

Browning Public Schools  
**Board Agenda Request**  
Meeting To Be Held: 6/29/16



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- 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
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**Date:**        6/13/16

**To:**            **John Rouse**  
                    Superintendent

**From:**        Jeri Matt  
**Title:**        Curriculum Coordinator

**Subject: Success For All Agreement of Services**

**Description:** SFA contract for 2016-17 academic year. Includes member center and 3 PD per school (KW, VC, BES and Napi)

**Justification (District Goals):** increase teacher effectiveness and student reading achievement

**Financial Impact:** \$ 25,800

**Funding Source (Budget/grant, etc.):** 115.90.494.1700.330.116 (Title I)

**Attachment(s):** contract

**Approval:** Superintendent's Office/Finance/Personnel as applicable (Initial) \_\_\_\_\_

**Comments:** \_\_\_\_\_

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**Board Action:**     N/A (Info)     Approved     Denied     Tabled to: \_\_\_\_\_



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2016/2017 Reading Renewal Contract

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**Contract Number: 102475**

**AGREEMENT FOR SERVICES**

The SUCCESS FOR ALL FOUNDATION, INC. (the "Foundation"; Federal Employer Identification Number 52-2061820), a Maryland not-for-profit corporation, located at 300 E. Joppa Road Suite 500, Baltimore, MD 21286-3006, and Browning School District #9 (the "School/District"), located at PO Box 610, Browning, MT 59417, acting on behalf of K. W. Bergan School, Napi Elementary, Browning Elementary and Vina Chattin Elementary (the "School(s)"), have executed and delivered this Agreement for Services (the "Contract") as of 7/1/2016 ("Effective Date").

WHEREAS, the mission of the Foundation is to develop and disseminate certain educational programs, materials, and/or services to schools and other educational institutions to help students achieve at the highest academic levels;

WHEREAS, the School/District wants to engage the Foundation for the provision of certain educational programs, materials, and/or services;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. The Engagement, the Work, the Terms and Conditions. Subject to the terms and conditions set forth in this Contract, the School/District engages the Foundation to carry out the work (the "Work") described in the attached Exhibit A – Professional Development Services. The Work includes all services and materials the Foundation has agreed to provide (together, the "Program") in the time frame that the Foundation has agreed to complete the Work.
2. Contract Term. The term of the Contract shall begin as of the Effective Date and end on 6/30/2017, unless terminated sooner by the parties as provided in this Contract.
3. Payment. Costs for Program Participation and Payment Terms are set forth on Exhibit C. Any change in services or materials must be pre-approved in writing by the Foundation and the School/District.
4. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in connection with this Contract. No person shall be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry or national origin.

5. Returns; Damaged or Missing Materials

(i) Returns. Materials properly ordered by and delivered to the School/District may be returned to the Foundation within ninety (90) days of receipt for a restocking fee equal to 25% of the order plus a 10% reshipping fee. All returns must be unused, in original packaging and accompanied by a Foundation issued return authorization number.

(ii) Damaged or Missing Materials. Any defective, damaged or missing materials should be reported to the Foundation Customer Service Department within ninety (90) days of receipt and replacement materials will be provided without charge.

6. Termination; Renewal

(i) Termination for Cause. This Contract may be terminated by either party for cause, provided that written notice containing a detailed description of the cause has been afforded to the other party at least sixty (60) days prior to the termination date, and further provided that during the sixty (60) days following the written notice, the party alleged to have breached the Contract shall have failed to remedy the alleged breach. On termination of this Contract, the Foundation shall retain all payments previously made, and shall be paid promptly for all services performed and products ordered through the date of termination.

(ii) Termination for Lack of Funding. Should funding for this contract be discontinued, the School/District shall have the right to terminate the Contract immediately upon written notice to the Foundation. Such termination shall not relieve the School/District of any liabilities already incurred for services rendered or for materials delivered.

(iii) Termination by Mutual Agreement. The Foundation and School/District may mutually agree to terminate the Contract with ninety (90) days notice. Such termination shall not relieve the School/District of any liabilities already incurred for services rendered or for materials delivered.

