

Browning Public Schools
Board Agenda Request
Meeting To Be Held: 7/12/16



Recognition: Students Staff Parents
Information: Building Report Old Business Superintendent's Report
Action: Resignation Hiring Contract Service Agreements
 Travel Out-of-State Travel In State Approvals
 Termination Legal Matters Other:
 This action request pertains to Elementary (only) High School/District Wide

Date: 6/20/16

To: **John Rouse**
 Superintendent

From: Jeri Matt
Title: Curriculum Coordinator

Subject: Voyager Service Agreement

Description: Retain the consulting service of Brenda LaBrasse (BMS and BHS literacy consultant through MSRP) during Leadership week-instructional planning and goal setting as well as Principal/Coaches planning days.

Justification (District Goals): increase student achievement in literacy and teacher effectiveness with instructional delivery

Financial Impact: \$ 11,250

Funding Source (Budget/grant, etc.): \$5300 (BMS)- 115.50.423.2213.330.646, \$1000 (BHS) 115.60.423.2213.330.646, \$4950 (BHS) 115.60.422.2213.330.126

Attachment(s): Voyager Service Agreement

Approval: Superintendent's Office/Finance/Personnel as applicable (Initial) _____

Comments: _____

Board Action: N/A (Info) Approved Denied Tabled to: _____

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the "Agreement") is made effective as of the **ninth** (9) day of **May, 2016**, by and between **Voyager Sopris Learning, Inc.**, a Colorado corporation with offices at 17855 Dallas Parkway, Suite 400, Dallas, Texas 75287 ("Voyager") and **Browning Public Schools, PO Box 610, Browning, MT 59417**

RECITALS:

WHEREAS, in connection with Voyager's curriculum for reading intervention, Voyager has agreed to provide certain implementation and training services to Customer;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, Voyager and Customer hereby enter into this Agreement and mutually agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms have the meanings set forth below:

1.1. "Voyager Employee" shall mean one or more employees provided by Voyager to perform the Services.

1.2. "Effective Date" shall mean the date first written above.

1.3. "Services" shall mean the services and work described in a Statement of Work.

2. Engagement.

Subject to the terms set forth herein, Voyager hereby agrees to provide Customer with and Customer agrees to accept the Services.

3. Term.

The Term of this Agreement shall commence as of the Effective Date and shall continue for a period of six (6) months.

4. Services.

Voyager shall provide to Customer the services as set forth on the attached Statement of Work. The Statements of Work shall be made a part of and incorporated in this Agreement. In the event of a conflict between the terms of this Agreement and a Statement of Work, the terms of this Agreement shall prevail. In the event Customer desires additional services, the parties shall execute additional Statements of Work which shall be deemed to be Services under this Agreement.

5. Compensation.

In connection with the provision of the Services, Customer shall pay Voyager the rates as set forth on the applicable Statement of Work. Amounts payable by Customer to Voyager are due within thirty (30) days of the date of the invoice. Any sales taxes applicable to Voyager's charges to Customer shall be included as a separate line item on Voyager's current invoice in accordance with the laws of the applicable state.

6. Indemnity.

- 6.1. Except as provided in Section 6.2, Voyager shall indemnify Customer and its officers, directors, managers, principals, agents or employees and shall hold each of them harmless from liability for any claims by third Persons for any acts or decisions made by Voyager with respect to performing the Services for Customer under this Agreement. Voyager will pay all expenses including attorneys' fees (other than in connection with Section 6.3(ii)) actually and reasonably incurred by Customer and its officers, directors, managers, principals, agents or employees in connection with the defense of any action, suit or proceeding and in connection with any appeal thereof, including the cost of out-of-court settlements, provided that Customer and its officers, directors, managers, principals, agents or employees incur no material costs without the prior written approval of Voyager, which approval shall not be unreasonably withheld.
 - 6.2. Customer shall indemnify Voyager and its officers, directors, principals, agents or employees and shall hold each of them harmless from liability for any claims by third Persons for any acts or decisions made by Customer with respect to the Services. Customer will pay all expenses including attorneys' fees (other than in connection with Section 6.3(ii)) actually and reasonably incurred by Voyager and its officers, directors, principals, agents or employees in connection with the defense of any action, suit or proceeding and in connection with any appeal thereof, including the cost of out-of-court settlements, provided that Voyager and its officers, directors, principals, agents or employees incur no material costs without the prior written approval of Customer, which approval shall not be unreasonably withheld.
 - 6.3. The indemnification set forth in Paragraphs 6.1 and 6.2 will be provided to the indemnified party provided that (i) the indemnified party reasonably cooperates with the indemnifying party at the indemnifying party's expense and (ii) the indemnifying party shall have the sole control of the defense or settlement of the claim, which shall be at the indemnifying party's own expense, provided that the indemnified party shall have the right to participate in the defense through counsel of its own choosing at the indemnified party's own expense. The indemnified party shall provide the indemnifying party with timely notice of any claim giving rise to indemnification. The indemnifying party will not need to indemnify the indemnified party to the extent the indemnifying party is prejudiced by the failure of the indemnified party to timely notify the indemnifying party of a claim.
 - 6.4. Notwithstanding anything contained herein to the contrary, neither party shall be liable or required to indemnify the other party to the extent any liability or expense is the result of such other party's gross negligence or intentional wrongdoing. The maximum aggregate amount of liability an indemnifying party shall be liable with respect to a claim by a third Person pursuant to this Section 6, shall be the lesser of (i) the amount paid
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pursuant to Section 5 in the 6 months immediately preceding the date on which the notice of the potential claim under Section 6 is delivered to the indemnifying party and (ii) \$1,000,000.

