

**AGREEMENT BETWEEN**  
**COLLEGE ACHIEVE GREATER ASBURY CHARTER SCHOOL**  
**AND**  
**COLLEGE ACHIEVE PUBLIC CHARTER SCHOOLS, INC.**

This agreement (this "Agreement") is entered into as of the       day of January, 2024 (the "Effective Date") by and between COLLEGE ACHIEVE GREATER ASBURY CHARTER SCHOOL A N.J. NONPROFIT CORPORATION ("the School"), a New Jersey charter school formed in accordance with the Charter School Program Act of 1995 (Pl. 1995 c. 426, N.J.S.A. 18A:36A) et seq. (the "Act"), with a principal place of business at 508 3<sup>rd</sup> Avenue, Asbury Park, New Jersey acting through its Board of Trustees (the "Board"), and COLLEGE ACHIEVE PUBLIC CHARTER SCHOOLS, INC. ("CAPS"), A NEW JERSEY NONPROFIT CORPORATION with a principal place of business at 788 Shrewsbury Avenue, Suite 2183, Tinton Falls, NJ 07724 (each of the School and CAPS a "Party," and together the "Parties").

**WHEREAS**, CAPS desires to provide to the School its educational management, curriculum, facility and program services; and

**WHEREAS**, the School desires to use CAPS' educational management, curriculum, facility and program services; and

**WHEREAS**, the Parties agree the School will operate pursuant to the laws of the State of New Jersey applicable to the operation of Charter Schools, and CAPS. will operate in accordance with the School's responsibilities and authorities provided by such laws; and

**WHEREAS**, it is the intention of both Parties to enter into a long-term relationship; and

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Services.

CAPS agrees to assume responsibility to the Board for all administrative activities of the school to advance the charter mission of the School, either as directly engaging in the activities or overseeing them. In connection therewith, CAPS shall have the right and the obligation to perform the following duties, subject to and in accordance with all applicable laws and with the School's charter (the "Charter"), as that term is used in the Act:

1.1. Support the School in implementing the CAPS educational model including designing, selecting, acquiring, and supporting implementation of the School's educational program, including but not limited to the School's curriculum and pedagogy; LEP/ELL education; special education services and programs; school-year and school-day requirements;

student assessment systems and materials; extracurricular activities and programs; teacher training and evaluation; student recruitment services; assistance to the school's business provider; designing a teacher recruitment and management process; recommendation of education and curriculum consultants; supervisory direction for teachers; guidance on disciplinary actions for teachers; and instructional and curricular materials, equipment, and supplies;

1.2. Recruiting, supervising, and evaluating the school administrator, on behalf of the School subject to Section 2 below; designing and implementing professional development activities for all School personnel; recommending the number, positions, responsibilities, and titles of all School personnel; and proposing employment practices and policies relating to School personnel;

1.3. CAPS will present to the Board (or its subcommittee) a proposed program budget for each Fiscal year in accordance with Applicable Law. The proposed program budget will include assumptions provided by CAPS. It is understood that information will need to be provided to CAPS by the school business provider in a timely manner. The parties will work in good faith to agree on a final program budget no later than June 30th of each year. The school, in consultation with CAPS, shall annually prepare a proposed budget and submit to the Board for its approval pursuant to the NJDOE budget timelines.

1.4. CAPS will provide and compensate the Executive Director for the School who will be an employee of CAPS (building level leadership shall be the responsibility of the School) in such amounts and in such manner as it deems appropriate.

1.5. The school is responsible for all business office functions including the hiring of a Business Administrator who will report to the School's Board of Trustees. Oversight of school business administration services shall be performed in cooperation with CAPS.

1.6 CAPS shall coordinate facilities planning, including selection of the school site, negotiations to purchase or lease, obtain financing, and oversee the design and construction of any new or renovated facilities and meet all the necessary permits, zoning, and insurance requirements.

1.7 A CAPS representative shall be present at every meeting of the School's Board of Trustees. At each regular Board of Trustees meeting, a CAPS representative shall present a report to the Board of Trustees, which shall include, the then student enrollment figure.

## 2. School Staff.

All School staff shall be employees of the School, and all School staff shall report to the School Executive Director (or his or her designee). CAPS shall present to the Board its recommendations concerning the hiring and replacement of the School Executive Director. The



Board may interview any School Executive Director candidate recommended by CAPS. Within three weeks of any CAPS recommendation concerning the hiring or replacement of any School Executive Director, the Board shall act to accept or reject that recommendation.