(iv) Renewal. This Contract will renew automatically for one (1) year terms following the expiration of the initial term unless either party gives the other party notice of non-renewal at least ninety (90) days prior to the expiration of the initial or any subsequent terms. Services for each renewal term shall be negotiated in good faith and mutually agreed upon by the parties, as evidenced by the contract planning form for the renewal term.

7. Subcontracts; Assignment

(i) The Foundation will not delegate nor enter into any subcontract for any work described within this Contract without the prior written consent from the School/District not to be unreasonably withheld or delayed. The Foundation shall have the right to assign this Contract to successors to the Foundation or to substantially all of the Foundation's business.

(ii) The School/District shall not assign this Contract or its rights and obligations, in whole or in part, to a third party without the prior written consent of the Foundation.

8. LIABILITY. The maximum aggregate liability of the Foundation under this Contract for any claim or matter, no matter what theory of liability, is expressly limited to the amount paid to the Foundation by

the School/District under the Contract. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS CONTRACT, THE FOUNDATION EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. Indemnification

(i) Except to the extent the School/District is required to indemnify the Foundation under Section 9(ii) below, the Foundation shall defend, indemnify, and hold harmless the School/District and its affiliates and their respective directors, officers, principals, shareholders, members, employees, agents, legal representatives, predecessors, successors and assigns from and against all liabilities, damages and costs, including reasonable attorney's fees, arising from any third-party claim (a) that the authorized use by the School/District of any materials provided by the Foundation under this Contract infringes a third-party's trademark or copyright rights; or (b) for which it becomes legally liable as a result of any negligent act or omission committed by or on behalf of the Foundation in the course of providing services under this Contract. No settlement which does not provide the School/District with a complete release may be made without the prior written consent of the School/District.

(ii) Except to the extent the Foundation is required to indemnify the School/District under Section 9(i) above, the School/District shall defend, indemnify, and hold harmless the Foundation and its affiliates and their respective directors, officers, principals, shareholders, members, employees, agents, legal representatives, predecessors, successors and assigns from and against all liabilities, damages and costs, including reasonable attorney's fees, arising from any third-party claim for which it becomes legally liable as a result of any negligent act or omission committed by or on behalf of the School/District in the course of receiving services under this Contract. No settlement which does not provide the Foundation with a complete release may be made without the prior written consent of the Foundation.

10. Insurance

(i) The School/District shall, at its own expense, procure and maintain the types and minimum limits of insurance as required by state and local laws and regulations. The School/District shall provide to the Foundation, upon request, a certificate of insurance.

(ii) The Foundation shall, at its own expense, procure and maintain the types and minimum limits of insurance covering the performance of services as follows: (a) Workers' Compensation including Employer's Liability at statutory limits; (b) General Liability insurance limit of liability: \$1,000,000 per occurrence, \$2,000,000 aggregate; (c) Automobile Liability insurance limit of liability: \$1,000,000 per occurrence; and (d) Professional Liability insurance limit of liability: \$1,000,000 per occurrence. The Foundation shall provide to the School/District, upon request, a certificate of insurance evidencing the above insurance limits.

11. Confidentiality; Student Records

(i) Confidential Information. Each party (the "Receiving Party") agrees not to use or disclose to any third party any confidential, nonpublic, competitively sensitive, private, and/or proprietary information ("Confidential Information") disclosed to it by the other party (the "Disclosing Party") for any purpose other than as contemplated by this Contract and to protect the Disclosing Party's Confidential

Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts. Although certain of the Disclosing Party's Confidential Information may be labeled 'Confidential' or 'Proprietary' (or with some similar wording), or identified orally as such, unlabeled information shall also be treated as Confidential Information to the extent the Receiving Party should reasonably construe it to be confidential or proprietary under the circumstances. These confidentiality obligations shall not apply to Confidential Information to the extent that the Receiving Party can prove through credible evidence that such information (a) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (b) is or becomes publicly available, by other than unauthorized disclosure; (c) is independently developed without any reference to the Confidential Information, as evidenced by contemporaneous written records of the Receiving Party; or (d) is required to be disclosed by law, regulation or court order; provided that, with respect to the foregoing clause (d), the Receiving Party shall give the Disclosing Party prompt notice prior to such disclosure. Upon termination of this Contract for any reason, the Receiving Party shall promptly destroy or return to the Disclosing Party, at the Disclosing Party's sole option, any Confidential Information of the Disclosing Party, including but not limited to electronic copies thereof.

