

## INDEPENDENT CONSULTING AGREEMENT

This Independent Consulting Agreement (the "Agreement") is made and entered into as of 1/17, 2019 (the "Effective Date") by and between MAST Financial Group, LLC, a Michigan limited liability company ("MAST") and The Village Charter School, an Idaho Charter School (the "School")

### Background

The school is a charter school organized as a public school under the Idaho Code (the "Code"). The School has been issued a contract (the "Contract") by the Idaho Public Charter School Commission (the "Authorizer") to organize and operate a charter school. The Authorizer is the statutory authorizing body. The Code permits a charter school to contract with persons and entities for the operation and management of the charter school.

The School and MAST desire to enter into an independent contracting relationship whereby MAST will be engaged to provide the services as set forth in this Agreement (the "Services"). This Agreement between the School and MAST sets forth the understandings with respect to the relationship between them, the scope of their relationship and the limitations on the relationship between the parties.

### Agreement

Now, Therefore, in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

#### 1. Relationship of the Parties and Other Matters.

1.1 Authority. The School represents that (a) it is authorized by law to contract with a private entity for the provision of services to the School, (b) it has been issued a Contract from the Authorizer to organize and operate a charter school, (c) it is authorized by the Authorizer to supervise and control the School, and (d) it is vested with all powers necessary or desirable for carrying out the duties contemplated in this Agreement. To the extent permitted by law, the School hereby authorizes and grants to MAST, the necessary authority and power to perform under this Agreement.

1.2 Relationship of the Parties. MAST is not a division, subsidiary or any part of the School. The School is a non-profit corporation authorized to operate a public charter school under the Code. The School is not a division or any part of MAST. The relationship between the parties hereto was developed and entered into through arms-length negotiation and is based solely on the terms of this Agreement.

1.3 MAST as Independent Contractor. The parties to this Agreement intend that the relationship of MAST to the School is that of an independent contractor, and not an employee of the School. No agent or employee of MAST shall be determined to be an agent or employee of the School, except as expressly acknowledged, in writing, by the School.

1.4 No Related Parties or Common Control. The parties hereby agree that none of the voting power of the governing body of the School will be vested in MAST or its directors, members, managers, officers, shareholders, or employees. Further, the School and MAST are not, and shall not become: (a) members of the same controlled group, as that term is defined in the Internal Revenue Code of 1986, as amended (the "IRS Code"); or (b) related persons, as that term is defined in the IRS Code.

1.5 The Board. The Board is the governing body with oversight responsibilities over the School. The parties acknowledge that throughout this Agreement the term "Board" and the term "School" are sometimes used interchangeably in some sections for the sole purpose of readability based on the nature and subject-matter of the article/section. This Agreement is executed by a duly authorized member of the Board (on behalf of the School), and by so executing this Agreement the Board acknowledges and accepts all obligations and

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responsibilities related to the Board as set forth in this Agreement.

## 2. Term

2.1 Term. The term of this Agreement shall commence January 21, 2019 and be completed by March 21, 2019.

## 3. Compensation and Reimbursement of Costs

3.1 Compensation for Services. Engagement fee of \$15,000 plus expenses. (such applicable amount being the "Fee").

3.2 Payment of Fee. Fee to be paid in three installments; \$5,000 on 1/21/2019, \$5,000 on 2/21/2019 and \$5,000 on 3/21/2019. Any Fee or installment thereof not received within 10 days when due shall be subject to a late charge equal to 5% of the amount due. Any fee or installment thereof not received within 30 days when due shall begin to accrue interest at the rate of 1% per month or the highest legal rate, whichever is less, until paid.

3.3 In addition to the Fee, the School shall reimburse MAST on request for any expenses incurred by MAST on behalf of the School for necessary travel to the School's premises at the School's request.

