

## DISTRICT EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT

This educational professional services agreement (this “Agreement”) is dated February 9, 2012 and is entered into between TEACH FOR AMERICA, INC. (“Teach For America”), a Connecticut non-profit and Gadsden Independent School District, a political subdivision of the state of New Mexico (“School District”).

Teach For America is a national leader in recruiting, selecting, training and providing ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems. Gadsden Independent School District seeks to recruit new teachers who are trained to lead students to academic achievement and to equip such teachers with ongoing professional development and support to further develop and sustain their professional practice.

Accordingly, and contingent upon the availability of sufficient funding to enable Teach For America to expand its operations to southern New Mexico and provide the described services, School District and Teach For America agree as follows:

### I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING

#### School District Responsibilities:

##### A. Hiring Commitment.

- i. Teach For America will use its reasonable efforts to provide the number of teacher candidates for employment with School District (“Teachers”) set forth in **Appendix A** (the “Agreed Number”), but Teach For America cannot and does not guarantee its ability to provide the full Agreed Number of Teachers to School District and the failure of Teach For America to provide the full Agreed Number of Teachers for any academic year shall not constitute a breach of this Agreement for any purpose whatsoever.

- ii. School District will use its reasonable efforts to hire the number of teacher candidates for employment with School District (“Teachers”) set forth in **Appendix A** (the “Agreed Number”), but the School District cannot and does not guarantee its ability to hire the full Agreed Number of Teachers to School District and the failure of School District to hire the full Agreed Number of Teachers for any academic year shall not constitute a breach of this Agreement for any purpose whatsoever.
- iii. Whether or not Teach For America is able to provide the full Agreed Number, School District shall consider for hire each Teacher provided by Teach For America who meets the district eligibility requirements.
- iv. Any Teach For America Teacher hired by the School District shall be hired as the classroom teacher of record and not for substitute, auxiliary, resource or teacher’s aide positions.
- v. Teach For America Teachers will be considered for vacancies across the full range of grades and subject matters and not restricted or limited to so-called “critical” or “shortage” subjects or grade level vacancies.
- vi. School District and Teach For America will collaborate in good faith to identify individual schools within School District appropriate for Teachers. In order to be considered an appropriate school (a “Partner School”) for placement of a Teacher, (i) the school’s student population must be considered high poverty relative to the student population elsewhere in the district and (ii) the school must have sufficient vacancies to enable the hiring/placement of at least two Teachers in the same academic year. To the extent reasonably practicable, School District will employ two or more Teachers per individual Partner School.

**B. Hiring Process.**

- i. School District and Teach For America will collaborate in good faith to facilitate the efficient hiring of individual Teachers, in accordance with the School District’s established hiring process.
- ii. School District shall enter into written employment agreements with and employ hired Teachers at least fourteen (14) days before the first day of the academic

school year, to the extent possible and in accordance with established District hiring practices.

- iii. Subject to Section A. ii. and its obligations under pre-existing collective bargaining agreements, contracts, or applicable law, School District will offer alternative employment to any Teacher who is not employed by the first day of the academic school year. "Alternative employment" includes, but is not limited to substitute teaching positions, "pool" teaching positions, classroom aides or other temporary category of employment available within School to individuals with teaching credentials. The purpose of an alternative employment placement is to enable the individual Teacher to obtain a salary until such time as School District can secure permanent employment as a full-time classroom teacher of record.

Teach For America Responsibilities:

- C. Candidate Recruitment and Selection. Teach For America will recruit, select for participation in the Teach For America program, and present to the School District for employment Teachers from a broad range of academic majors and career fields. Teach For America will use reasonable efforts to recruit Teachers from diverse backgrounds. In connection with the foregoing, Teach For America will not knowingly engage in any unlawful acts of discrimination in its recruiting or selection of candidates.
- D. Pre-Service Training. Prior to entering the classroom, all Teachers will undergo pre-service training at Teach For America Institutes, which are designed and delivered by the organization in order to prepare Teachers for this work.
- E. Highly Qualified Status. Teach For America will provide the described pre-service training to Teachers presented to School District for the purpose of ensuring that such Teachers meet the "highly qualified" teacher requirements set forth in the federal No Child Left Behind Act and applicable state regulations (together, the "Requirements"). For purposes of this Section E, only those Requirements in effect at the time that the

Teacher is offered employment by School District will be applicable including compliance with the provisions of the School District's Corrective Action Plan for schools in restructuring as identified in the School District's Educational Plan for Student Success (EPSS).

