



UNIVERSITY OF MINNESOTA

USE AND SERVICES AGREEMENT

THIS USE AND SERVICES AGREEMENT (the "Agreement") is entered into effective as of September 1, 2014, by and between the Regents of the University of Minnesota, a Minnesota constitutional corporation the ("University"), and Duluth Public Schools ISD 709, a Minnesota public school district ("Licensee"). This Agreement is entered into by the University through its Department of Communication Sciences and Disorders (the "Department").

RECITALS

WHEREAS, Department operates the Robert F. Pierce Speech-Language-Hearing Clinic on the University's Duluth campus located at 156 Chester Park, 31 West College Street, Duluth, MN 55812 (the "Clinic"); and

WHEREAS, Licensee desires to use space in the Clinic to conduct audiological assessment of eligible students in Licensee's school district ("Licensee's clients"); and

WHEREAS, University is willing to permit Licensee to use certain space, equipment, materials and services in the Clinic, all as further described and subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and the provisions contained herein, the parties agree as follows:

1. Grant of License. University grants to Licensee a non-exclusive license for shared use of the laboratory and testing booth and exclusive use of Room 176 in the Clinic, as shown on the attached Exhibit A, for the sole purpose of conducting audiological testing and assessments of Licensee's clients, during normal business hours and by appointment only, and for no other purpose. In connection with such use, University grants to Licensee, on a non-exclusive basis, reasonable use of telephones located in the Clinic (for local calls only), of one parking place for Licensee's audiologist, and of general parking for Licensee's clients. Licensee's use of the laboratory and testing booth shall be scheduled in advance with University. Licensee shall be required to provide all assessment and evaluation templates and documents for Licensee's clients seen at the Clinic.

Licensee acknowledges and agrees that University, its agents, employees, invitees, licensees and students may use any portion of the Clinic for any purpose whatsoever and at any time during the term of the License, provided that University does not unreasonably disturb Licensee's use of the Clinic as provided in this Agreement. Licensee shall use the Clinic in accordance with the terms and conditions of this Agreement, all University rules and regulations and all federal, state and local laws, ordinances, rules and regulations (including copyright or similar laws).

2. Description of Services. In connection with the license granted in Section 1, University shall render to Licensee for its reasonable and non-exclusive use during normal business hours the following services during the term of this Agreement:

2.1 Calibration of Audiological Equipment. University shall conduct calibration of Licensee's portable audiometers, tympanometer and hearing test box (the "Equipment") on a schedule in accordance with professional practice standards.

2.2 Secretarial Services. University shall provide secretarial services to Licensee for scheduling of Licensee's testing of Licensee's clients. University shall be responsible for all employer obligations of University employees providing such secretarial services. All testing of Licensee's clients must be scheduled through University's secretary.

2.3 Office Supplies, Lab Materials and Services. Licensee may use lab supplies (towels, swabs and equipment cleaning supplies, diagnostic tests), office supplies (folders and blank client logs), Ethernet, the postage meter and the copier located in the Clinic.

Except as described in this Section 2, no other equipment and services shall be made available to Licensee by University.

3. Term and Termination.

3.1 Term. The term of this Agreement shall be ten months, **beginning on September 1, 2014 and ending on June 30, 2015**, unless earlier terminated pursuant to Section 3.2 or 13 below.

3.2 Termination. Either party may terminate this Agreement at any time without cause, upon sixty (60) days' written notice to the other. Upon such termination, Licensee shall make payment of amounts owing to University through the termination date. In the event the Clinic become unusable for the purposes contemplated herein due to fire or other damage or destruction through no fault of Licensee, Licensee shall have the right to immediately terminate this Agreement as of such date and upon payment of all amounts owing to University through the date of termination.

4. Fees. For use of the Clinic and the services described in Sections 1 and 2 above, Licensee shall pay the University as follows (altogether, the "Fees"):

4.1 License Fee. Licensee agrees to pay to University a license fee for use of the Clinic in the amount of \$100.00 per month, in advance, on or before the first day of each month.

4.2 Fee for Calibration Services. Licensee agrees to pay to University for calibration of Equipment the amount of \$183.00 per month, in advance, on or before the

first day of each month. Such fee shall be due and payable regardless of whether Licensee actually uses the Equipment during the applicable month.

