

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
NEW HAVEN BOARD OF EDUCATION
AND
RENAISSANCE SCHOOL SERVICES, LLC

A11-0225

PART I

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the ____th day of May 2011, by and between Renaissance School Services, LLC (RSS), a Delaware limited liability company, and New Haven Board of Education, (the “District”), a school district organized under the laws of the State of Connecticut (the “State”). The effective date of this Agreement shall be May 17, 2011 (the “Effective Date”). RSS and the District agree to the terms set forth below and in the appendices, exhibits, and schedules attached hereto and incorporated by reference herein.

WHEREAS, the District is a school district located in New Haven, Connecticut; and

WHEREAS, RSS is a provider of educational management services with a focus on assisting schools in need of turnaround to improve the school’s performance and overall educational program; and

WHEREAS, the District desires to engage RSS and RSS desires to provide certain services (as more fully set forth herein) to the District in an effort to help turn around the Roberto Clemente Leadership Academy (the “School”);

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article 1: Relationship

1.1 Governance

The District is governed by a Board (the “Board”) that is responsible for overseeing the operations and performance of the District at large and by operation, the School. Management of the day-to-day affairs of the District is vested in the Superintendent and his or her staff. For the purposes of this Agreement, the District’s main point of contact with RSS shall be the Superintendent and/or his or her designees(s). The District shall provide prompt written notice to RSS of any changes in RSS’ point(s) of contact to ensure uninterrupted communication between the parties.

1.2 Authority to Contract and Perform; Financial Ability; Delegation of Authority.

The District represents and warrants that, under applicable Law, it is vested with the power to contract with RSS to provide the Services contemplated in this Agreement and possess the financial ability to pay for such Services pursuant to the terms and conditions set forth below. RSS represents and warrants that it, and its employees, possess the credentials necessary to carry out its obligations hereunder. In order for RSS to fully and effectively perform the services contemplated by this Agreement.

1.3 Representations by District and RSS

Both District and RSS represent that each party has relied upon the information provided by the other party during the course of negotiating this Agreement and such information is true and accurate to the best of the party's knowledge providing such information. Each party further represents that throughout the course of the Term of the Agreement (and thereafter as may be required), it shall provide all additional information which comes into its possession that the other party may require to perform its obligations under this Agreement.

1.4 Term

(a) Unless terminated in accordance with the provisions of this section, this Agreement shall remain in effect until June 30, 2011. It is acknowledged and agreed between the parties that they each anticipate executing a professional services agreement for the 2011-2012 school year coincident with the termination hereof, in substantially the same form as this Agreement.

(b) This Agreement shall not be terminated by the District prior to June 30, 2011 for any reason other than for cause, after RSS has been provided with notice and opportunity to cure per Section 5.1 below. The parties agree that termination for cause may be initiated due to lack of School Improvement Grant ("SIG") Funding being awarded to the District and that the District may, without penalty, terminate the agreement upon notice that SIG funding has not been awarded.

Article 2: RSS & District Roles and Responsibilities

2.1 RSS Services; Performance Agreement

(a) RSS shall provide to the School comprehensive whole school management services (the "Services"). RSS shall provide the Services under the oversight of the District, and shall provide monthly reports to the District's designee in a form mutually agreed upon by the parties. Additionally, RSS On-Site Personnel and senior management of RSS shall also be available from time to time to discuss management issues under this Agreement with the District senior staff as well as members of the District's Board and other government officials, as may be required. All such reports shall be produced, at RSS's option, in pdf form only.

(b) RSS shall also be responsible for meeting certain performance metrics as set forth in the performance agreement (the "Performance Agreement") attached hereto as Appendix 1 and incorporated by reference herein.

(c) RSS shall **not** provide the services described in Appendix 2.

2.2 Personnel

(a) On-Site Personnel.