## II. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT COMMITMENTS

### School District Responsibilities

#### A. Employment Status.

- i. Every Teacher employed by School District as described in this Agreement shall be a full-time employee of School District with all of the rights, responsibilities and legal protections attendant to that status and not an employee of Teach For America.
- ii. Nothing in this Agreement shall be construed to permit Teach For America to interfere in the employment relationship between School District and an employed Teacher.
- iii. Nothing in this Agreement shall be construed to permit Teach For America to function as the representative of any Teacher absent the express agreement among the parties and the Teacher that Teach For America may operate in such capacity in a particular circumstance.
- iv. Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.
- v. Nothing in this Agreement shall be construed to make Teach For America a party to any employment agreement between the School District and the Teacher.
- vi. Nothing in this Agreement shall be construed to imply that any Teacher employed by the School District as described in this Agreement is an agent of Teach For America or has any right or authority to create or assume any obligation of any kind, express or implied, on behalf of Teach For America or bind Teach For America in any respect whatsoever.

vii. Every Teacher employed will be supervised by a district administrator and evaluated according to School District policy.

B. Compensation of Teachers. School District shall provide to every Teacher employed by School District pursuant to this Agreement the same salary and benefits (including, as applicable, health, dental, vision and retirement) as are provided to other teachers employed by School District who are similarly situated from the standpoint of certification status, seniority and any other factors routinely used by School District in making such decisions.

C. Reductions in Force. Subject to its obligations under pre-existing labor agreements and applicable municipal and state laws and regulations, School District shall use reasonable efforts not to terminate any employed Teacher from his/her teaching position in the event of a reduction in force (RIF), layoffs, “leveling” or other elimination or consolidation of teaching positions within School District. School District shall treat any Teacher employed in connection with this Agreement whose teaching position is eliminated at least as favorably as other teachers with the same job classification, certification status, and/or seniority rights. For the avoidance of doubt, this obligation is limited and controlled by any obligations that the School District has under any pre-existing collective bargaining agreements and applicable municipal and state laws and regulations.

#### Teach For America Responsibilities

D. Professional Development Services.

- i. During the course of the academic year, Teach For America shall provide various professional development services and activities for participating Teachers. These services may include periodic classroom observations by regional program staff, videotaping of instruction with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-

level workshops facilitated by veteran teachers. In addition, Teach For America shall facilitate Teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. These professional development services will be available to all Teachers during their first two years in the classroom.

- ii. Teach for America will allow participation of other School District teachers in the professional development services subject to Teach for America's approval and provided that the School District employee is doing so on a voluntary basis without the employee being compensated by the School District. Teach for America will not assess any additional fees for this service.
- iii. Pursuant to its obligations under the Family Education Rights and Privacy Act ("FERPA"), School District hereby acknowledges that in the course of providing on-going professional development services for the purposes of improving instruction, School District may disclose to Teach For America student identifiable data from individual Teachers, pursuant to 34 CFR §99.31(a)(6)(i)(c).
- iv. Teach For America shall use and maintain such data as provided in 34 CFR §99.31(a)(6). In accordance with 34 C.F.R. § 99.33(b), Teach For America may re-disclose student identifiable information on behalf of School District as part of Teach For America's service to School District of providing on-going professional development services.
- v. Teach For America may also disclose student identifiable information on behalf of School District to additional parties, provided that Teach For America, in advance, provide to School District the names of such parties and a brief description of such parties' legitimate interest in receiving such information.

E. Credentialing Services.

- i. Teach For America shall facilitate the enrollment of individual Teachers in an alternative certification/licensure program that will enable the individual Teacher to obtain appropriate credentials to be a classroom teacher of record.
- ii. Individual Teachers are responsible for completing all credential requirements, including required coursework through an alternative licensure program.

