PLA’s operation and management of the School will be made available to the independent auditor.

5.3 **Expenditures.** School revenues shall be expended by PLA in accordance with the approved School Budget and as otherwise authorized by the Board (except in emergencies). The expenditure of revenues received from governmental entities shall be consistent with all applicable regulations and policies, and in the case of private donations, according to applicable lawful directives of the donor.

5.4 **Compensation.** TBLA shall pay to PLA the management fee detailed in Section 5.5 as reasonable compensation for the Services PLA will provide to the School during the term of this Agreement. No portion of the compensation paid by TBLA to PLA under this Agreement is based on a share of the net profits of the School.

5.5 **Management Fee.** For the term of this Agreement, TBLA will pay PLA a fee equal to Five Hundred Thousand (\$500,000) Dollars (the “Management Fee”). PLA will receive the monthly installment of its Management Fee in advance on or about the fifteenth (15th) day of each month, but in no even later than the date that the School receives payments from the State of Indiana.

5.6 **Payment of Costs.** The parties acknowledge the School is obligated to pay all costs and expenses associated with the operation of the School, including but not limited to all PLA Staff and benefit costs referenced in Section 3.13.

ARTICLE VI CONFLICT OF INTEREST

6.1 **Conflict of Interest.** Any Board member, officer of TBLA, or individual who is to hold a leadership position in the operation of the School, including any administrative position (together, “**Interested Persons**”), any family member of any Interested Person, or any organization in which the Interested Person has a more than a 2% ownership position, which has any direct or indirect financial interest in PLA, must disclose to the Board, or to a committee designated by the Board as having the authority to review potential conflicts of interest, the existence of his or her financial interest may be given the opportunity to disclose facts material to that interest to the Board or committee. A “financial interest” includes any current or potential ownership interest in, investment interest in, or compensation arrangement with PLA. The term “family member” includes any spouse, parent, child, or sibling of the Interested Person. The disinterested members of the Board or committee, (that is, all members except for any Interested Person) will evaluate the impact of the Interested Person’s financial interest, assess whether a conflict of interest arises from the financial interest, and determine what action, if any, is appropriate with regard to the financial interest and any conflict of interest. The Board or committee shall conduct whatever additional investigation is considered appropriate under the circumstances.

ARTICLE VII FACILITIES AND ASSETS

7.1 **Facilities.** TBLA currently operates two (2) facilities; an elementary school and a high school (the “**Facilities**”). The elementary campus serves grades K-6 and is located at 975 W. 6th Avenue, Gary Indiana 46402. The junior and senior high campus serves grades 7-12 and is located at 3401 W. 5th Avenue, Gary Indiana 46406. PLA will provide Services at the Facilities. At the end of the Term, the Board agrees that, should it become necessary for the continued operation of the School, PLA, or an affiliate, may rent, lease or purchase the Facilities at or below fair market value. Any agreement between PLA or an affiliate, for the use of the Facilities shall contain provisions, which, at a minimum, permit the charter school to continue to use such facility until such time as a new facility may be located should this Agreement be terminated.

ARTICLE VIII INDEMNIFICATION

8.1 **Indemnification.** To the extent permitted by Applicable Law, each Party will release the other Party and all of its respective employees, officers, directors, trustees, subcontractors, and agents from any losses, liabilities, damages, and claims that may arise out of, or by reason of, any act or omission of the releasing party under this Agreement.

This mutual release applies only to the extent that it reiterates existing law and enforces each Party's obligations as may be permitted by law. This mutual release does not and shall not be construed to expand or increase the liability or scope of its liability of either Party. To the extent that this provision purports to create liability or potential liability on the part of either Party beyond its legal authority or power to incur liability, this Section 8.1 is invalid.

ARTICLE IX CONFIDENTIALITY

9.1 **Commitment to Preserve.** PLA shall maintain the confidentiality of all finance, personnel, student and other records as required by law. PLA shall also maintain the confidentiality of all Confidential Information (defined in Section 9.2 below), received or accessed by its employees and agents during the course of providing services pursuant to this Agreement.

9.2 **Confidential Information.** Confidential Information includes paper and electronic student education, and/or medical information supplied by the School and/or its students or parents/guardians to PLA and includes, without limitation, "education records" and "education record information" as defined under FERPA and IDEA; "protected health information" as defined under HIPAA; "relevant records" as defined under Section 504; and social security numbers. Confidential Information also includes any new records created and maintained by PLA under this Agreement using existing Confidential Information.