In order to effectively deliver the Services and meet the requirements of the Performance Agreement set forth in Section 2.1 above, it shall be necessary for RSS to directly employ and supervise certain School-based personnel ("RSS On-Site Personnel"). Therefore, RSS and the District shall plan for the hiring and/or transfer of the School's senior management to RSS' payroll and management, effective July 1, 2011. Notwithstanding the foregoing, should RSS identify prior to July 1, 2011 an individual who is not employed by the District who RSS desires to hire and place at the School in an RSS On-Site Personnel position, RSS may do so in its sole and absolute discretion and RSS shall begin to receive payment for that individual pursuant to section 2.5(b) below as of that individual's start date On-Site. All RSS On-Site Personnel shall be required to complete RSS' standard employee paperwork, including, but not limited to its standard confidentiality and non-compete agreements. The positions RSS requires and the District has agreed to be transferred are set forth in Appendix 3. The District and RSS shall work together in good faith to insure, to the extent possible under the law, maintenance of all retirement benefits and seniority credits for District staff transferred to RSS payroll. As RSS begins to review the School's structure and identifies its needs for personnel change, RSS may, in its sole reasonable discretion, eliminate certain RSS On-Site Personnel. RSS shall be required to replace such personnel in order to fulfill the agreed upon staffing levels more fully set forth in Appendix 3. Subject to appendix 3 the obligation of the District to pay for On-Site Personnel commences when the first On-Site Personnel individually begin work at the school. Compensation for vacancies that occur after the On-Site Personnel being is defined in Section 2.5(b) below. Conversely, RSS may determine that additional positions need to be added and RSS shall propose such additions to the District. Such additions, if any, would be subject to the availability of funding and require a mutually agreed upon amendment to this agreement.

(b) **Restrictions on soliciting RSS HQ Personnel.** During the Term of this Agreement and for two (2) years after its expiration or termination, the District agrees that it shall not hire or attempt to hire any RSS HQ Personnel. Since it would be difficult to measure the damages RSS would suffer in the event that the District hired any RSS Personnel in violation of this section, the parties agree that the District shall pay liquidated damages to RSS in such event in an amount equal to 200% of the employee's total annual compensation. Upon termination of the Agreement RSS shall notify the District of all RSS HQ Personnel who would be covered under this provision and RSS shall, upon request, review the total compensation of such employees with the District. This provision shall not apply to any On-Site Personnel. RSS shall have the right to waive this provision in writing upon the request of the District or a covered employee.

If three months after termination or expiration of this Agreement any RSS On-Site Personnel have not returned to the District's employ, such employees shall be deemed RSS HQ Personnel and subsequently subject to the restrictions in this Section 2.2(b).

(c) Other than the RSS On-Site Personnel set forth in Appendix 3, RSS is neither obligated nor expected to provide any additional RSS On-Site Personnel at the School.

2.3 School Budget

It is understood by the parties that the District is responsible for funding all of the staff positions, functions, services, or expenses required to operate the School in the manner consistent with the way all other schools within the District are supported with the exception of the RSS On-Site Personnel mentioned in Appendix 3. RSS does not have any obligation to pay for any of the operating expenses of the School.

2.4 Student Records

The District hereby designates RSS and all RSS Personnel (On-Site and HQ) providing Services or support at the School as having a legitimate educational interest such that they are entitled to access to education records under 20 U.S.C. §1232g of the Family Educational Rights and Privacy Act. RSS, its officers and employees shall comply with the Family Educational Rights and Privacy Act at all times. Accordingly, RSS shall not disclose, share or otherwise disseminate any information, documents, reports, papers, etc. that would violate RSS' obligations under the Family Educational Rights and Privacy Act.

2.5 RSS Compensation

For the services provided by RSS under this Agreement, the District shall pay RSS as follows:

(a) **Start Up Fee:** The District shall pay RSS a fee commencing upon the Effective date of this Agreement as follows:

1. **Retainer:** The District shall pay to RSS a retainer of \$65,000 (the "Retainer") upon execution of this Agreement. This Retainer shall be paid back to the District by RSS on June 30, 2012.
2. **Management Fee:** The District shall pay to RSS the monthly Management fee, described in Section 2.5(c) below, pro-rated from the effective date of the Start-Up through June 30, 2011.