4.3 Fee for Secretarial Services. Licensee agrees to pay to University a fee for secretarial services in the sum of \$472.60 per month, in advance, on or before the first day of each month. Such payment shall be due and payable regardless of the amount of secretarial services used by Licensee during the applicable month.

4.4. Additional Fees. Licensee shall pay a charge of \$2.00 for each of Licensee's clients served in the Clinic and a photocopying fee of \$0.10 per page. Licensee shall pay such fees within 10 days of receipt of an invoice from University.

If the Term commences on a day other than the first day of the month, or terminates on a day other than the last day of a month, or both, the Fees payable for the partial month(s) shall be pro-rated on a daily basis. If Licensee fails to make any payment within ten (10) days after the payment is due, Licensee shall be obligated to pay a late payment fee of five percent (5%) of the overdue amount, and, in addition, any payment which is not paid within thirty (30) days after the amount is due shall bear a finance charge at an annual rate of twelve percent (12%), one percent (1%) per month, from the first day due until paid. Payments received will be applied first to the late payment fee, then to the finance charge, and then to the base amount due. A fee of twenty and no/100 dollars (\$20.00) shall be paid by Licensee for all checks returned by the bank due to insufficient funds, account closed, or for any other reason.

5. Environmental. Licensee will not install, use, generate, store, or dispose of in or about the Clinic any hazardous substance, toxic chemical, pollutant, or other material regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1985 or the Minnesota Environmental Response and Liability Act or any similar law or regulation, including without limitation any material containing asbestos or PCBs (collectively "Hazardous Materials") without University's prior written approval of each Hazardous Material. Licensee will indemnify, defend and hold harmless University from and against any claim, damage, or expense arising out of Licensee's installation, use, generation, storage, or disposal of any Hazardous Materials, regardless of whether University has approved the activity.

6. Alterations. Licensee may not redecorate, change or alter the Clinic, nor may Licensee display any signs on or within the Clinic.

7. Personal Property. Licensee is responsible for loss of or damage to any personal property of Licensee, its guests, agents, employees or invitees, located within the Clinic before, during or after the term of the Agreement.

8. Liability. Licensee and University will each be responsible for their own acts and the acts of their directors, agents, employees and invitees, to the extent authorized by law, and will not be responsible for the acts of the other party, or its directors, agents, employees or invitees. Licensee's liability is governed by the provisions of Minnesota Statutes Chapter 466 and University's liability is governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §3.736 and other applicable law.

9. **Insurance.** Licensee will obtain and keep in force comprehensive general liability insurance, including coverage for bodily and personal injury, property damage, and professional liability, with limits of not less than \$1,000,000 each occurrence and \$3,000,000 combined single limit. Licensee will also obtain and keep in force workers' compensation and Part B Employer's Liability insurance to the extent required by law and furnish proof of such insurance upon request. Licensee may self-insure for the coverages required in this section.

10. **Assignment.** Licensee may not assign its rights under this Agreement.

11. **Surrender.** Licensee will, at the termination or expiration of this Agreement, remove all of its personal property and equipment from the Clinic and will quietly yield and surrender the Clinic to the University in the same good condition that existed when it took them, normal wear and tear excepted. Personal property not removed by Licensee will be considered abandoned and University may dispose of it as it is permitted by law.

12. **Notices.** All notices, demands, and communications under the terms and conditions of this Agreement shall be given in writing and sent by first class mail to the below addresses for each of the parties or to such other addresses as may from time-to-time be requested by University and Licensee.

If to the University: University of Minnesota
Attn.: Ginger DeRosier
c/o Real Estate Office
424 Donhowe Building
319-15th Avenue SE
Minneapolis, MN 55455-0199

With a copy of
notices of default to: University of Minnesota
Office of the General Counsel
Attn.: Transactional Law Services Group
360 McNamara Alumni Center
200 Oak Street SE
Minneapolis, MN 55455-2006

If to the Licensee: Duluth Public Schools, ISD 709
Attn: Bill Hanson, Director of Business & Finance
Central Administration Building
215 North 1st Avenue East
Duluth, MN 55802
Phone No.: 218-336-8704
Facsimile: 218-336-8773

13. **License Only, Termination and Remedies.** Licensee acknowledges that this Agreement represents a grant of a revocable license only, and not an easement, lease or other interest in real property. If Licensee fails to comply with the terms and conditions of this Agreement, University

will be entitled to immediately terminate this Agreement and exercise all other legal and equitable remedies available to University.

IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT.

14. Use of University Name or Logo. Licensee may not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, Extension, SGE or the name of any representative of the University without the written permission of the University in each instance.

15. Amendments. This Agreement will be amended only in a writing duly executed by all the parties to this Agreement.

16. Governing Law; Forum. The laws of the state of Minnesota will govern the validity, construction and enforceability of this Agreement. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement will be brought in the state courts of Minnesota.

17. Entire Agreement. This Agreement (including all exhibits) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

18. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, University and Licensee have executed this Agreement as of the date set forth above.

Regents of the University of Minnesota

Duluth Public Schools, ISD 709

By: _____

By: W. K. Hanson

Name: _____

Name: Bill HANSON

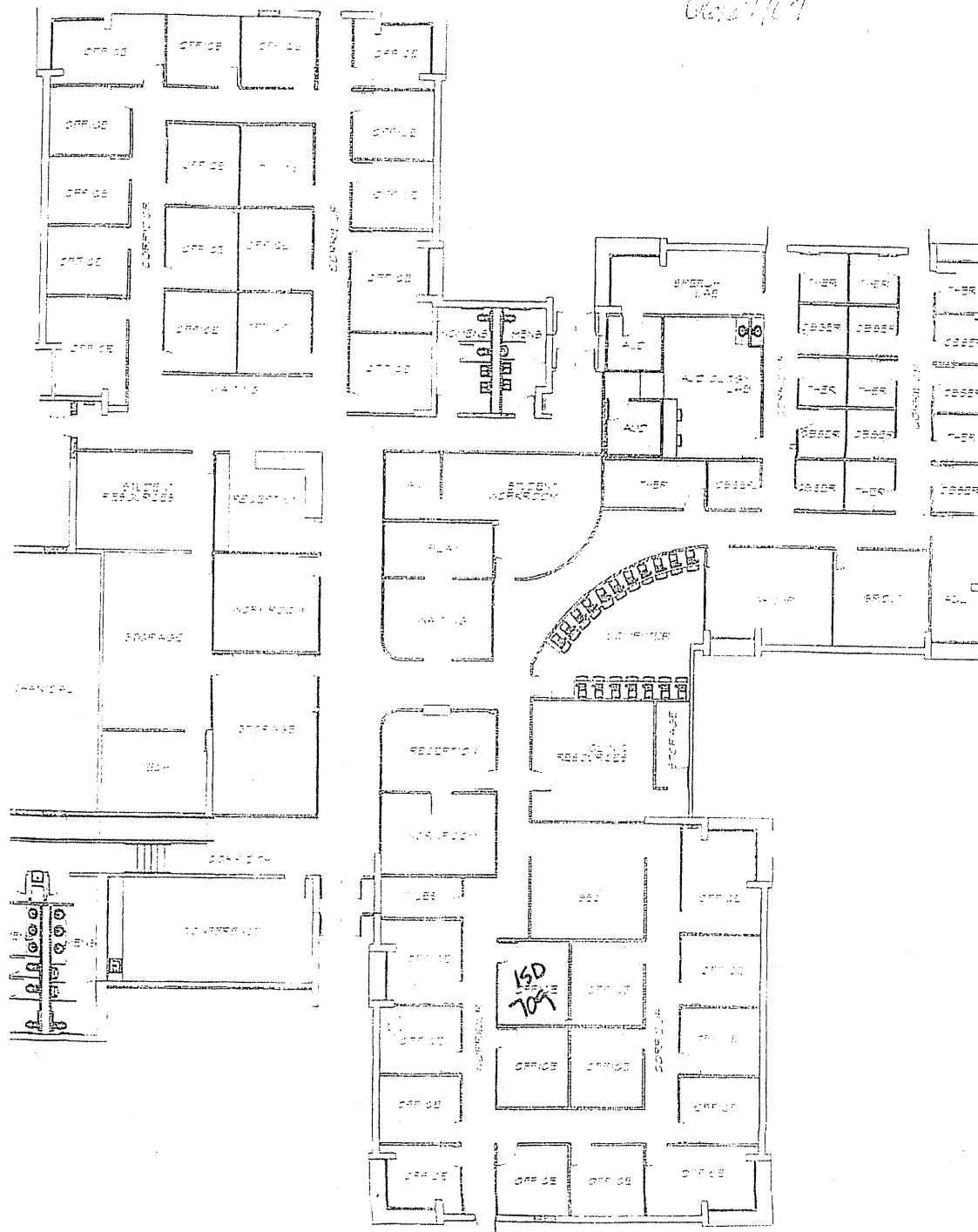
Title: _____

Title: CFO

Date: _____

Date: 4/14/14

06/27/17





FACILITIES MANAGEMENT

Independent School District No. 709

Located at 730 E. Central Entrance

Mailing Address: 215 North 1st Avenue East

Duluth, Minnesota 55802

Construction Management (218) 336-8907

Maintenance (218) 336-8906

Operations (218) 336-8905

Fax (218) 336-8909

Memorandum



To: Kerry Leider
Bill Hanson

From: Dave Spooner

Date: April 3, 2014

Re: PSS Fence Repair

Please find attached 3 copies of a proposal from Keller Fence Company, to make needed repairs to the PSS site perimeter fence, re-tie the upper bleacher fence fabric, and a complete replacement of the fence fabric between the track and bleachers.

This is a project that will be funded with Alt Facilities budget.

We have worked with Tom Pearson to verify the scope of the work, and are only completing the critical items that are needed to improve the appearance, improve safety, and keep the site secure when not in use.

I have received quotes from two firms, Century Fence along with Keller Fence, and Keller Fence is approximately \$7000 lower in cost for this work.

Proposal Recommendations:

I am recommending that we move forward with this proposal in the amounts identified. If you are in agreement please sign / date and return to Facilities Management.