3.4 Other Institutions. The School acknowledges that MAST may enter into agreements similar to this Agreement with other public or private educational schools or institutions (the "Institutions"). MAST shall maintain separate accounts for reimbursable expenses incurred on behalf of the School and for reimbursable expenses incurred on behalf of the Institutions. MAST shall only charge the School for reimbursable expenses incurred on behalf of the School.

## 4. Independent Consulting

4.1 Services. The Services shall include, but are not limited to, the following:

- (a) Operations Review
- (b) Administration and Governance Review
- (c) Facilities Inspection

## 5. Termination

5.1 Termination by MAST. MAST may terminate this Agreement prior to the end of the Term in the event the Board fails to remedy a material breach of this Agreement within the time frames required herein. The School has ten (10) days after notice from MAST to remedy a breach that involves the payment of a Fee or other sums owed by the School to MAST. The School has thirty (30) days after written notice from MAST to remedy all other material breaches. Termination prior to the end of the Term shall not relieve the School of any financial or other obligations to MAST outstanding as of the date of termination. Failure by MAST to (a) declare a breach, (b) place the School on notice thereof, or (c) fail to exercise or exert any remedy available to MAST under

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this Agreement or applicable laws, shall not be deemed a waiver of MAST's right and remedies whatsoever.

5.2 Termination by School. The School may terminate this Agreement prior to the end of the Term in the event that MAST fails to remedy a material breach of this Agreement within thirty (30) days of written notice from the School describing such material breach.

5.3 Termination of the Charter Contract. This Agreement will immediately terminate upon the School ceasing to be a party to a valid and binding Contract.

5.4 Change in Law. If any federal, state or local law or regulation, or court or administrative decision, or attorney general's opinion (collectively referred to in this Agreement as the "applicable laws") has a substantial and material adverse impact (as reasonably determined by the party suffering the impact) on the ability of the impacted party to carry out its obligations under this Agreement, then the impacted party, upon written notice, may request a renegotiation of this Agreement. If the parties are unable or unwilling to successfully renegotiate the terms of this Agreement within ninety (90) days after the notice, and after making good faith efforts which shall include, but not be limited to, the use of a third party arbitrator and/or alternative dispute resolution process, the impacted party may terminate this Agreement as of the end of the then-current academic year.

5.5 Obligations upon Termination or Expiration. Upon any termination or the expiration of this Agreement, the parties shall remain obligated for all financial or other obligations due at the time of the termination or expiration.

## 6. Indemnification & Cooperation

6.1 Indemnification of MAST. To the extent permitted by law, the School shall indemnify, save, and hold harmless MAST and all of its employees, officers, directors, subcontractors, and agents against any and all claims, demands, suits or other forms of liability that might arise out of or by reason of any noncompliance by the School with any agreements, covenants, warranties or undertakings of the School contained in or made pursuant to this Agreement, and any misrepresentations or breach of the representations and warranties of the Board and the School contained in or made pursuant to this Agreement. In addition, the School shall reimburse MAST for any and all legal expenses and costs associated with the defense of any such claim, demand or suit.

6.2 Indemnification of the School. MAST shall indemnify, save, and hold harmless the School and all of its employees, officers, directors, subcontractors, and agents against any and all claims, demands, suits, or other forms of liability that may arise out of, or by reason of any noncompliance by MAST with any agreements, covenants, warranties, or undertakings of MAST contained in or made pursuant to this Agreement, and any misrepresentation or breach of the representations and warranties of MAST contained in or made pursuant to this Agreement. In addition, MAST shall reimburse the School for any and all legal expenses and costs associated with the defense of any such claim, demand, or suit.

6.3 Indemnification for Negligence. Each party to this Agreement shall indemnify and hold harmless the other, and their respective boards of directors, partners, officers, employees, agents, and representatives, from any and all claims and liabilities which they may incur and which arise out of the negligence of the other party's trustees, directors, officers, employees, agents, or representatives.

6.4 Mutual Duty to Cooperate. The parties acknowledge that each party has a duty and obligation to cooperate with the other party, and further that such duty to cooperate is a material part of this Agreement. The purpose of the duty to cooperate is to enable each party to perform its obligations as efficiently as possible. The duty to cooperate shall include all areas of the business of the School and the Services, including but not limited to potential and actual issues related to employees or teachers as they arise. The duty to cooperate also includes reasonable assistance in the event of litigation or a dispute involving a party related to the School or the Services provided, such as provision of testimony, records and/or documents reasonably related to the litigation or dispute (which are not otherwise protected from disclosure).

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## 7. Insurance

7.1 School Insurance. The School shall maintain such policies of insurance coverage in the amounts as required by the Contract. MAST shall comply with any reasonable information or recording requirements under the School's policies of insurance), to the extent reasonably practicable. The School shall name MAST as an additional insured on its general liability policy and shall provide MAST with a certificate evidencing such coverage.

7.2 MAST Insurance. MAST shall maintain separate general liability and umbrella insurance coverage, with the School listed as an additional insured on all policies.

7.3 Workers' Compensation Coverage. Additionally, each party shall maintain workers' compensation insurance, as required by state law, covering their respective employees.

## 8. Warranties and Representations

8.1 Warranties and Representations of the School. The School represents to MAST that (a) it has the authority under law to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (b) its actions have been duly and validly authorized, and (c) it will adopt the necessary resolutions or expenditure approvals required for execution of this Agreement.

8.2 Warranties and Representations of MAST. MAST represents and warrants to the School that (a) it is a Michigan limited liability company in good standing duly authorized to conduct business, (b) it has the authority under applicable laws to execute, deliver and perform this Agreement and to incur the obligations provided for under this Agreement, (c) its actions have been duly and validly authorized, and (d) it will adopt any and all resolutions required for execution of this Agreement.

8.3 Mutual Representations and Warranties. Each party represents and warrants to the other party that except as disclosed in writing to the other party, to its knowledge, there are no pending actions, claims, suits, or proceedings, whether threatened or reasonably anticipated, against or effecting it, which if adversely determined would have a material adverse effect (as might be reasonably determined by the non-affected party if disclosed) on its ability to perform its obligations under this Agreement.

## 9. Miscellaneous

9.1 Entire Agreement. This Agreement supersedes and replaces any and all prior written or oral agreements and understandings between the School and MAST. This Agreement constitutes the entire agreement of the parties.

9.2 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, accident, labor strike, flood, terrorism, or other acts beyond its reasonable control.

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The School: The Village Charter School  
c/o \_\_\_\_\_  
\_\_\_\_\_

MAST: MAST Financial Group, LLC  
c/o \_\_\_\_\_  
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9.5 Amendment. This Agreement may only be amended in writing, signed by a duly authorized representative of each party.

9.7 <sup>a</sup> Waiver. No waiver of any portion 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 in writing.

9.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

9.11 Survival of Termination. All representations, warranties, and indemnities made in this Agreement shall survive any termination or expiration of this Agreement without limitation.

9.12 Delegation of Authority; Compliance with Laws. Nothing in this Agreement shall be construed as delegating to MAST any of the powers or authority of the Board which are not subject to delegation by the Board in accordance with all applicable laws. The parties agree to comply with all applicable laws.

9.13 Execution. The parties may execute this Agreement by facsimile, by .pdf, or in counterparts. A facsimile or photographic copy of this Agreement may be relied upon by either party, or any third party, as if it were an original signature copy. If this Agreement is executed in counterparts, the separate counterpart signature pages shall be combined and treated by the parties, or any third party, as if the separate counterpart signature pages were part of one original signature copy.

9.14 Review by Independent Counsel. The parties agree that each has reviewed, or had the opportunity to review, this Agreement with its own independent legal counsel prior to the execution of this Agreement.

The undersigned hereby execute this Agreement as of the Effective Date.

MAST Financial Group, LLC, a Michigan limited liability company

By: 

Its: President and CEO

The Village Charter School, an Idaho Charter School

By: 

Its: Board Chairman