7. Independent Contractor.

It is understood and agreed that Voyager will perform the Services under this Agreement as an independent contractor. It is also agreed that Voyager will comply with all applicable federal, state, and local laws and regulations relating to the employment, insurance, and taxation of employees who perform services under this Agreement. No agency or employment relationship with Customer is intended nor shall be construed to exist between Customer and Voyager or between Customer and any Voyager employee performing Services under this Agreement.

8. Intellectual Property.

Customer agrees that all materials developed, generated or produced by Voyager resulting from the provision of Services, including but not limited to information, documentation, flow charts, diagrams, reports, writings, both internal and external, and data ("Work Product") shall be the sole and exclusive property of Voyager. Customer shall have no proprietary interest in the Work Product. If and to the extent Customer may, under applicable law or otherwise, be entitled to claim any ownership interest in the Work Product, Customer hereby transfers, grants, conveys, assigns, and relinquishes exclusively to Voyager all of Customer's right, title, and interest in and to such materials in perpetuity or for the longest period otherwise permitted by law. Customer shall perform any acts that may be deemed necessary or desirable by Voyager, in its sole discretion, to further evidence transfer of ownership of the Work Product to Voyager to the fullest extent possible, including but not limited to, the making of further written assignments in a form determined by Voyager.

9. Disclaimer of Warranties

NEITHER PARTY GIVES ANY EXPRESS WARRANTIES NOR does EACH PARTY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitation of Liability.

Except for the obligations set forth in Section 6 and except for the amounts to be paid pursuant to Section 5, the liability of Voyager and Customer arising out of this Agreement shall be limited to \$1,000,000. In no event shall Voyager or Customer be liable to the other for any special, consequential, incidental, or indirect damages, however caused, on any theory of liability, and whether or not Voyager or Customer has been advised of the possibility of such damages. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

11. Liaisons.

Each party shall designate an officer of such party to be the primary liaison for this Agreement who shall be the single person authorized to agree to changes, modifications or methods of implementation of this Agreement.

12. Notices.

All notices, requests, demands or other communications provided for by this Agreement shall be in writing and shall be addressed to the address of the respective parties stated below or to such changed address as such party may have affixed by notice:

If to Voyager:
Barbara Benson, CFO
17855 Dallas Parkway, Suite 400
Dallas, TX 75287
888-399-1995

If to Customer:
Jeri Matt
Curriculum Director
Browning Public Schools
PO Box 610
129 1st Ave SE
Browning, MT 59417

13. Confidentiality

13.1. Neither party shall, without the written consent of the other, communicate confidential information of the other (designated in writing or identified in this Agreement as such or otherwise reasonably believed to be such) (the "Confidential Information") to any third Person and shall protect such information from disclosure to any third Person in the same manner that it protects its own Confidential Information. Neither party shall use Confidential Information received by it other than for the purpose of performing this Agreement.

13.2. The obligations contained in this Section shall not be applicable to information: (i) which was in the possession of or communicated to the receiving party free of any obligation of confidence; (ii) which is in the public domain at no fault of the receiving party; (iii) which is disclosed to a third Person by the receiving party with the written approval of the furnishing party, provided that the approval given pursuant to this clause shall have effect only in the instance for which given; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information. Additionally, a party who receives Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") may disclose Confidential Information of the Disclosing Party to the extent required to be disclosed under applicable law, governmental or judicial order, decree, regulation, rule or process; provided that the Receiving Party gives written notice to the Disclosing Party as far in advance as reasonably possible prior

to disclosure and the Receiving Party reasonably cooperates in seeking to dispute such disclosure and/or obtain confidential treatment for the disclosed information.