(b) **On-Site Personnel Costs.** Effective on the actual start date of the RSS On-Site Personnel at the School, which may be during the term hereof, which in no event is expected to be later than August 1, 2011, the District shall pay to RSS a monthly fee equal one-twelfth (1/12th) of 125% of RSS's cost for the annual salaries of the RSS On-Site Personnel set forth in Appendix 3 (as may be amended in accordance with this Section and Section 2.2 above). The fee payable under this Section 2.5(b) shall only be payable with respect to the periods that the RSS On-Site Personnel positions set forth in Appendix 3 are filled. If an On-Site position remains unfilled for a period of two (2) months, the fee shall be adjusted for the period of time that position remains unfilled, less two (2) months. If an RSS On-Site Personnel position is eliminated in a restructuring, the fee shall be adjusted as of the effective date of the position's elimination.

(c) **Management Fee.** In addition to the On-Site Personnel Costs fees, District shall pay to RSS on an annual basis a management fee equal to \$800.00 per pupil enrolled at the School (the "Management Fee"). For the purposes of setting the number of enrolled students to calculate the Management Fee, the student enrollment shall be presumed to be

538 students. All monthly fees shall be due no later than the last day of the month for that month's services (e.g., the fee for June 1, 2011 services shall be due no later than June 30, 2011).

2.7 Proprietary Information

The District acknowledges that RSS has a proprietary interest in the training materials, policies, processes, programs, and methodologies developed by RSS (collectively, RSS Proprietary Information), and that the above RSS Proprietary Information is core to RSS's business, and as such, is of significant value. RSS owns and shall own all existing, and hereafter created, copyrights, trademarks, and patents, and other intellectual property rights with respect to all training materials, policies, process, programs, and methodologies that are developed by RSS, its employees, agents or subcontractors. RSS shall have the sole and exclusive right to license any of its Proprietary Information to third parties. The District shall take all measures reasonably necessary to protect the Proprietary Information from being disclosed to or used by any third party without RSS's prior written approval, which may be withheld in its sole and absolute discretion. Upon RSS' request, the District shall require all District personnel or agents to agree in writing that they shall not disclose to any third party, publish, copy, transmit to any third party, modify, alter, or utilize the Proprietary Information without RSS's prior written consent. Nothing herein contained shall be construed in a manner that would cause the District to act or fail to act in a manner that would cause the District to be in violation of any State open records law.

RSS acknowledges that the District remains the central repository of all student records and information. In addition, the District maintains a variety of data systems and records that have been created and maintained to support the schools within the District. RSS acknowledges that all requests for information or the dissemination of information will be presented to the District for review and approval. No unauthorized dissemination of records or practices shall be permitted. This provision shall not limit RSS's ability to utilize summary information or other publically available information in its materials.

Subsequent to the termination of this Agreement, the District may continue to make use of RSS Proprietary Information developed or put in place at the School during the term of this Agreement, without any payment or penalty, but shall continue to be subject to the above requirements regarding non-disclosure. For the avoidance of any doubt, however, the District shall not be permitted (without RSS' prior written consent) to utilize Proprietary information developed by RSS for the School at any other school within the District.

2.8 RSS Property and Equipment.

From time to time throughout the Term of this Agreement, RSS may bring certain property and equipment (including, but not limited to, servers, computers, printers, fax machines, scanners, copiers, etc) into the School for use by RSS On-Site Personnel, RSS HQ Personnel, and other School employees, as required. Any property and equipment brought onto School property by RSS shall remain the sole property of RSS, and RSS may remove, replace or exchange any such property or equipment in its sole discretion at any time. RSS shall be ultimately responsible for the maintenance and security of its property and equipment; however, the District shall use its best efforts to ensure that RSS' property and equipment -- as well as the School's -- are adequately secured and protected from opportunity for damage of theft.

Article 3: Indemnification

3.1 Legal Representation and Costs; Cooperation

Except as expressly provided herein or in connection with insurance coverage 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. Except where there is an actual or potential conflict of interest, the District and RSS shall fully cooperate with legal counsel for one another in connection with any legal claim asserted against either of them. Notwithstanding any other provision of this Agreement, neither party shall settle or compromise any third party claim against the other without the express written permission of that party.

