

**NO CHILD LEFT BEHIND**  
**Master Contract for Supplemental Educational Services**

This Contract entered into by and between Independent School District 709/ Duluth Public Schools (hereinafter referred to as DISTRICT) and Tutorial Services hereinafter referred to as PROVIDER) for Supplemental Educational Services to DISTRICT students (hereinafter referred to as Students).

In consideration of the promises and the mutual covenants and agreements set forth in this Contract, the DISTRICT and PROVIDER agree as follows:

**I. CONTRACT PURPOSE**

- A The purpose of this Contract is to define the rights and obligations of the parties with respect to Supplemental Educational Services (SES) provided by PROVIDER to DISTRICT for Students under the provisions of No Child Left Behind (NCLB).
- B PROVIDER warrants that it is qualified to and able to provide the Supplemental Educational Services (SES) required by the DISTRICT for Students as described in each Student's Individual Learning Plan.

**II. CONTRACT DURATION.**

This contract shall become effective on September 10, 2010, and shall remain in effect until June 30, 2011.

**III. PROVIDER RESPONSIBILITIES**

- A. PROVIDER shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules and regulations, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.
- B. PROVIDER shall comply with all procedures concerning enrollment, contracting, attendance reporting and billing as specified by the DISTRICT.
- C. PROVIDER shall conduct criminal background checks for all its staff members who have direct contact with children under this contract.
  - a.) PROVIDER will obtain a criminal background check on each such of its staff members prior to such staff member providing any tutoring services under this contract. Criminal background checks will be obtained by the PROVIDER from the State of Minnesota Bureau of Criminal Apprehension and the county of the staff

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member's residence, or, if such staff member has not resided in the current county or the State of Minnesota for at least six months, the next, most recent county and/or state of residence will be checked.

- b.) Any conviction appearing on a criminal background check must be presented by mail or courier to the Executive Director of Human Resources for the DISTRICT and the Federal Programs Supervisor for the DISTRICT. The PROVIDER shall include the following information on company letterhead: the name of the staff member, the work assignment, work location, and contact person along with a copy of the background report. The Executive Director of Human Resources will review the criminal background report and make the final decision as to whether or not the PROVIDERS staff member will be allowed to provide service to the DISTRICT under this contract. The PROVIDER must receive written DISTRICT approval before such staff member will be allowed to provide service under this contract.
- D. PROVIDER shall begin services within sixty (60) calendar days from the time the DISTRICT releases student registration information to the PROVIDER. If the PROVIDER is unable to start services within that time, the student will be assigned to another PROVIDER.
- E. PROVIDER is prohibited from offering incentives of any value to Parents/Guardians or their Students for selecting the PROVIDER'S Supplemental Educational Services. If student incentives are offered, the incentives must be appropriately related to the purpose of the student's Individual Learning Plan for academic achievement and should reasonably motivate or reward students for achievement of the specific goals of the Individual Learning Plan. Additionally, the incentive or reward must be directly related to a motivational activity that is part of the provider's plan to facilitate academic achievement. The cost of the incentives and/or rewards must be of nominal value and must not diminish the effectiveness of the original intent of Supplemental Educational Services as set forth in the "No Child Left Behind" legislation of 2001.
- F. PROVIDER shall complete their portion of the Individualized Learning Plan (ILP) for each student within thirty calendar days (30) of beginning services. PROVIDER will not be paid until an Individual Learning Plan is signed by the student's parent and is received and approved by the DISTRICT. PROVIDER shall make no changes in this Student's Individualized Learning Plan without the written consent of the DISTRICT and each Student's Parent/Guardian.
- G. PROVIDER shall provide Supplemental Educational Services to each Student in accordance with each Student's Individualized Learning Plan in a format established by the DISTRICT.

