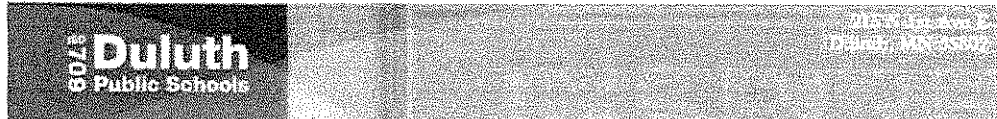




GENERAL SUPPORT SERVICES
STATEMENT OF WORK
17200 MEDINA ROAD SUITE 800, PLYMOUTH, MN 55447



Xigent Solutions, LLC
General Support Services
Statement of Work



Prepared for
Janet Young
215 N 1st Ave E
Duluth, MN 55802
2/11/2015

Xigent Solutions Internal Use Only

ST Number: _____

1 SUPPORT SERVICES AGREEMENT.

The General Support Services *Statement of Work* (hereafter "SOW") sets forth the terms and conditions under which "Duluth Public Schools" (hereafter "Client") has engaged Xigent Solutions LLC (hereafter "Xigent"), through its employees or other agents, to provide the consulting and professional services ("Services") described below.

2 SERVICE SCOPE.

2.1 Service Overview.

The objective of General Support Services is to provide consultative services upon Client's request. Services will be scheduled as resource availability allows and no deliverables will be provided unless specifically agreed upon prior to the start of work. General Support Services is designed to provide the Client with the ability to request services that are short term in nature or may require quick turn-around.

2.2 General Support Services.

Xigent will provide ad hoc support within the following areas, which may include:

- Technical and process support to include troubleshooting, problem/change management, configuration management, capacity planning, performance management, product usage support associated with:
 - Virtual infrastructure – VMware vSphere and View
 - Server Infrastructure – Cisco UCS
- Architectural support and guidance.
- Vendor management and escalation assistance.
- Best practice guidance.

2.3 Service Delivery.

2.3.1 Delivery Management

A member of the Xigent Service Delivery Team will:

- Coordinate and facilitate resources and tasks, including any changes as requested by Client.
- Acts as the main point of contact to the Client.

2.3.2 Deliverables.

Deliverables will be provided as mutually agreed between Client and Xigent.

2.3.3 General Support Request.

When Client requires work to be performed under this agreement, Xigent and Client will complete the General Service Request form prior to work being performed.

An example General Support Request Form is included in Appendix A.

To request Xigent Support Services, please call the Service Desk at **1-855-290-4500**, or e-mail servicedesk@xigentsolutions.com. Your request will be directed to the appropriate resource.

2.3.4 Service Scheduling

Service delivery will be scheduled upon agreement between Client and Xigent along with receipt of the signed General Support Request form. All work will be conducted during normal business hours (Monday through Friday, between 8 a.m. and 5 p.m. local time), unless otherwise agreed upon by Client and Xigent.

Should you require more aggressive scheduling, please contact kutzj@xigentsolutions.com to determine availability.

3 ROLES AND RESPONSIBILITIES.

3.1 Xigent Responsibilities.

Xigent resources are responsible to

- Complete the work as agreed to with Client and as described in the Service Request Form.
- Provide qualified professional(s) to perform the work requested by the Client.
- Work with Client to schedule resources and ensure activities are completed in a satisfactory manner.

3.2 Client Responsibilities.

Client resources will be responsible to

- Perform backups of all systems affected by services performed in this Statement of Work. Xigent is not responsible for lost data.
- Provide Xigent with detailed and accurate information regarding its current infrastructure environment.