3.2 Indemnification by RSS

RSS shall indemnify, defend, and save and hold the District, the Board, their employees, officers, directors, subcontractors, and agents, harmless against any and all claims, demands, suits, costs, judgments, or other forms of liability to third parties, actual or claimed, including reasonable attorneys' fees (collectively, "Losses"), for injury to property or persons, occurring or allegedly occurring due to the negligent conduct or willful misconduct of RSS or of its employees, managers, members, officers, directors, subcontractors, or agents, during the term of this Agreement or any renewal thereof, except to the extent such Losses may arise due to the negligence or willful misconduct of the District or its employees or agents. Upon timely written notice from the District, RSS shall defend the District, the Board, their employees, officers, directors, subcontractors, and agents in any such action or proceeding brought thereon.

3.3 Indemnification by District

To the extent legally permissible, the District shall indemnify, defend, and save and hold RSS, its employees, managers, members, officers, directors, subcontractors, and agents, harmless against any and all Losses, for injury to property or persons, occurring or allegedly occurring due to the negligent conduct or willful misconduct of the District or of its employees, officers, directors, subcontractors, or agents, during the term of this Agreement or any renewal thereof, except to the extent such Losses may arise due to the negligence or willful misconduct of RSS or its employees or agents. Upon timely written notice from RSS, the District shall defend RSS, its employees, managers, members, officers, directors, subcontractors, and agents in any such action or proceeding brought thereon.

3.4 No Waiver

The foregoing provisions 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 State governmental immunities laws.

3.5 Limitation of Liability

With the exception of amounts required to be covered by any insurance specified in Section 4.2 (with respect to which, so long as RSS performs its obligations as set forth in Section 4.2, RSS shall not be liable for beyond the amount of any applicable insurance

coverage), RSS shall not under any circumstances be liable, on account of any breach of this contract, for more than the aggregate amount of the fees, if any, it received pursuant to this Agreement during the last twelve (12) months of the Term prior to the date of any Losses.

Article 4: Insurance

4.1 District Insurance

The parties understand that the District is a self-insured entity. Such status, which is applicable to schools under the jurisdiction of the District, shall continue to be applied to Clemente, including any and all student accident policies or coverage which the District shall, in its discretion choose to maintain. Any alterations in the District's self-insured status shall be noticed to RSS.

4.2 RSS Insurance

RSS shall maintain insurance consistent with applicable law, all with Lloyd's of London or carriers rated at least A- or higher by A.M. Best, including

- Commercial general liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
- Automobile liability insurance of one million dollars (\$1,000,000); and
- Professional Liability insurance with limits of one million dollars (\$1,000,000);
- Workers Compensation insurance for RSS employees.
- Excess liability insurance with limits of five million dollars (\$5,000,000) (applicable to all of the coverages described above except professional liability).

The District will be shown as an additional insured on all of the above insurance policies with the exception of Professional Liability and Workers Compensation.

4.3 Coordination of Risk Management

The parties 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 Commonwealth governmental immunity laws and applicable insurance policies. Neither 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.

Article 5: Termination

5.1 Termination by District

The District may terminate this Agreement for cause prior to the end of the Term if RSS materially breaches any of the material terms and conditions of this Agreement and fails to remedy such breach within 30 days after receipt of written notice of such breach from the District, unless such breach is incapable of being cured within 30 days, but is capable of being cured within 90 days, in which case this Agreement may be terminated if RSS, within 30 days after receipt of such written notice, fails to initiate and diligently pursue a cure for such breach or if RSS fails to accomplish a cure for such breach within 90 days of such written notice.

Upon receipt of the notice of intent to terminate provided in the preceding paragraph, the cause for termination shall immediately be submitted to the Superintendent and RSS's Chief Executive Officer, or their respective designees, for consideration and discussions to attempt to resolve the matter. If these representatives are unable to resolve the matter, then termination shall become effective in accordance with the District's termination notice unless the alleged default is cured within the applicable time period specified in the previous paragraph.