ARTICLE X INSURANCE

10.1 **Insurance Coverage.** The School and PLA shall keep and maintain general liability insurance coverage in the amounts required (i) by the Charter School Contract as to the School, (ii) to fully comply with the terms and conditions of any agreement to which either is a party, or (iii) by sound business practices ("Insurance Standards"), during the Term of this Agreement. Such policies shall name the other party and its affiliates and their respective directors, officers, employees, subcontractors, and agents as additional insureds under such policies. Each party will comply with any information requests from its insurer(s) and all reporting requirements applicable to such insurance.

10.2 **Workers' Compensation.** The School and PLA shall each maintain workers' compensation insurance as required by law, covering their respective employees, including the maintenance of such insurance with respect to the School Leader, teachers and support staff of the School, the cost of which shall be provided for the School's budget.

**ARTICLE XI
MISCELLANEOUS**

11.1 **Sole Agreement.** This Agreement supersedes and replaces any and all prior agreements and understandings between TBLA and PLA.

11.2 **Force Majeure.** Notwithstanding any other sections of this Agreement, neither party shall 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 control.

11.3 **Governing Law/Waiver of Jury Trial.** The rights of all parties hereto shall be subject to the jurisdiction of and be construed according to the laws of the State of Indiana, and subject to venue in Indiana. The School and the Board hereby waive the right to a jury trial in any action, proceeding or counterclaim brought by either PLA or the Board against the other.

11.4 **Agreement in Entirety.** This Agreement constitutes the entire agreement of the parties.

11.5 **Severability.** In the event that any provisions of Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, all other provisions of the Agreement shall remain in full force and effect, such invalidity, illegality or unenforceability shall not affect the validity, legality and enforceability of all other provisions.

11.6 **Counterparts, Facsimile Transmissions.** This Agreement may be executed in identical counterparts, all of which will be deemed an original, but all of which will constitute one Agreement.

11.7 **Official Notices.** All notices and other communications required by the terms of this Agreement must be in writing and sent to the Parties hereto at the addresses set forth below. Unless otherwise agreed in writing by the receiving Party, notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) reputable overnight carrier, postage prepaid; (iii) electronic mail if sent to the email address set forth below; or (iv) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given two school days after mailing as described in clauses (i) and (ii) above, on the date of personal delivery, or on the date of email transmission if on a business or school day during normal business hours (or, if not, the next succeeding business day). The addresses of the Parties are:

For TBLA:

For ESP:

Earl Martin Phalen

11001 Marina Drive, #410
Quincy, MA 02171

11.8 **Assignment.** Except as expressly provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party, which may be withheld at each Party's sole discretion.

11.9 **Amendment.** This Agreement may not be altered, amended, modified, or supplemented except in a written document executed by the Parties.

11.10 **Waiver.** No waiver of any provision of this Agreement will be effective unless made in writing, no waiver of any breach of any provision of this Agreement shall be held as a waiver of any other or subsequent breach, and no waiver shall constitute a waiver of any other provision of this Agreement unless otherwise expressly stated.

11.11 **Severability.** The Parties intend that each provision of this Agreement constitutes a separate agreement between them. Accordingly, the provisions of this Agreement are severable and, in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the Parties, amended and limited to the extent necessary to render the same valid and enforceable.

11.12 **Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

11.13 **No Third-Party Rights.** This Agreement is made for the sole benefit of IPS and the Operator and their respective successors and permitted assigns. No person or entity who is not a Party to this Agreement shall have, or be deemed to have, any rights under this Agreement or any relationship with either of the Parties by virtue of this Agreement, including without limitation any relationship in the nature of a third-party beneficiary or fiduciary.

11.14 **Headings and Captions.** The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

The parties herein have agreed to the foregoing terms and conditions. This Agreement is hereby entered into on the _____ day of _____, 2016.

PHALEN LEADERSHIP ACADEMY-INDIANA, INC.

By: _____

Name: _____

Title: _____

DREXEL FOUNDATION FOR EDUCATIONAL EXCELLENCE, INC. d/b/a THEA
BOWMAN LEADERSHIP ACADEMY

By: _____

Name: _____

Title: _____

DRAFT