Thank you, and please contact me with further questions.



PO Box 781 * Grand Rapids, MN 55744-0781
(218) 328-5504 * 1-800-241-2309 * Fax: (218) 328-5509
SWIFT VENDOR ID # 246131

PROPOSAL

To: David Spooner
Supervisor of Maintenance & Construction
Duluth Public Schools

Date: March 31, 2014
PROPOSAL# 0314016 Revised
F.O.B. Job Site
Terms: Due Upon Completion

Regarding: Public Schools Stadium Fence Repairs – Prices Include Prevailing Wages
Keller Fence Company-North proposes the following:

ACCEPTED WORK

Perimeter Fence Repairs: (Work to be done on a time & material basis, not to exceed amount shown)
In addition to the spread sheet provided by owner, replace 34 LF of 10' high chainlink on the SE corner of perimeter fence, remove and replace all 10' chainlink fabric on the south fence line (318'), dig out and reset the bottom rail and level all posts. Level entire west fence line, straighten top rail and level 6 gate posts. Lower 150 LF of 10' high fence on the NE corner, level gate posts, replace 8' of bottom rail and replace 1 each gate latch. Replace 8 LF of 8' high chainlink on the east fence line, replace 1 each gate latch and straighten the bottom cantilever horizontal.

	\$ 14,250.00
Add for any 2 1/2" line post replacement if leveling fails:	Per each \$ 125.00

Bleacher Fence Option: Re-tie all chainlink fabric to all the top & bottom rails at the top and sides of the bleachers
\$ 650.00

Track Fence Options:
Install 330' new 5' high 9 gauge 2" mesh aluminum coated chainlink to the bleacher framework. Includes removing the existing bleacher fence fabric.
\$ 3,450.00

Install 330' of new 5' high 9 gauge 1" mesh aluminum coated chainlink on new framework. All posts shall be 3" X 5' high Schedule 40 full weight and plate mounted to the concrete slab in front of bleachers.. Includes 1 5/8" top and bottom rails. Includes removing the existing bleacher fence fabric.

6 gauge 2" mesh	\$ 14,300.00
1" mesh 9 ga	\$ 14,500.00
3/8" mesh 11 ga	\$ 21,300.00

The above quotation is good for a period of ten (10) days from the date of this proposal. Keller Fence Company -North appreciates the opportunity to quote on this project and hope it merits your favorable review. If you have any questions or need additional information do not hesitate to call us at the above number.