(ii) Student Records. The Foundation shall keep in strict confidence any and all records and information, in whatever form or format received, pertaining to the School/District's individual students, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services, social security or public benefits, or information as to race, ethnicity or disability. The School/District represents and warrants that it is duly authorized to transmit such student records to the Foundation for the purposes of the Foundation providing the services under this Contract.

## 12. Intellectual Property

(i) All right, title, and interest in and to all intellectual property rights in all materials, Program components and other items made available or provided by the Foundation shall remain the exclusive property of the Foundation and/or its licensors. All components of materials provided to the School/District are copyrighted materials held by or licensed to the Foundation, which is the only distributor of the materials to support these programs. The Foundation possesses all rights necessary to license the Program to the School/District under the terms of this Contract.

(ii) The School/District is granted a license to use the intellectual property solely for the purposes of implementing the Program at the specified school(s) during the term of this Contract. The School/District is not permitted to resell the Program or to sublicense any of the rights to the intellectual property granted by this Contract or use any of the materials to create derivative works. All right, title, and interest in and to any suggestions provided by the School/District as it relates to the Program shall be the exclusive property of the Foundation and/or its licensors. The School/District is forbidden to duplicate any copyright protected materials provided without the express written permission of the Foundation. The School/District shall cooperate in the protection of the intellectual property rights by promptly notifying the Foundation of any infringement or other unauthorized use of the intellectual property rights licensed to the School/District. Upon any termination of the Contract, the School/District will cease to use the Program and, upon the Foundation's request, will return or destroy all of the materials provided in connection with the Program.

13. Conflict of Interest. The Foundation represents, warrants and covenants that it has no public or

private interest which does or may conflict in any manner with the performance of this Contract and that neither it, nor any of its officers, employees or subcontractors has or shall acquire any such interest. The Foundation shall promptly and fully disclose to the School/District all interests which may constitute such a conflict.

14. Applicable Law. This Contract shall be governed and construed in accordance with the laws of the state of Maryland, without reference to any principles regarding conflicts of law.

15. Severability; Survival

(i) If a court holds any term, covenant or condition of this Contract invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of this Contract, which the Foundation and School/District hereby deem severable and which shall remain in full force and effect.

(ii) Any and all provisions of this Contract which contemplate performance by the Foundation or School/District after the expiration or termination of this Contract shall survive and be enforceable after such expiration or termination, including without limitation, provisions relating to intellectual property and indemnification.

16. Independent Contractor. The School/District has engaged the Foundation as an independent contractor to carry out the work described within this Contract. Neither the Foundation nor any of the Foundation's agents, employees or subcontractors shall in any way or for any purpose be deemed agents or employees of the School/District.

17. Notices. Any notices to be given under this Contract shall be in writing and shall be delivered by either (a) registered or certified mail, return receipt requested, or (b) overnight messenger service that provides a receipt for delivery.

Notices shall be addressed as follows:

To the Foundation:

Success for All Foundation, Inc.  
Attn: Executive Vice President  
300 E. Joppa Road Suite 500  
Baltimore, MD 21286  
Telephone: (800) 548-4998

To the School/District:

Browning School District #9  
Attn: Jeri Matt, Curriculum Director  
PO Box 610  
Browning, MT 59417  
Telephone: (406) 338-2715

18. Order of Precedence. The parties have attached the following Exhibits to this Contract, each of which the parties have agreed to incorporate and make part of this Contract.