5.2 Termination by RSS

RSS may terminate the Agreement for cause prior to the end of the Term, for any of the reasons set forth in subparagraphs (a) or (b) below:

(a) If the District fails to pay when due any monetary obligation of the District as required by the provisions of this Agreement, and such obligation remains unpaid for a period of 30 days after receiving written notice of the delinquent payment from RSS;

(b) If the District materially breaches any of the material non-monetary provisions of this Agreement and fails to remedy such breach within 30 days after receipt of written notice of such breach from RSS, unless such breach is incapable of being cured within 30 days but is capable of being cured within 90 days, in which case this Agreement may be terminated if the District, within 30 days after receipt of such written notice, fails to initiate and diligently pursue a cure for such breach or if the District fails to accomplish a cure for such breach within 90 days of such written notice.

Upon receipt of the notice of intent to terminate provided in the preceding paragraph, the cause for termination shall immediately be submitted to the Superintendent and RSS's Chief Executive Officer, or their respective designees, for consideration and discussions to attempt to resolve the matter. If these representatives are unable to resolve the matter, then termination shall become effective in accordance with RSS's termination notice unless the alleged default is cured within the applicable time period specified in the previous paragraph.

Article 6: Miscellaneous

6.1 Alternative Dispute Resolution

The parties agree to cooperate in good faith in all actions relating to the Agreement, to communicate openly and honestly, and generally to attempt to avoid disputes in connection with the Agreement. If, nevertheless, a dispute should arise in connection with the 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. Except as otherwise set forth in Article 5 of this Agreement, in the event any dispute arises between the District and RSS concerning this Agreement, it shall be resolved in accordance with the alternate dispute resolution procedure that is set forth in Appendix 4, attached hereto. If a dispute arises over the amount of funds that the District is to remit to RSS, the District shall remit all funds that are not in dispute to RSS, hold the disputed funds in escrow, and the amount in dispute shall be resolved in accordance with Appendix 4.

6.2 Force Majeure; Legislative or Regulatory Action

Neither party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered, or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, terrorism, accident, or any other casualty or cause beyond either party's control, including legislative or regulatory action, and which cannot be overcome by reasonable diligence and without unusual expense.

6.3 Survival

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

6.4 Independent Contractor Status

The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not employer-employee. No employees of RSS shall have any rights as employees of the District.

6.5 Subcontracting

RSS reserves the right to subcontract any and all services specified in this Agreement public or private subcontractors, as permitted by law, subject to the approval of the District, which shall not be unreasonably withheld, conditioned or delayed.

6.6 No Third Party Beneficiary Rights

No third party, whether a constituent of the District or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, the District or RSS in this Agreement. This Agreement is not intended to create any rights of a third party beneficiary.

6.7 Appendices and Exhibits

The parties agree to the terms and conditions of this Agreement and the appendices and exhibits attached hereto and incorporated herein by reference.

6.8 Entire Agreement

This Agreement and the appendices and exhibits hereto shall constitute the full and complete agreement between the parties. All prior representations, understandings, and agreements are merged herein and are superseded by this Agreement.

6.9 Construction and Enforcement

The Agreement shall not be construed against the party that drafted it and shall be construed and enforced in accordance with the laws of the State of Connecticut.

6.10 Amendments

This Agreement may be altered, amended, changed, or modified only by agreement in writing executed by RSS and the officer of the Board authorized to so execute by action of the Board on behalf of the District.

6.12 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.

6.13 Invalidity of Provisions of this Agreement

If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

6.14 Assignment

This Agreement shall not be assigned by either party without the prior written consent of the other party. In the event that RSS chooses to reorganize its Corporate Structure in a manner which maintains the current leadership of RSS then the District shall not withhold consent of a resulting Assignment.

6.15 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.

6.16 Confidentiality

The District shall treat all of the terms of this Agreement confidentially and shall not disclose the terms hereof to any third party other than as required by Law.

6.17 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, facsimile, or by registered or certified U.S. mail, postage prepaid, addressed as set forth below (except that a party may from time to time give notice changing the address for this purpose). 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 receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

To RSS at: Richard O’Neill
 President
 Renaissance School Services, LLC
 7 Farmersville Rd.
 Califon, NJ 07830

With a copy to: Cliff S. Schneider, Esq.
 Cohen Schneider LLP
 275 Madison Ave., 6th Floor
 New York, NY 10016

To District at: Dr. Reginald Mayo
 Superintendent of Schools
 New Haven Board of Education
 54 Meadow Street
 New Haven, CT 06519

6.18 Miscellaneous

Part I of this Agreement is continued in – New Haven Board of Education Contract for Professional or Technical Services Part II – Terms and Conditions. For the avoidance of any doubt, should there be a conflict between the provisions of Part I and Part II, the terms of Part I shall in all respects control. Further, any reference to the “City” in Part II is intended by the parties to mean and apply to the “District.”

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

WITNESSES:

NEW HAVEN BOARD OF EDUCATION

Dr. Carlos A. Torre, President
Duly Authorized

RENAISSANCE SCHOOL SERVICES, LLC

Richard O'Neill, President
Duly Authorized

APPENDIX 1 PERFORMANCE AGREEMENT

Throughout the Term of this Agreement, RSS shall be accountable to the District for meeting the following performance metrics:

1. RSS shall manage the School to relevant Compliance and Action Steps:
 - a. RSS shall manage the School in accordance and ensure compliance with all applicable Federal and State laws and regulations, including in regard to Special Education, English Language Learning, and State Testing requirements and the School Improvement Grant Program;
 - b. RSS shall cause the School to meet all Federal and State reporting deadlines;
 - c. RSS shall manage the School in a financially prudent basis by operating within the constraints of the annual budget approved by the Board;
 - d. RSS shall provide the District with a School Improvement Plan in draft by July 15th, 2011, and to be updated in subsequent months and years as appropriate, and otherwise keep the District informed of its plans and actions to improve the performance of the School through the communication mechanisms outlined in the Agreement; and
 - e. RSS shall manage the school in collaboration and discussion with the District, so as to ensure effective district operations and to minimize the potential for negative impact on the District, including in the movement of students, responsiveness to parents, adherence to applicable Collective Bargaining Agreements and District-wide contractual arrangements and protocols and in the handling of press inquiries.
2. RSS shall cause the School to make substantial progress within the District's Performance Management structures. Substantial progress will be measured according to the following:
 - a. Engagement: increase student attendance rates, parent involvement as measured by attendance at report card nights and other school events and rates of satisfaction measured on the NHPS school climate survey. Target rates for increases in this category shall be to move the school above the District average in these metrics within three (3) years.
 - b. Interim Student Academic Performance: 75 percent of students demonstrating more than a year's progress on the DRP, on district pre and post-assessments, and on interim measures suggested in advance by RSS, as compared to other students in the district or other appropriate norm references for those measures suggested by RSS.
 - c. Summative Student Academic Performance: student progress on all three CMT tests, so that the school earns safe harbor under NCLB, the school

makes appropriate progress to close the gap to the district average in 5 years, and individual student growth remains above the 55th percentile in the district.

In order for RSS to meet the above performance metrics, it is essential that the District provide RSS with copies of any and all communication, reports, findings, requests, demands, etc received from the State or any regulatory agency and that the District make its employees available to RSS in order to facilitate the timely and thorough completion of any required reports or responses.

Failure of RSS to meet the performance metrics set forth above may subject RSS to the termination provisions set forth in Section 5.1 of this Agreement.

APPENDIX 2
SERVICES FOR WHICH RSS IS NOT RESPONSIBLE

RSS is not responsible for the following services and functions:

- Training or Recruitment of District-level Staff or school level staff at schools other than the School
- Fundraising or competitive grant applications and school financial management, generally. RSS shall support such applications and assist the District in a collaborative fashion as needed but shall not be required as a contractual matter to take the lead on such efforts.
- School Real Estate (including facility maintenance, improvement management and any financial obligations related to same)
- Human resources functions for School employees (other than those agreed upon by the parties and functions related to RSS Onsite Employees)

APPENDIX 3
RSS ON-SITE PERSONNEL

Head of School

Achievement Administrator

Operations Administrator

District acknowledges that RSS reserves the right to in its sole reasonable discretion add or remove positions and/or alter titles and duties as RSS facilitates the restructure of the School.

RSS acknowledges that the above referenced positions shall maintain all appropriate certifications and education requirements applicable in Connecticut for School Administrators, including but not limited to an 092 Certification as applicable.