PROPOSAL ACCEPTED BY

W. C. Hanson

Date: 4/14/14

PURCHASE ORDER #

Sincerely,

Scott Windorski

Scott Windorski
Keller Fence Company - North, Inc.

DECLINED

AGREEMENT

THIS AGREEMENT, made and entered into this 12 day of March, 2014, by and between Independent School District #709, a public corporation, hereinafter called District, and Amy Murzyn, 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: *(insert as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of 3/12/14, and shall remain in effect until _____, 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.
2. **Performance.** (Provide A SEPARATE PAGE detailing a description of the programs or services to be performed by contractor, as well as the funding source for payment.)
3. **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 \$ 200.00. 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.***
4. **Requests for Reimbursement.** Contractor shall request reimbursement on a _____ (Monthly, quarterly, other - *please describe*) basis, using either the District Invoice (included as Attachment A) OR the contractor's official invoice. This invoice must be submitted within 10 days of the end of the period being billed for.
5. **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.
6. **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.
7. **Relationship.** It is agreed that nothing contained herein is intended to or shall be construed in any manner as creating or establishing a relationship between the parties for any purpose whatsoever. Contractor and its officers, agents, servants and employees shall not be construed as employees of the District and any and all claims which may or might arise under the

Worker's Compensation Act on behalf of the Contractor's officers, agents, servants or employees shall in no way be the responsibility of the District.

8. **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 Bill Hanson, Director of Budget & Finance, ISD 709, Duluth Public Schools, 215 North 1st 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 to

(Mailing address, including zip code)

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **Insurance.** (If applicable)

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

Dr. Amy Murzyn
Name

Clerk

Consultant
Title

3/21/14
Date

Program Director

Taxpayer Identification Number

W. C. Hanson 4/1/14
Director of Budget and Finance

Dr. Amy Murzyn 3/21/14
Date

AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of March, 2014, by and between Independent School District #709, a public corporation, hereinafter called District, and Stephanie Mills, 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: (insert as appropriate)

1. **Dates of Service.** This Agreement shall be deemed to be effective as of March 24, 2014, and shall remain in effect until June 30, 2014, 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.
2. **Performance.** Will provide assistance to Integration Specialists during the PASS Program at Laura MacArthur Elementary School.
3. **Background Check .** (Applies to contractors working independent with students)

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 on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) 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 \$150.00. 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.

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

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. 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

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.

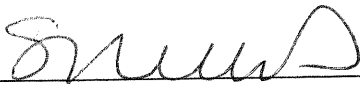
17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

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

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

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.




Contractor SSN/ Tax Identification Number

3-28-14
Date



Program Director

4/2/14
Date



Director of Business Service / Superintendent of Schools

4/4/14
Date



AGREEMENT

THIS AGREEMENT, made and entered into this 24th day of March, 2014, by and between Independent School District #709, a public corporation, hereinafter called District, and Brian Allen, 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: (insert as appropriate)

1. **Dates of Service.** This Agreement shall be deemed to be effective as of March 24, 2014, and shall remain in effect until June 30, 2014, 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.

2. **Performance.** Will provide assistance to Integration Specialists during the PASS Program at Laura MacArthur Elementary School.

3. **Background Check .** (Applies to contractors working independent with students)

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 on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) 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 \$150.00. 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.

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

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. 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

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.

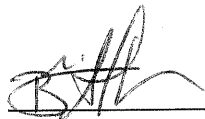
17. **Insurance.** (If applicable) Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

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

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

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.



Contractor

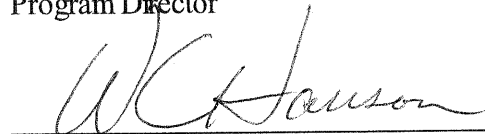
SSN/ Tax Identification Number

4/1/14
Date



Program Director

4/2/14
Date



Director of Business Service / Superintendent of Schools

4/4/14
Date



Date: April 14, 2014

To: Bill Hanson - Director of Business Services

From: William Howes
Coordinator - Office of Education Equity

Subject: **Amendment to Contractor Agreement with Avalon Educational Institute**

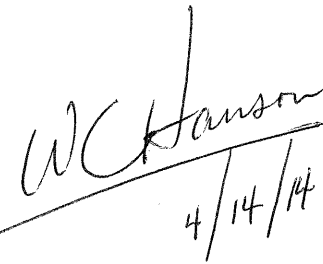
Refer to *Avalon Educational Institute Agreement of November 1, 2013*

We are requesting to increase the "not to exceed" amount within the existing contract from \$2000.00 to \$4000.00 for an additional amount of services outlined within the existing contract. The rate for services rendered will remain the same as within the existing contract.



William Howes

Coordinator - Office of Education Equity

Approved: 
4/14/14

AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of March 2014, by and between Independent School District #709, a public corporation, hereinafter called District, and John Achartz, 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: (insert as appropriate)

1. **Dates of Service.** This Agreement shall be deemed to be effective as of March 29th, 2014, and shall remain in effect until March 29th, 2014 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.

2. **Performance.** (insert programs or services to be performed by contractor)

Contract with John Achartz – Perpich Center for Arts Education Grant with Duluth Public Schools for Saturday, March 29th, 2014.

SmartMusic for Secondary Music: John Achartz, Duluth Edison Charter Schools
9:10-10:25AM – Provide training to teachers on how the SmartMusic Program/iPad app can be used in the classroom to aid in both instruction and assessment at the instrumental secondary level.

3. **Contract Documents.** It is understood that this Contract consists of the following:

1. Printed Memoranda of Agreement and Title Sheet;
2. Advertisement for Quotes, Contractor's Quote, and Quote Tabulation;
3. Contractors Insurance Policy;
4. Supplementary Conditions and Insurance Requirements; and
5. Any other documents identified by the District.

4. **Background Check .** (Applies to contractors working independent with students)

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 on all of its employees assigned to the program. Contractor is precluded from performance of contract until the results of the criminal background check(s) are on file.

5. **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 \$100. Contractors are 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 the TIN is provided.

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

- a. Payment shall be made by the District within 30 days of submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

7. **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, or to seek other damages.

8. **Ownership of Materials.** The District reserves the rights to reproduce the documents that are the subject of the Contract, in any form, in any fashion, or appropriate the contents of the documents, 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.

9. **Independent Contractor.** Both the District and Contractor agree that the Contractor will act as an independent contractor in the performance of its duties under this Agreement and is not an employee of the District. 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.

10. **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.

11. **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 Teri Akervik, ISD 709, Duluth Public Schools, 215 North 1st 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 _____.

(Contractor Address)

12. **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.

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

14. **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 without regard to conflict of laws considerations.

15. **Compliance with Laws.** The Contractor shall comply with all governing laws, rules and regulations, whether federal, state, local or those of the District. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Contractor transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Contractor recognizes that, to the extent that competitive bidding requirements apply to this Contract, that those requirements apply to the award and performance of this Contract.

The Regulations of the District are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

16. **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.

17. **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.

18. **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.

19. **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:

20. **Workers' Compensation Insurance:** Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in

accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

21. **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. The District shall be named an additional insured under said policy and proof of this insurance shall be provided to the District. This insurance shall be in at least the amount of \$2,000,000.

22. **Bonding.** Contractor shall provide such Payment and Performance Bonds as may be required, if any.

23. **Representatives of the District.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>District Employee</u>	<u>Position</u>
William Hanson	Director of Business Services

The Consultant shall report to the following persons regarding its work pursuant to this Agreement, or the designees:

<u>District Employee</u>	<u>Position</u>
Teri Akervik	Music/Grant Coordinator

24. **Protection of the District.** To the extent that work by the Contractor or others on behalf of the District is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise the District if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. if the work should be performed in a different manner and whether other work should be performed;
- d. if the District should be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of the District and act to protect those interests and endeavor to guard the District against defects, deficiencies and omissions in the performance of the work.

25. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between the district and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of the District, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors,

subcontractors, materialmen and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of the District.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for the District courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

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

John Achar
By

Clerk

Presenter
Title

Program Director

Taxpayer Identification Number

WCHanson
Director of Business Service

CITON SOLUTION SUMMARY

Hosted Email Encryption

**Customer Information:**

ISD 709 - Duluth School District
Sandra Benson
215 N. 1st Ave. E.
Duluth, MN 55802
United States

Phone:
Fax:

Ship To:

ISD 709 - Duluth School District
Bart Smith
215 N. 1st Ave. E.
Duluth, MN 55802
United States

Phone: (218) 336-8700
Fax:

QUOTE #
CCCQ32882-B

TERMS
Net 10

DATE
4/28/2014

REP
Jberini

Quote Expires in 30 days.

Citon Scope of Work / Project Deliverables:**Scope of Work (Citon's Responsibilities):**

1. Install and configure ZixGateway (and ZixPort when requested)
2. Setup initial rules and testing.
3. Documentation.
4. 1 hour training with ISD 709 IT.

Client Responsibilities / Project Assumptions:**Scope of Work (Customer's Responsibilities):**

1. Any items not detailed under deliverables will be considered out of scope and will be invoiced separately on a time and materials basis.
2. Prices are quoted for standard business hours. If any of the work is to be done after hours, standard after hours rates will apply.
3. A final plan will be agreed upon by both parties including, but not limited to: Date, time, tolerance of downtime, roles and fallback plan.
4. Training of ISD 709 End Users will be performed by ISD 709 IT Staff.
5. ISD 709 will provide Citon with logos and other branding material as needed IF ZixPort requested..

Change of Scope: Citon is happy to provide additional services outside the Scope Definition for this project. Scope changes will be processed on a Change Order Request and services will be performed as soon as signed request is received.

Line	Description	Qty	Unit Price	Ext. Price
1	Citon Hosted eMail Encryption Solution			
2				
3	1 Year Agreement - MONTHLY RECURRING			
4	ZixGateway - PER MONTH - Hosted eMail Encryption - per user	9	\$16.00	\$144.00
5	ZixPort - PER MONTH - Secure custom recipient delivery method with advanced mobile support NOTE: This feature allows users who do not have Zix eMail Encryption the ability to interface with a custom designed ISD 709 Portal. If this feature is not selected, the interface Portal defaults to the standard Citon logo'd Portal.	1	\$158.00	\$158.00
6				
7	1 Year MONTHLY RECURRING Subtotal:			\$302.00
8				
9				
10	ONE-TIME Professional Services Implementation	1	\$1,900.00	\$1,900.00

All Citon branded computer systems are covered by our comprehensive warranty. Customer understands that Seller is not the manufacturer of the non-Citon branded Products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Seller or its Affiliates. In purchasing the Products, Customer is relying on the manufacturer's specifications and instructions for the handling of warranty claims. In order to better serve Customers' needs, Customer agrees to process any claims directly with the manufacturer, with the exception of Citon branded PCs. Citon services to assist with warranty processing for non Citon branded products is available upon request and may be billable. Please note, all Labor is estimated. In adherence with industry best practices, Citon recommends budgeting an additional 5% to 15% of the Professional Services line item above for unforeseen needs and/or out of scope requests.

Prices subject to change - however we endeavor to maintain those quoted. Prices based upon total purchase - all delivery, training or consulting services to be billed at published rates for each activity involved - All hardware computer components proposed above are covered by their respective manufacturers warranties- we specifically disclaim any and all warranties, express or implied, including but not limited to any implied warranties or with regard to any licensed products. We shall not be liable for any loss of profits, business, goodwill, data, interruption of business, nor for incidental or consequential merchantability or fitness of purpose, damages related to this agreement. Minimum 15% restocking fee with original packaging. By accepting this proposal you agree to accept all our terms and conditions located at www.citon.com, which are incorporated herein by reference. Thank you for considering Citon Computer Corp. All logo's, brands, and product names are trademarks or registered trademarks of their respective companies. © Copyright 2014. Citon Computer Corp. Duluth MN. Citon is a registered trademark of Citon Computer Corp. All rights reserved. Please note that this quotation contains proprietary design and configuration information. Disclosure to a 3rd party prohibited. Citon's report findings and recommendations are part of our propriety process

Authorized Name

Bill Hanson

Authorized Signature & Date

Bill Hanson 4/29/14

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