14. Insurance.

14.1. During the term of this Agreement, Voyager shall, at its sole cost and expense, secure and maintain Workers' Compensation insurance in amounts as required by the applicable statutes, Employer's Liability Insurance in a minimum amount of \$500,000; Commercial General Liability insurance (including Premises Operations; Products and Completed Operations and Broad Form Property Damage) in a minimum amount of \$1,000,000 bodily injury and property damage combined single limit per occurrence; Public Liability insurance shall include "contractual" coverage to specifically acknowledge the provisions of the section entitled "Indemnification"; and Automobile Liability insurance for owned, non-owned, and hired vehicles in a minimum amount of \$1,000,000 bodily injury and property damage combined single limit per occurrence. Voyager shall provide for or require any subcontractor to maintain similar coverage for the subcontractor's employees employed in connection with this Agreement.

14.2. Upon request, all liability insurance policies maintained by Voyager pursuant to this Agreement, except Workers' Compensation, shall be endorsed to name Customer as an "Additional Insured". Voyager shall furnish to Customer certificates of insurance reflecting policies in force before commencing the Services under this Agreement but in any event within fifteen (15) days of the Effective Date, and thereafter upon the renewal of such policies during the term of this Agreement. In the event Voyager fails to furnish such certificate(s) or endorsement(s), or upon the cancellation of any insurance required under this Agreement, without prejudice to any other remedy Customer may have, Customer may terminate this Agreement, upon providing fifteen (15) days notice of such default and Voyager fails to cure such default within the fifteen (15) day period.

15. Successors and Assigns.

This Agreement shall inure to the benefit of and be binding upon Voyager and Customer, their respective successors and permitted assigns.

16. Force Majeure.

Neither party shall be in default if performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, labor difficulty, sabotage, failure of suppliers or subcontractors or unavailability of material or supplies or any other cause beyond the control of such party ("Force Majeure"), provided that such party gives the other party written notice within fifteen (15) days of discovering the Force Majeure. In the event of a Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure, and if the duration of the Force Majeure is in excess of six (6) months, the other party may terminate this Agreement.

17. Applicable Law.

This Agreement shall be governed by the laws of the State of Colorado, without giving effect to conflict of laws rules.

18. Entire Agreement.

This Agreement supersedes all prior understandings and agreements between the parties concerning the Services and may not be amended orally, but only by a writing signed by each of the parties hereto.

19. Waiver.

Any waiver of any right or default under this Agreement shall be effective only in the instance given and shall not operate as or imply a waiver of the same or any similar right or default on any subsequent occasion.

20. Captions.

The captions to the Sections of the Agreement are for convenience only, are not part of this Agreement, and shall have no force or effect in construing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers duly authorized effective as of the date and year first above written.

Voyager Sopris Learning, Inc.
Gayle Owens, Ed.D.
Executive Director Professional Development
17855 Dallas Parkway
Dallas, Texas 75287

Browning Public Schools
Jeri Matt
Curriculum Director
PO Box 610
129 1st Ave SE
Browning, MT 59417

Signature:
Date:

Signature:
Date:

Signature:
Date:

SCHEDULE A

STATEMENT OF WORK

Customer:

Jeri Matt
Curriculum Director
Browning Public Schools
PO Box 610
129 1st Ave SE
Browning, MT 59417

Project Description:

Coaching for Leadership Team August 3 4-5 and 8-9, 2016, in
Browning Public Schools - Montana

Consultant: Brenda LeBrasse

Fees and Payment:

	Unit price	
Leadership Team Coaching August 3 (half day) August 4-5 (2 days) August 8-9 (2 days)	\$2500.00 per day	\$11,250.00
	Total	\$11,250.00

Daily rate includes all consultant fees and travel.
Payable within 30 days upon completion of service.

IN WITNESS THEREOF, the parties have executed this Work Order as this ninth (9) day of May, 2016.

Voyager Sopris Learning, Inc.
Gayle Owens, Ed.D.
Executive Director Professional Development
17855 Dallas Parkway
Dallas, Texas 75287

Browning Public Schools
Jeri Matt
Curriculum Director
PO Box 610
129 1st Ave SE
Browning, MT 59417

Signature:
Date:

Signature:
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Signature:
Date: