

## **AGREEMENT**

**THIS AGREEMENT**, made and entered into this 2nd day of June 2011, by and between Independent School District #709, a public corporation, hereinafter called District, and Duane Byrd, d/b/a Youth of Duluth RW, an independent contractor, hereinafter called Contractor.

**THE PURPOSE OF THE AGREEMENT** is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of June 11, 2011, and shall remain in effect until August 27, 2011, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first. Dates of service for each program are set forth as follows:
  - A. Youth of Duluth's Summer Slam Basketball League, June 11, 2011 thru August 27, 2011, for a duration of 10 weeks.
  - B. Youth of Duluth's Summer ABC Program, June 13, 2011, thru August 27, 2011, for a duration of 13 weeks.
  - C. Youth of Duluth's Life Skills Program, June 13, 2011 thru August 25, 2011, for a duration of 10 weeks.
  
2. **Performance.**
  - A. The Youth of Duluth Summer Slam Program will target 90-100 boys and girls from West Duluth and the Hillside Community. Participants will meet twice per week for 10 weeks; one session for practice and one session for a game. Contractor is responsible for securing the location for the program. Contractor is responsible for all program expenditures which include fees for referees, uniforms, snacks, and the recognition program. In the event Contractor utilizes District property on a weekend (Saturday), Contractor will be responsible to cover cost of maintenance at a rate of \$40.00 per hour.
  - B. The Youth of Duluth Summer ABC Program will target 40-50 boys and girls from West Duluth and the Hillside Community. Participants will meet four times per week, Monday through Thursday, from 9:00 AM to 2:00 PM, for a duration of 13 weeks. Contractor is responsible for securing the location for the program. In the event Contractor utilizes District property on a weekend (Saturday), Contractor will be responsible to cover cost of maintenance at a rate of \$40.00 per hour. Contractor is responsible for all program expenditures:
    - a. Payroll for the program director, assistant program director, and three (3) program assistants.
    - b. Operational expenses for tee shirts, school supplies, and the recognition program.
  - C. The Youth of Duluth Life Skills Program will target 20 boys and girls ages 13-18 from West Duluth and the Hillside Community. Participants will meet Tuesday through Friday from 4:00 PM to 8:00 PM, for a duration of 10 weeks. Contractor is responsible for securing the location for the program. In the event Contractor utilizes

District property on a weekend (Saturday), Contractor will be responsible to cover cost of maintenance at a rate of \$40.00 per hour. Contractor is responsible for all program expenditures:

- a. Payroll for the program director and two program assistants.
  - b. Operational expenses for tee shirts, supplies, snack, and the recognition program.
- D. Duane Byrd will provide a narrative summary of program results and recommendation within 10 days of the completion of each program sector.

**3. Background Check .**

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check for all Contractor employees working within each program. Contractor is precluded from performance of contract until the results of the criminal background check are on file.

**4. Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$31,340.00 as follows:

- A. Youth of Duluth's Summer Slam Basketball League, not to exceed \$17,930.00.
- B. Youth of Duluth's Summer ABC Program, not to exceed \$4,500.00.
- C. Youth of Duluth's Life Skills Program, not to exceed \$8,910.00.

Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided. District hereby agrees to reimburse Contractor for each program as follows:

**5. Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment by the District shall be made to the Contractor in the amount of \$6,268.00 (twenty percent of total contract) upon approval of the contract for start up costs. Additional payments by District to Contractor shall not exceed \$25,072.00 for the remainder of contract programming.
- b. Payment shall be made by the District on a bi-weekly basis upon submission of a proper invoice by the Contractor;
- c. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

**6. Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor hereby agrees to defend, indemnify and hold the District harmless from all claims relating to its work pursuant to this Agreement.

In the event that Contractor breaches its obligation to defend, indemnify and hold the District harmless, then in addition to its other damages the District shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail care of Office of Education Equity, ISD 709, Duluth Public Schools, 215 North 1<sup>st</sup> Avenue East, Duluth, MN 55802. All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail care of Youth of Duluth, 719 East 2<sup>nd</sup> Street, Suite 1, Duluth, MN, 55805.

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

15. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

16. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to “data on individuals”; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

**Commercial General Liability:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

**AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT,** set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

INDEPENDENT SCHOOL DISTRICT NO. 709

CONTRACTOR

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Title

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Title

*x Duane E. Byrd*  
\_\_\_\_\_  
Program Director

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
**Director of Business Service**