### 3. Term and Compliance.

Pursuant to the New Jersey Public School Contract Law, unless earlier in accordance with Section 14 below, the term of this Agreement shall be for two (2) years (the "Initial Term") beginning with the 2023-24 school year. The school will perform its obligations under this Agreement and shall comply with, and govern itself in a manner consistent with, the requirements of Applicable Law, the Charter and the Charter Authorizer's policies. This agreement replaces all prior CMO Agreements between CAPS and the school.

### 4. Renewal.

Following the Initial Term, this Agreement will automatically extend for one successive additional period of two (2) year(s) or the maximum permitted by law consistent with the length of the renewal term from the charter authorizer, unless (a) either Party provides the other with written notice of non-renewal at least eighteen (18) months before the expiration of the then-current Initial Term or Renewal Term (as applicable);

### 5. Facility.

CAPS will be responsible for finding, acquiring, and developing all school facilities so that the School can focus on the mission of the school and academic achievement. CAPS shall make best efforts to provide a suitable and appropriate facility for the School. The School shall maintain responsibility for any necessary capital improvements and repairs to the facility. CAPS may by separate agreement be responsible for management and oversight of the daily maintenance and operation of the facility.

### 6. Academic Performance.

CAPS shall make all reasonable efforts to manage the School so as to permit it to meet or exceed the standards and performance criteria set forth in the School's Charter.

### 7. Fees and Compensation.

Each Academic Year, the School shall pay to CAPS a fixed yearly fee equal to Fourteen and Nine Tenths ( 14.9.0%) percent of the sum of the School's Program Revenues in the first year of this agreement. After the second year of this agreement, the yearly fee shall be reduced each succeeding year by one-tenth of a percentage point (0.1%) :

2024-25 School Year- 14.8%;

2025-26 School Year- 14.7%.

2026-27 School Year 14.6%

2027-28 School Year 14.5%  
2028-29 School Year 14.4%

Program revenues are a subset of the total revenue in the school budget and are limited to all revenues and income generated or appropriated for and received by or on behalf of the School as attributed to any student currently in the school or previously in the school, which includes, but is not limited to, the following sources as applicable; state and local per pupil basic education funds and other public school state and local funding; federal funds specific to the program and/or its students; other funding including, but not limited to, Title I of the Elementary and Secondary School Education Act of 1965, as amended (20 USC 6301 et. Seq., as amended) and other income or revenue sources provided by law and obtained by the school which are not specifically excluded herein and all contributions and grants (including but not limited to Charter School block grants and other grants applicable) received by or on behalf of the school granted as a matter of right and/or practice or through competitive and non-competitive grant processes, which are to assist in the implementation or maintenance of the program, and/or school operations. The fee shall not be paid from federal funds or grant funds. The School shall make such payments to CAPS on a pro rata basis as the School receives such funding or any portion thereof, with each payment due within three business days of the School's receipt of such funding or portion thereof. CAPS retains the right to charge additional fees for services mutually agreed upon beyond those set forth in Section 1 above, including but not limited to the operation of after-school and summer programs.

To the extent the School fails to pay the fees required by this Section 7, the School shall pay interest on outstanding amounts due to CAPS at a rate equal to two percent (2%) per year.

Notwithstanding anything to the contrary contained herein, payment of any fee or other compensation paid or payable to CAPS by the School under the terms of this Agreement shall be junior and subordinate to payment of all rents and other amounts payable by the School to CAPS under the terms of the Lease. CAPS acknowledges and agrees that all rents, additional rents and other obligations of the School to CAPS under the Lease are to be paid directly by the School for deposit in a rent collection account designated by CAPS, and CAPS hereby agrees that payment of any fees or other compensation payable to CAPS under this Agreement will not be deducted or otherwise offset against any and all rent and other obligations of CAPS to Landlord.

#### 8. Operational Expenses.

The School shall, unless otherwise agreed to in writing by the parties, be responsible for paying all costs of the School's operations, including but not limited to costs for personnel, payroll, assessment materials, books, educational materials, supplies, equipment, furniture, fixtures, custodial services, food services, facility maintenance and repairs, utilities, and transportation.



## 9. Budget.

No less than sixty days prior to the beginning of each of the School's fiscal years, CAPS shall submit to the Board a proposed budget for the School for that fiscal year based on the NJDOE submitted budget. Within thirty days of its receipt of a proposed budget from CAPS, the Board shall review the proposed budget and provide CAPS with any comments or proposed changes. No later than two weeks prior to the beginning of the fiscal year, CAPS shall submit a final budget to the Board for approval, which the Board shall not unreasonably withhold or delay.

## 10. Access to Funds.

School funds shall be kept in an account belonging to the School. CAPS shall have no obligation to fund any School deficit or to pay School expenses other than with School funds provided hereunder.

## 11. Reporting and Compliance.

CAPS shall provide the Board with an annual report of the School's progress toward the standards and the performance criteria set forth in the School's Charter. The School shall engage a Certified Public Accountant to conduct an annual financial audit of the school. This audit shall report to CAPS the total program revenues given to the school.

## 12. Indemnification, Damages and Liability.

12.1 CAPS shall indemnify, defend and save and hold the School, the Board, School 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, for injury to property or persons, occurring or allegedly occurring in connection with the operation of the School from conduct committed by CAPS or by its employees, officers, directors, subcontractors, agents or by School employees while assigned to and under the supervision of CAPS during the term of this agreement or any renewal thereof. Upon timely written notice from the School, CAPS shall defend the School, the Board, School employees, officers, directors, subcontractors and agents in any such action or proceeding brought thereon.

12.2 The School shall indemnify, defend and save and hold CAPS, the Board, its 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, for injury to property or persons, occurring or allegedly occurring in connection with the operation of the School from conduct committed by the School or by its employees, officers, directors, subcontractors or agents, unless such conduct is committed by School employees assigned to and working under CAPS's supervision in the School. Upon timely written notice from CAPS, the School shall defend CAPS, the Board, its

employees, officers, directors, subcontractors and agents in any such action or proceeding brought thereon.

12.3 Consequential Damages. Except in connection with its indemnity obligations expressly set forth herein, neither party shall be liable for any indirect, exemplary, punitive, special, incidental or consequential damages, including, without limitation, any lost savings, lost profits, lost sales, business interruptions, delay damages, damages for third party claims, lost or destroyed data, even if that party has been advised of the possibility of such damages. Neither occasional short-term interruptions of service or products, which are not unreasonable under comparable industry standards nor interruptions of service or products resulting from events or circumstances beyond caps reasonable control shall be cause for any liability or claim against CAPS hereunder, nor shall any such occasion render CAPS in breach of this agreement.

12.4 Limit of Liability. CAPS maximum liability and obligation to the school and the School's exclusive remedy for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, relating to this Agreement shall be limited to the recovery of actual direct damages up to the amount of fees paid under this agreement in the prior twelve (12) months.

### 13. Insurance.

13.1 Liability Insurance. CAPS shall secure and maintain, at its expense, for the protection of CAPS, the School, and their respective officers, directors, employees, students, teachers and volunteers, insurance, on which the School shall be named as an additional insured, including, but not limited to, general liability insurance coverage for bodily injury and property damage. Such insurance policies shall be issued by an insurance company or companies selected by CAPS and licensed to do business in New Jersey, which shall be rated "A" or better by A.M. Best Company. Except as otherwise agreed to in writing by the School and CAPS, all such insurance shall be primary insurance, with deductibles or self insured retentions which are outside the policy limits.

13.2 The insurance policies maintained by each party pursuant to this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled or reduced, in coverage or limits, except after thirty days' prior written notice to CAPS and the School. The Parties shall furnish one another certified copies of the insurance or certificates of insurance which name one another as an additional insured and which demonstrate compliance with this Agreement.

### 14. Property Insurance.

14.1 CAPS shall maintain property insurance for all personal property provided by CAPS at the School facilities on which the School shall be named as an additional insured. CAPS shall



secure from its insurers waivers of subrogation as against the School with respect to damages to the site, and shall otherwise hold the School harmless against liabilities arising out of any such damages.

14.2 The School shall maintain property insurance for the School facility and for all personal property on the site provided by the School, on which CAPS shall be named as an additional insured. The School shall secure from its insurers waivers of subrogation as against CAPS with respect to damages to the site, and shall otherwise hold CAPS and its directors, officers, employees and agents harmless against liabilities arising out of any such damages.

14.3 Workers' Compensation Insurance. Each party shall secure and maintain workers' compensation insurance covering its employees.

## 15. Termination.

15.1 Termination by School. Subject to the notice and cure provisions of this Section 16, the School may terminate this Agreement at any time if a trustee or receiver of CAPS's property has been appointed; CAPS has made an assignment for the benefit of creditors; a petition in bankruptcy has been filed by or against CAPS; CAPS has terminated or liquidated its operations or announced its intention to do so; CAPS's conduct jeopardizes the health or safety of the School's students; or, at any point after the initial three years of the School's operation, the School has failed to make reasonable progress toward achievement of the goals and objectives section of the School's charter application based on longitudinal student performance data, or committed a material breach of obligations under this Agreement which have not been cured after reasonable notice to CAPS, (collectively, "School Termination Events"). If the School seeks to terminate the Agreement under this Section 15, the School shall send to CAPS a written notice of its intention to terminate, which notice specifies the specific conduct that the School believes has given rise to a School Termination Event. Upon receipt of such notice, CAPS shall have one hundred-eighty (180) days to cure any such School Termination Event. If, during that one hundred-eighty (180) day period, CAPS cures the School Termination Event, the School shall not terminate the Agreement. If, at the conclusion of that one hundred-eighty (180) day period, CAPS has not cured the condition that led to the School Termination Event, except in the case of the termination of the Lease and/or Sublease, the School may issue to CAPS a termination notice, and this Agreement shall then terminate as provided in 15.3 below.

15.2 Termination by Caps. Subject to the notice and cure provisions of this Section 15, CAPS may terminate this Agreement if, upon request of CAPS, the Board fails to adopt recommendations or proposals by CAPS that CAPS believes are necessary for the successful implementation of the CAPS school design; there is a material reduction in the School's per-pupil funding of 15% or more, as compared to any previous year; or the cash receipts of the School are insufficient to fund all of the School's budgeted cash expenditures (collectively,



"CAPS Termination Events"). If CAPS seeks to terminate the Agreement under this Section 15.1, CAPS shall send to the School a written notice of its intention to terminate, which notice specifies the specific conduct that CAPS believes has given rise to an CAPS Termination Event. Upon receipt of such notice, the School shall have one hundred-eighty (180) days to cure any such CAPS Termination Event. If, during that ninety-day period, the School cures the CAPS Termination Event, CAPS shall not terminate the Agreement. If, at the conclusion of that ninety-day period, the School has not cured the condition that led to the CAPS Termination Event, CAPS may issue to the School a termination notice and this Agreement shall then terminate as provided in 15.3 below.

15.3 Date of Termination. Unless otherwise agreed in writing, in the event of termination above, CAPS shall continue to provide services through the end of the school year and the actual termination date shall be the last day of school for teachers and staff and the School shall continue to pay the fee through such date. The School shall pay to CAPS all outstanding payments on or before the Termination Date.

15.4 Termination at End of Initial Term. At any point following the conclusion of the Initial Term, either party may terminate this Agreement for cause by providing the other party (the "Receiving Party") with Eighteen (18) months written notice of termination. For the purpose of this Section 15.2, for cause shall include only a material breach of this Agreement, a School Termination Event, or a CAPS Termination Event.

15.5. Responsibilities Upon Termination. Upon termination of this Agreement, CAPS shall immediately turn over to the School all student, personnel, and other school records, and the School shall immediately turn over to CAPS all proprietary CAPS materials. CAPS shall cooperate in the transition of management to school personnel or to agents of the School and shall seek to not disrupt the educational programming at the school.

#### 16. Dispute Resolution Procedure.

The Parties agree that they will attempt in good faith to settle any and all disputes arising in connection with this Agreement amicably in the ordinary course of business. If a dispute is not resolved in the ordinary course of business, the aggrieved Party will submit its dispute in writing to the School's Business Administrator or its authorized designee and to the Chief Executive Officer of CAPS. The dispute resolution procedures described herein will be deemed complete upon the earlier to occur of the following: (i) the Parties mutually agree in writing to discontinue the dispute resolution procedures; and (ii) the relevant dispute is not resolved within the time periods provided under.



17. Mediation and Arbitration.

If the Parties are unable to resolve the dispute pursuant to the Section immediately above, the Parties agree that they will attempt in good faith to settle any and all disputes arising out of this agreement, including those disputes relating to the enforceability or validity of this Agreement, through a process of mediation in the county in which the School is located, under the supervision of a mutually agreed upon mediator. In the event that mediation fails to settle any such dispute(s), either party may file suit in the New Jersey Superior Court, in the vicinage where the School is located.

18. Injunctive Relief.

Notwithstanding the foregoing dispute resolution procedures, the School acknowledges that in the event it breaches any provision contained in the Section 22 entitled "CAPS Intellectual Property", CAPS may suffer irreparable harm in which the full extent of damages may be impossible to ascertain and monetary damages may not be an adequate remedy. As such, in its sole discretion, CAPS may seek immediate judicial relief as available in law or equity, and the initiation of any judicial proceeding will suspend the dispute resolution procedures set forth above. CAPS will be entitled to enforce this Agreement by an injunction or other equitable relief without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy. The decision by CAPS not to seek judicial relief during the above described dispute resolution procedures, will not create any inference regarding the presence or absence of irreparable harm.

19. Charter Entity Authority.

Nothing in this agreement shall be construed in any way to limit the authority of the New Jersey Department of Education. CAPS shall immediately notify the Board of Trustees' Chairperson upon receiving any notice from the Commissioner of Education or New Jersey Department of Education about the actual or prospective placing of the School on probation or charter revocation, non-renewal or termination.

20. Conflict with Charter.

To the extent that there are any conflicts between this Agreement and the terms of the School's Charter, the terms of the Charter shall control.

21. Tax-Exempt Status.

The Parties agree to make any changes to this Agreement necessary for the School and CAPS to obtain and maintain a tax exempt status.

22. CAPS Intellectual Property.

All intellectual property or proprietary information, whether now existing or developed in the future ("CAPS Property"), including but not limited to programming, products, or practices that CAPS develops or has developed, shall belong exclusively to CAPS. All rights to all CAPS Property, whether or not developed or enhanced during the term of this Agreement or in the course of CAPS's performance under this Agreement, shall remain the exclusive property of CAPS, unless otherwise required by law.

23. Governing Law and Jurisdiction.

This Agreement shall be governed by and construed in accordance with the substantive laws of New Jersey, without regard for conflict of laws principles. The Parties agree that any suit, action, proceeding, or claim of any type arising out of or relating to this Agreement may be commenced and maintained in the New Jersey Superior Court, in the vicinage where the School is located.

The Parties agree to waive any objection to such courts' personal jurisdiction over the Parties or either of them. In any suit, action, proceeding, or claim of any type brought in a court in the states of New Jersey, the Parties agree not to assert any defense based upon improper venue or forum non conveniens.

24. Notices.

All notices that this Agreement requires a Party to provide to the other Party shall be sent to the following addresses:

If to the School:

Board Chairperson

College Achieve Greater Asbury Charter School  
508 3<sup>rd</sup> Avenue, Asbury Park, New Jersey

With copy to:

Thomas O. Johnston, Esq.  
Johnston Law Firm LLC  
151 Forest Street, Suite 1  
Montclair, NJ 07042

If to CAPS:



College Achieve Public Charter Schools, Inc.  
788 Shrewsbury Avenue, Suite 2183  
Tinton Falls, NJ 07724

A Party may change its address for purposes of this Section 24 by giving written notice to the other Party of such change.

25. Authorship.

The Parties acknowledge that authorship of this Agreement, or any part thereof, shall not be a basis for interpreting the Agreement, or any part thereof, against either Party.

26. Severability.

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provisions, or any part hereof.

27. Entire Agreement.

This Agreement constitutes the Parties' entire agreement with respect to the transactions and matters addressed herein. Each Party's signature on this Agreement constitutes an affirmation that no other representations or understandings have been made or exist with respect to the transactions and matters addressed herein. Each Party understands that the other Party is relying on the affirmations of this Paragraph in connection with its execution of this Agreement.

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

COLLEGE ACHIEVE GREATER ASBURY CHARTER SCHOOL



By: Dr. Dale Caldwell, Board President

COLLEGE ACHIEVE PUBLIC CHARTER SCHOOLS INC.



By: Michael D. Piscal, CEO