APPENDIX 4
ALTERNATE DISPUTE RESOLUTION PROCEDURE

District and RSS agree that the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which may be directly affected by such dispute.

Any and all disputes which cannot be resolved informally shall be settled by final and binding arbitration in accordance with the Expedited Rules of the Commercial Arbitration Rules of the American Arbitration Association, except as otherwise expressly provided herein or agreed to in writing by the parties, or to the extent inconsistent with the requirements of Delaware law. The arbitration shall take place in the city in which District is located and that judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, in accordance with the laws of Connecticut

Each party shall pay one-half of the reasonable fees and expenses of the neutral arbitrator. All other fees and expenses of each party, including without limitation, the fees and expenses of its counsel, witnesses and others acting for it, arbitrators not jointly appointed, shall be paid by the party incurring such costs.

The arbitrator(s) shall have no authority to add to, delete from, or otherwise modify any provision of this Agreement or to issue an award having such effect.

These provisions are not intended to preclude a party from terminating this Agreement pursuant to Article 5. These provisions are only intended to provide that any other legal consequences flowing from a contract breach and termination pursuant to Article 5 shall be resolved by arbitration and not by judicial action.

NEW HAVEN BOARD OF EDUCATION
CONTRACT FOR PROFESSIONAL OR TECHNICAL SERVICES
PART II - TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If, through any cause not the fault of the Contractor, the Contractor shall fail to fulfill in timely and proper manner his obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In the event of such termination, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the City from the Contractor is determined.

2. Termination for Convenience of City. The City may terminate this Agreement at any time for the convenience of the City, by a notice in writing from the City to the Contractor. If this Agreement is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement, less payments of compensation previously made; Provided, However, that if less than sixty percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Contractor during this Agreement period which are directly attributable to the uncompleted portion of the services covered by this Agreement. If this Agreement is terminated due to the fault of the Contractor, Section 1 hereof relative to termination shall apply.

3. Changes. The City may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

4. Personnel. (a) The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City, unless use of City employees or personnel having a contractual relationship with the City is approved in writing by the City. The City may approve the Contractor's use of

City employees, personnel having a contractual relationship with the City, City office space, telephone service, computers, supplies, etc. at no cost to the Contractor.

(b) All the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State or local law to perform such services.

(c) No person who is serving sentence in a penal or correctional institution shall be employed on work under this Agreement.

5. Anti-Kickback Rules. Salaries of architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deductions or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1948; Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Section 874; and Title 40 U.S.C. Section 276(c). The Contractor shall comply with applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations or exemptions from the requirements thereof.

6. Withholding of Salaries. If, in the performance of this Agreement there is any underpayment of salaries by the Contractor or by any subcontractor thereunder, the City shall withhold from the Contractor out of payments due to him an amount sufficient to pay to employees underpaid the difference between the salaries required hereby to be paid and the salary actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the City for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

7. Claims and Disputes Pertaining to Salary Rates. Claims and disputes pertaining to salary rates or to classifications of architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be promptly reported in writing by the Contractor to the City, and the City's decision regarding such claims and disputes shall be final.

8. Equal Employment Opportunity.

A. During the performance of this Agreement, the Contractor agrees as follows:

- 1) To comply with all provisions of Executive Order 11246 and Executive Order 11375, Connecticut Fair Employment Practices Act and Chapter 12 1/2, the contract compliance ordinance of the City of New Haven, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements, and all standards and regulations are incorporated herein by reference;
- 2) Not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, physical disability or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin and physical handicap. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of any or other forms of compensation, and selection for training, including apprenticeship;
- 3) To post, in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- 4) To state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, physical disability, or national origin;

B. And where this contract involves construction, or is a "public contract" as defined section 12 ½ -19 (o) then the contractor additionally agrees to:

- 1) To send to each labor union or representative of workers with whom the Contractor has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the Contractor's commitments under the equal opportunity clause of the City of New Haven, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor shall register all workers in the skilled trades, who are below the journeyman level, with the Apprentice Training Division of the Connecticut State Labor Department;
- 2) To utilize labor department and City sponsored manpower programs as a source of recruitment and to notify the contract compliance unit and such programs of all job vacancies;

- 3) To take affirmative action to negotiate with qualified minority contractors, women business enterprises and disadvantaged women business enterprises, for any work which may be proposed for subletting, or for any additional services, supplies, or work which may be required as a result of this Agreement;
- 4) To cooperate with City departments in implementing required Agreement obligations for increasing the utilization of minority business enterprises, women business enterprises and disadvantaged business enterprises;
- 5) To furnish all information and reports required by the contract compliance director pursuant to section 12 ½ 19 through section 12 ½ -32 of the City's Code of General Ordinances and to permit access to the Contractor's books, records and accounts by the contracting agency, the contract compliance officer, and the Secretary of Labor for purposes of investigations to ascertain compliance with the program;
- 6) To take such action, with respect to any subcontractor, as the City may direct as a means of enforcing the provisions of sub-paragraphs (1) through (8) herein, including penalties and sanctions for noncompliance, provided however that, in the event the Contractor becomes involved in or is threatened with litigation as a result of such direction by the City, the City will intervene in such litigation to the extent necessary to protect the interest of the City and to effectuate the City's equal employment opportunity program. In the case of contracts funded directly or indirectly, in whole or in part, under one or more federal assistance programs, the Contractor or the City may ask the United States to enter into such litigation to protect the interest of the United States;
- 7) To file, along with its subcontractors, if any, compliance reports with the City in the form and to the extent prescribed in this Agreement by the contract compliance director of the City of New Haven. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the Contractor and its subcontractors, if any;
- 8) To include the provisions of sub-paragraphs (1) through (8) of this equal opportunity clause in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor;
- 9) That a finding, as hereinafter provided, of a refusal by the Contractor, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the following penalties:
 - (a) Withholding of all future payments under the involved public contract to the Contractor in violation until it is determined that the

Contractor, or subcontractor, is in compliance with the provisions of this Agreement;

- (b) Refusal of all future bids for any public contract with the City of New Haven, or any of its departments or divisions, until such time as the Contractor, or subcontractor, is in compliance with the provisions of this Agreement;
- (c) Cancellation of this Agreement;
- (d) Recovery of specified monetary penalties;
- (e) In case of substantial or material violation, or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate equitable or legal proceedings may be brought to enforce these provisions against contractors, subcontractors, or other organizations, individuals or groups who directly or indirectly are not in compliance with the policy as herein outlined.

9. Discrimination Because of Certain Labor Matters Related to Construction Contracts. No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because it has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable hereunder to its employer.

10. Compliance with Local Laws. The Contractor shall comply with applicable laws, ordinances, and codes of the State and local governments.

11. Subcontracting. None of the services covered by this Agreement shall be subcontracted without the prior written consent of the City. The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

12. Assignability. The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City; Provided, however, that claims for money due or to become due the Contractor from the City under this Agreement may be assigned to a bank, trust, company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

13. Interest of City Officials. No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

14. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the above-referenced project or any parcel of land therein or any other interest which would conflict in any manner or degree with the performance of its service hereunder. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

15. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

16. Audit. The City reserves the right to audit the Contractor's books of account in relation to this Agreement any time during the period of this Agreement or at any time during the twelve month period immediately following the closing or termination of this Agreement. In the event the City elects to make such an audit, the Contractor shall immediately make available to the City all records pertaining to this Agreement, including, but not limited to, payroll records, bank statements and canceled checks.

17. Agreement Approved By Board of Aldermen. Upon approval of this Agreement by action of the Board of Aldermen, no substantive amendment to this Agreement is effective absent approval of such substantive amendment by the Board of Aldermen. A "substantive amendment" requiring prior approval by the Board of Aldermen includes but is not limited to:

- increases in the rate or total amount of compensation payable to the contractor; or
- increases in the total contract amount; or
- increases in the type and/or total cost of contractor's expenses that shall be reimbursed by the City; or
- increases in the duration of the contract; or
- extensions to the contract, including but not limited to extensions that were explicitly provided for in the original agreement; or
- changes in the scope of services; or
- assignment of the contract; or
- subcontracting of the contractor's obligations; or
- changes in the location(s) at which the contractor shall provide services.