- iii. Teach For America shall not be responsible for, and shall not be in breach of any provision of this Agreement, in the event of any failure by an individual Teacher to fulfill his/her obligations to maintain his/her teaching credentials.

### III. GENERAL PROVISIONS

#### A. Fees-for-Service.

- i. School District shall pay Teach For America an annual fee for each Teacher employed under this Agreement to defray expenses Teach For America incurred in recruiting, selecting, providing pre-service training and continuing professional development services to the Teachers employed by School District under this agreement. School District agrees that all payments for fees shall be in the form of check delivered to Teach For America or wire transfer to an account designated by Teach For America in writing.
- ii. With respect to each Teacher whose employment by School District is to commence in the 2012-13 academic year, School District shall pay Teach For America an annual amount of \$3,000 for each year in which such Teacher is employed by School District, up to two years [from the date such employment is to commence]; and
- iii. With respect to each Teacher whose employment by School District is to commence in the 2013-14 academic year, School District shall pay Teach For America an annual amount of \$3,000 for each year in which such Teacher is employed by School District, up to two years [from the date such employment is to commence].
- iv. The annual fee amount will be reduced in total by the rent value of space to be leased to Teach for America by the School District. A separate lease agreement will be required between the School District and Teach for America.

Non-refund. Teach For America shall have no obligation to refund to School District any amount paid by School District in respect of any Teacher except in the event when a Teach

for America teacher unilaterally decides to leave the School District within 30 work days of their date of employment.

B. Invoicing. Teach For America will invoice School District for all amounts due hereunder with respect to any academic year within thirty (30) days of the start of the academic school year, provided that Teach For America's failure to timely do so, will not constitute a waiver of any of Teach For America's rights hereunder or constitute a breach by Teach For America of this Agreement.

C. Term.

- i. The term of this Agreement will cover the 2012 cohort of Teachers for the 2012-13 and 2013-14 academic years. It will also cover the 2013 cohort of Teachers for the 2013-14 and 2014-15 academic years. This Agreement will expire on April 30, 2014 but all provisions applicable to the 2013 cohort of Teachers will remain in effect through the conclusion of the 2014-15 academic year and may be renewed at the end of the term on the same or substantial similar terms by mutual agreement of the parties.
- ii. The agreement is renewable for each fiscal year of the School District (July to June) subject to availability and appropriation of funds for the payment and performance of this agreement.

D. Termination. This Agreement may be terminated as follows:

- i. at any time by mutual written agreement of the parties; or
- ii. by either party upon written notice to the other party in the event of a material breach of this Agreement that is incapable of being cured or, if capable of being cured, is not cured within thirty (30) days following receipt by the breaching party of written notice of such breach from the non-breaching party.

E. Effect of Termination. Except as otherwise specifically provided, if this Agreement expires or is terminated by either party, it shall become void and of no effect without liability of any party (or any of its directors, officers, employees, agents, representatives or advisors) to the other parties; provided that no such expiration or termination shall



relieve any party of any liability incurred by such party under this Agreement prior to such termination. In the event that this Agreement expires or is terminated by either party, Sections II.B. and II.C. shall survive and will remain in effect until such time as there are no Teachers in their second year of employment in School District. Sections III.F., III.G., III.H., and III.I. shall survive the expiration or termination of this Agreement indefinitely. Additionally, Teach For America will be entitled to all outstanding amounts due up to the date of expiration or termination.

F. No Warranty. School District hereby agrees and acknowledges that Teach For America does not make and has not made any representation and warranty (express or implied) as to the fitness of any Teacher presented or provided by Teach For America and School District shall indemnify and hold harmless the TFA Indemnities (as defined below in Section III.H) from and against any Losses (also defined below in Section III.H) resulting from any claim related to the services provided by Teach For America, including, but not limited to, claims that any Teacher presented or provided by Teach For America was unfit for the position for which he or she was hired by School District.