- Provide power, network access, work area and other facilities as needed for Xigent resources during onsite visits and remote assistance.
- Provide access to resources and information necessary for the consultant to be successful including staff resources, architectural information, IT planning materials, network information/documentation, etc.
- Verify the equipment location (work site) is ready for consultant to perform supporting services.
- Provide at least one (1) technical contact with system administration responsibilities and appropriate levels of access privileges to systems and information necessary to perform this service dedicated 100% for duration of this engagement.
- Provide VPN access to allow remote support and troubleshooting where appropriate.
- Respond to Xigent requests that Client' resources work on issues and tasks not directly stated in this Statement of Work, but have a direct impact on the successful completion of tasks related to the service provided.

4 LOCATION.

The location of services to be provided is: Client Location or remote.

5 TERMS AND CONDITIONS.

5.1 Completion Criteria.

Unless specifically stated otherwise, the acceptance criteria will be the acceptance of the reported hours worked on by the applicable Xigent consulting resource.

5.2 Fees.

This is a 12 month, time and material contract for the General Support Services identified in this SOW. The associated fee structure for services performed is listed in the table below.

The minimum billable hours for services performed are 2 hours for remote support and 4 hours for onsite support.

If Client location is outside the seven county Twin Cities metropolitan area or more than 30 miles from the city of Sioux Falls, SD, travel time to and from the Client location will be invoiced at \$60 per hour. Any other Incidental expenses, incurred by Xigent in provision thereof will be billed as outlined in the following table.

Travel T&E	Rate
Travel Time, 3 hours ea way (MSP to Duluth)	\$60/hr
Hotel (If overnight required)	\$150/night
Meals Per-diem (If overnight required)	\$40/day
Transportation Charge to Duluth and back	\$200 flat fee

Service	Rate (\$/Hour)
Service During Business Hours	\$225
Service During Non-Business Hours	\$250
Service Delivery Coordination/Management	\$175

Fee Table

5.3 Invoicing.

Xigent shall invoice Client for billable hours monthly for all services and Client shall remit payment for invoices within (30) days of invoice. Xigent will summarize services performed and expenses incurred when requested by Client.

5.4 Cancellation and Termination.

In the absence of a breach by Xigent of Xigent' obligations, if Client cancels the Service or if Xigent terminates due to breach by Client, Xigent is authorized to invoice, and Client shall pay Xigent fees for Services performed through the date of cancelation.

In the absence of a breach by Xigent and Client, this SOW will terminate twelve months from the date of signing.

5.5 SOW Acceptance.

This *Statement of Work* is the complete and exclusive agreement between Xigent and Client with regard to its subject matter, and supersede all prior oral or written proposals, agreements, representations and other communications between the parties with respect to the Consulting Services and shall prevail notwithstanding any different, conflicting or additional terms and conditions which may appear on any order or other document submitted by Client.

IN WITNESS WHEREOF, the parties have caused the *Statement of Work* to be signed on the respective dates indicated below.

The parties hereby acknowledge that they have read and do understand this Agreement and all attachments hereto, and agree to all terms and conditions stated herein.

Acceptance of Statement of Work			
Xigent Solutions, LLC		Client	
Name:	Blake Abdella	Name:	BILL HANSON
Position:	VP, Service Delivery	Position:	CFO
Signature:	<i>Blake R. Abdella</i>	Signature:	<i>Bill Hanson</i>
Date:	2/11/2015	Date:	3/26/15

EXHIBIT A: GENERAL SUPPORT REQUEST.

General Support Request.

GENERAL SUPPORT REQUEST	
CLIENT: Duluth Public Schools	
SERVICE REQUESTED: 02/11/15	REQUEST DATE:
SERVICE REQUESTED BY: Janet Young	DATE REQUIRED:
SERVICE TO BE PERFORMED BY:	ST#:
DESCRIPTION OF REQUESTED SUPPORT SERVICE:	
ACTIVITIES TO PERFORM:	
DELIVERABLES:	
ESTIMATED HOURS:	
APPROVALS	
CLIENT:	DATE:
XIGENT:	DATE:

Please email signed document to: kutzj@xigentsolutions.com

AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of January, 2015, by and between Independent School District #709, a public corporation, hereinafter called District, and Jay Giddings, 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 February 7th, and shall remain in effect until February 7th, 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.**
Instrument Repair – Jay Giddings will present a session on February 7th that will provide regional music teachers the opportunity to discuss and learn basic repairs for instruments used in their classrooms. The session will include the latest technology and tools used to help instrumental teachers in repairs. Mr. Giddings will plan and prepare for this workshop in advance of the date of service.