- H. PROVIDER shall provide a written progress report to the DISTRICT and each Student's Parent/Guardian a minimum of four times during the course of the service period or after each 25% of service has been provided, describing each Student's progress as it relates to the student's learning goals.
- I. PROVIDER shall notify DISTRICT of the location and/or change in location, at which it is providing services to DISTRICT'S eligible students. PROVIDER shall allow access to its facilities for periodic monitoring of each Student's instructional program by DISTRICT. Such access shall include unannounced monitoring visits. DISTRICT representatives shall have access to observe each Student at work, observe the instructional setting, interview the provider, and review each Student's progress and all student records maintained on site.
- J. PROVIDER shall maintain daily records of student services provided, including the name/address of student, the name of PROVIDER'S employee who rendered the service, and the amount of time of such service. PROVIDER shall permit access to and/or a copy of such records to DISTRICT upon request.
- K. PROVIDER shall submit to DISTRICT monthly invoices in the manner prescribed by the DISTRICT.
- L. PROVIDER shall receive compensation only for sessions actually attended by DISTRICT students. Provider shall not receive compensation for student absences.
- M. PROVIDER shall be solely responsible for the provision of all appropriate supplies, equipment, and facilities for a pupil as required in the Student's Individual Learning Plan. A PROVIDER that desires to use DISTRICT facilities must make a separate application for use of facilities and when applicable, payment for such use. PROVIDER will follow the DISTRICT'S Use of Facilities procedures.
- N. PROVIDER shall retain any and all books, documents, papers, reports and any other records related to the services PROVIDER provides to each Student for six (6) years. PROVIDER agrees that the DISTRICT or its duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to the records that are pertinent to and involve transactions relating to this Contract.
- O. PROVIDER'S accounting practices and procedures relevant to this Contract shall also be subject to examination by the DISTRICT or its duly authorized representative as often as and during such times as

aforesaid. The DISTRICT, or its representative, may duplicate, use or disclose all data delivered under this Contract in any manner consistent with state and federal laws.

- P. PROVIDER shall neither assign nor transfer any part of his/her interest in this contract without the express written consent of DISTRICT.
- Q. All data created, collected, received, stored, used, maintained, or disseminated by PROVIDER in providing Supplemental Educational Services under this Contract is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and PROVIDER must comply with those requirements as if it were a government entity.

#### **IV. DISTRICT RESPONSIBILITIES**

- A. DISTRICT shall approve the Individual Learning Plan, which is developed by a TEACHER, the Student's Parent/Guardian and the PROVIDER.
- B. In consideration for services provided under the terms of this contract DISTRICT shall pay PROVIDER up to \$\_\_\_\_\_per hour, not to exceed .One thousand eight hundred fifty one dollars and sixty five cents (\$1,851.65) for each student.
- C. Payments shall be made upon presentation of an accurately completed invoice within 35 days of the date of invoice.

#### **V. INDEMNIFICATION**

- A. PROVIDER shall indemnify, defend and hold DISTRICT harmless from and against any and all liability, judgments, costs, damages, claims or demands including reasonable attorney's fees, that arise out of the acts or omissions of PROVIDER, or its employees or agents and that arise out of the performance of this Agreement.
- B. DISTRICT shall indemnify, defend, and hold PROVIDER harmless from and against any and all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, that arise out of the acts or omissions of DISTRICT, or its employees or agents, and that arise out of the performance of this Agreement.

#### **VI RIGHT TO WITHOLD**

- A. DISTRICT may withhold payment to PROVIDER, upon written notice of such withholding, when in the opinion of the DISTRICT:
  - a. PROVIDER'S performance, in whole or in part, either has not

been carried out or is insufficiently documented.

b. PROVIDER has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records.

c. PROVIDER has failed to submit the invoice in a timely and accurate manner.

B. If DISTRICT gives notice of intent to withhold, PROVIDER shall have fourteen (14) days from the date of receipt of said notice to correct such deficiency.

## **VII. INSURANCE REQUIREMENTS**

A. PROVIDER shall provide an insurance certificate naming DISTRICT as an additional insured with the maximum liability limits established by Minn. Stat. § 466.04. The coverage required by this section must include Director's and Officer's Errors and Omissions coverage and coverage for any automobiles used for performance of the Contract as a part of general liability coverage.