G. Mutual Indemnification.

- i. To the extent permitted by applicable state laws and regulations, School District shall indemnify and hold harmless Teach For America and its officers, directors, employees and agents (the "TFA Indemnitees") from and against any and all losses, liabilities, claims, damages, costs and expenses (including attorneys' fees) ("Losses") to which such TFA Indemnitee may become subject arising out of the provision by Teach For America to School District of services hereunder (including without limitation the designation of Teachers), except to the extent such Losses result from the willful misconduct or gross negligence of such TFA Indemnitee.
- ii. Teach For America shall indemnify and hold harmless the School District and its officers, directors, employees and agents (the "School District Indemnitees") from and against any and all Losses to which such School District Indemnitee may become subject arising out of a breach of this

Agreement by Teach For America to School District of services hereunder, except to the extent such Losses result from the willful misconduct or gross negligence of such School District Indemnitee.

- H. Limitation of Liability. Neither Teach For America nor any of its officers, directors, employees or agents shall be liable to School District or any individual Partner School of School District for any Loss incurred by School District or such individual Partner School (as defined in I.A.v) in connection with the matters to which this Agreement relates, except for a loss resulting from willful misconduct or gross negligence on the part of Teach For America; provided that in no event shall Teach For America and its officers, directors, employees and agents have any liability to School District or any such individual Partner School in connection with the matters to which this Agreement relates in excess of the aggregate amount of payments made to Teach For America by School District pursuant to this Agreement or in connection with any Loss of which School District is primarily culpable.
- I. Amendment/Modification. No amendment or modification of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and signed by each party.
- J. Non-Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either party without the prior written consent of the other party, and any such assignment that is not consented to shall be null and void.
- K. Counterparts. This Agreement may be executed in counterparts (including by electronic transmission), each of which shall be deemed an original copy of this Agreement, and which, taken together, shall be deemed to constitute one and the same agreement.

- L. Construction. The headings of Sections contained in this Agreement are for convenience only, and they do not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the Sections of this Agreement. Any reference in this Agreement to gender includes all genders. Further, except where expressly specified to the contrary, the words “include,” “including,” and “such as” in this Agreement should be read to mean “include without limitation.”
- M. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of New Mexico.
- N. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section III.N., then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.
- O. Notices. Any notice, demand, or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered to the address of such Party as set forth below:

If to Teach For America:  
Tracy-Elizabeth Clay, Esq.  
General Counsel  
300 W. Adams St., Ste. 1000  
Chicago, IL 60606

If to School District:  
Efren Yturralde  
Superintendent  
P.O. Drawer 70  
Anthony, NM 88021

IN WITNESS WHEREOF, each of School District and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

Gadsden Independent School District

By \_\_\_\_\_

Name: Efren Yturralde

Title: Superintendent

Date:

TEACH FOR AMERICA, INC.

By \_\_\_\_\_

Name: Landon Mascareñaz

Title: Executive Director

Date:

APPENDIX A

<b>Certification (subject) Area</b>	<b>Grade Level</b>	<b>Agreed Number of Teachers</b>	<b>Academic Years of Employment</b>
MATH	SECONDARY	2	2012-2013 & 2013-14
SOCIAL STUDIES	SECONDARY	2	2012-2013 & 2013-14
MUSIC	ELEMENTARY	1	2012-2013 & 2013-14
ART	ELEMENTARY	1	2012-2013 & 2013-14
SCIENCE	SECONDARY	2	2012-2013 & 2013-14
SPED	ELEMENTARY	1	2012-2013 & 2013-14
SPED	SECONDARY	1	2012-2013 & 2013-14

It is the intent of Teach for America and the School District that the positions identified in Appendix A be flexible and subject to modification as Teach for America applicants become available and School District positions become vacant or open.

The number of positions for subsequent years will be determined upon renewal of this agreement.

Fees shall be determined by the actual number of Teachers hired under this Agreement.

- i. Each cohort of Teachers employed pursuant to this clause is in addition to Teachers from prior cohorts employed by the School District and who are returning for their second year of employment.
- ii. If Teach For America provides School District with a number of Teachers that is lower than the Agreed Number, the number of Teacher candidates provided will constitute the Agreed Number for purposes of determining any fees that the School District owes Teach For America.
- iii. In the event that Teach For America supplies the School District with any Teachers above the Agreed Number, School District agrees to pay the agreed upon fees for the additional Teachers.