- Exhibit A Professional Development Services
- Exhibit B Materials (if applicable)
- Exhibit C Program Participation Fee and Payment Terms

In the event of conflict between any Exhibit and another Exhibit, or this Agreement for Services, the following order of precedence shall apply: first, this Agreement for Services, second, Exhibit A and B.

19. Waiver. No waiver by either party of any right under this Contract shall be deemed to be either a waiver of any other right or provision or a waiver of that same right or provision at any other time.

20. Entire Agreement. This Contract, including all and any Exhibits (which are incorporated by reference herein), constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral and written agreements and statements. This Contract supersedes any course of conduct, performance or dealing between the parties. No amendment or modification changing this Contract's scope or terms shall have any force or effect unless executed and delivered in writing and signed by both parties.

21. Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original, including by facsimile, but all of which together shall constitute one and the same instrument.

In witness whereof, the parties, have executed and delivered this Contract as of the day and year set forth above.

SUCCESS FOR ALL FOUNDATION, INC.

Browning School District #9

By:   
Lynsey Seabrook, Executive Vice President

By: \_\_\_\_\_  
Name/Title

Date: May 25, 2016

Date: \_\_\_\_\_

\*Please complete the payment terms page at the end of this contract to ensure proper billing.

**EXHIBIT A – PROFESSIONAL DEVELOPMENT, TECHNOLOGY AND OTHER SERVICES**

The following professional development services are provided as part of this Contract:

<b>On-Site Professional Development</b>	<b>Total # of Days</b>
Coaching & Support for Browning Elementary	3.0
Coaching & Support for K. W. Bergan School	3.0
Coaching & Support for Napi Elementary	3.0
Coaching & Support for Vina Chattin Elementary School	3.0
<b>Total</b>	<b>12.0</b>

Professional Development days will be scheduled by mutual consent. Cancellations of on-site days within 15 days of scheduled dates will be subject to cancellation fees.

**Technology Support and Other Services**

Technology Support includes unlimited access and use of the Success for All Member Center, Resource Centers, and Data Tools

Other Services includes

- Goal-focused achievement planning and progress monitoring with quarterly student progress summaries
- Frequent telephone contact for informal support

**EXHIBIT B – MATERIALS**

The following pages specify the materials to be provided as part of this contract (if applicable):

N/A

**EXHIBIT C – PROGRAM PARTICIPATION FEE PAYMENT TERMS**

The School/District shall pay the Foundation the following fees for the Work described in Exhibit A and materials included on the attached materials quotations:

**TOTAL COSTS:**

Total On-Site Professional Development	\$25,800.00
Total Technology Support Fee	Waived
<b>Total Costs</b>	<b>\$25,800.00</b>

**PAYMENT TERMS:**

**Materials Payment terms:**

Invoice as Shipped \$0.00 included in contract

Materials are invoiced as they are shipped. Purchase orders are required before materials will be shipped. Payment is due within thirty (30) days of invoice date. Materials amount includes both shipping/handling and sales tax (CA, NC & WA only).

**Technology Support Payment Terms:**

**Invoice by October 15th** Waived

Technology Support is invoiced at the start of the school year or with your first professional development invoice. Payment is due within thirty (30) days of invoice date.

**Professional Development - Payment Options (select one):**

( ) Option A: As Services Rendered \$25,800.00 total amount

Invoice monthly for services as rendered. Payment is due thirty (30) days from invoice date.

( ) Option B: By October 15th – 3% Discount \$25,026.00 discounted amount

If Payment in full is received by October 15th, a 3% discount will be applied to all Professional Development.

**Purchase Orders and Invoicing:**

SFAF requires purchase orders before materials will be shipped. If a purchase order is required by your district for professional development, SFAF will not begin services until the purchase order is received. Please indicate your district’s purchase order requirements below:

**Training** Yes ( ) No ( ) **Conference** Yes ( ) No ( )

If yes, does your district require an invoice before generating the Purchase Order? Yes ( ) No ( )

**Billing Information:**

Please send invoices to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please list a contact for invoicing questions:

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_  
E-mail \_\_\_\_\_