B. PROVIDER shall not cancel or revise any insurance coverage required by this section during the term of this Contract without the express written consent of DISTRICT.

C. PROVIDER shall maintain coverage for Workers' Compensation at the level required by law.

## **VIII. RELATIONSHIP OF THE PARTIES**

It is agreed that nothing contained in this Contract is intended, or should be construed in any manner, as creating or establishing the relationship of partners between the DISTRICT and PROVIDER or as constituting PROVIDER as the agent, representative or employee of the DISTRICT for any purpose or in any manner whatsoever. PROVIDER is to be and shall remain an independent contractor with respect to all services performed under this Contract. PROVIDER represents that it has, or will secure at its own expense, all personnel required to perform services under this Contract.

## **IX. AMENDMENTS**

Any alterations, variations, modifications, or waivers of provisions of this Contract shall be valid only when they have been reduced to writing as an amendment to this Contract and duly signed by the parties hereto. In the event any provision of this Contract is found to be contrary to state or federal law, then such provision shall be deemed invalid except to the

extent permitted by law, but all other provisions of the Contract shall continue in full force and effect.

**X. TERMINATION OF CONTRACT**

- A. If the PROVIDER is unable to meet each stated individual Student's goals and timelines as specified in the Statement of Goals, the DISTRICT may withdraw that Student from the PROVIDER'S services.
- B. If any Student has unexcused absences for more than three consecutive sessions scheduled during a semester or have unexcused absences for more than 25 percent of the scheduled sessions, the DISTRICT may withdraw such Student.
- C. A Student's Parent/Guardian may terminate service at any time, or request to change providers in consultation with and approval from the DISTRICT.
- D. This Contract may be canceled by either party, prior to said termination date upon thirty(30)days written notice to the other party and without showing cause.
- E. Upon receipt of notice of cancellation, PROVIDER shall discontinue provision of service on the date specified for each Student specified and cancel all expenditures related to the specific cancellation.
- F. PROVIDER shall maintain all records relating to performance of this contract and upon request shall submit all records to the DISTRICT.

**XI. DEBARMENT AND SUSPENSION**

PROVIDER in executing this agreement is certifying that it is not currently debarred, suspended, or proposed for debarment from participating in this or any other agreement by any federal department or agency.

**XII. REMEDIES**

Either party's failure to insist upon strict performance of any requirement of the Contract or to exercise any right contained in the Contract, shall not be a waiver or relinquishment of any requirement.

**XIII. NOTICES**

Any notice or demand, which may or must be given or made by a party to this Contract, under the terms of this Contract or any law or regulation, shall be in writing and shall be sent registered or certified mail to the other party addressed as follows:

FOR DISTRICT

FOR PROVIDER

Duluth Public Schools  
215 North First Avenue East  
Duluth, MN 55802

Any party may designate a different addressee or address at any time by giving written notice thereof as above provided. Any notice, if mailed, properly addressed, postage prepaid, registered or certified mail, shall be deemed dispatched on the registered date or that stamped on the certified mail receipt and shall be deemed received when it is actually received.

**XIV. MINNESOTA LAW TO GOVERN**

This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to the Contract shall be venued in the State of Minnesota.

**XV. ENTIRE CONTRACT**

This Contract shall constitute the full and complete Contract between the parties to the Contract. All prior representations, understandings and agreements are merged into this Contract and are superseded by this Contract.

**IN WITNESS WHEREOF, the parties** have executed this Contract as of the date and year first written above.

Duluth PUBLIC SCHOOLS

PROVIDER Tutorial Services

By \_\_\_\_\_  
By \_\_\_\_\_

Jacquelyn Gaudreau  
State Coordinator

Title \_\_\_\_\_  
Title \_\_\_\_\_

*Jacquelyn Gaudreau*

Date \_\_\_\_\_

Date 11/3/2010

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Address 166 S. Industrial Dr.  
Saline, MI 48176

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