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 \$ 100.00. 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 L. 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 9215 East Superior St, Duluth, MN 55804.

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 L. Akervik	Music/Perpich 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, material men 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

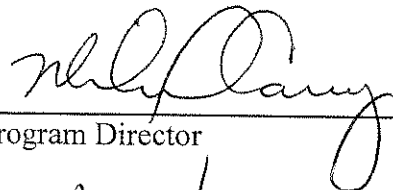
CONTRACTOR

Chair

By 

Clerk

Title

x  3/12/15
Program Director


Taxpayer Identification Number

 3/13/15
Director of Business Service

 3/12/15

Date: March 9, 2015

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 December 23, 2014*

We are requesting to increase the "not to exceed" amount within the existing contract from \$1400.00 to \$2400.00 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 3/9/15

William Howes
Coordinator - Office of Education Equity

**SIGN
& DATE**



OK WCHanson
3/9/15

UNIVERSITY OF MINNESOTA

FIRST AMENDMENT TO USE AND SERVICES AGREEMENT

THIS FIRST AMENDMENT TO USE AND SERVICES AGREEMENT (the "**Amendment**") is entered into as of the date of last signature below by and between Regents of the University of Minnesota, a Minnesota constitutional corporation (the "**University**"), and Duluth Public Schools ISD 709, a Minnesota public school district ("**Licensee**").

WHEREAS, University and Licensee entered into a Use and Services Agreement (the "**Agreement**"), dated September 3, 2014, providing for Licensee's use of the Robert F. Pierce Speech-Language-Hearing Clinic (the "**Clinic**") on the Duluth campus for the sole purpose of conducting audiological testing and assessments of Licensee's clients from September 1, 2014 through June 30, 2015 (the "**Term**"); and

WHEREAS, University and Licensee desire to amend the Agreement in accordance with the terms and conditions of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. The above recitals are incorporated into and are a part of this Amendment. All capitalized terms not defined in this Amendment will have the meaning given them in the Agreement.
2. Pursuant to Section 3.2 of the Agreement, Licensee desires to renew this Agreement for the annual term beginning July 1, 2015 and ending June 30, 2016, and University consents to such renewal.
3. University shall have the right at each annual renewal to increase the License Fee and the fees for calibration services, secretarial services, photocopying services and the \$2.00 charge for each of Licensee's clients served in the Clinic. University shall provide the amount of any increased fee to Licensee upon acceptance of Licensee's request to renew.
4. The License Fee for the annual renewal beginning July 1, 2015 will be \$105.00 per month. All other fees remain unchanged.
5. Licensee's use of the Clinic and services provided by University is subject to all applicable University policies, procedures, rules and regulations, including the Safety of Minors policy.
6. Except as modified by this Amendment, all terms and conditions of the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, University and Licensee hereby execute this Amendment on the day and year written below.

Regents of the University of Minnesota

Duluth Public Schools ISD 709

By:

Name: [REDACTED]

Title: [REDACTED]

Date:

By:

Name: [REDACTED]

Title: [REDACTED]

Date:

WCHanson

BILL HANSON

CFO

3/26/15

Original Contract NTE 71586 -



License No. U- _____

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, typanometer 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 prorated 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 as 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: Bill Hanson

Name: _____

Name: Bill Hanson

Title: _____

Title: CFO

Date: _____

Date: 4/14/14

Memorandum

To: Bill Hanson

From: Kerry M. Leider



Date: March 9, 2015

Re: Quote #4194– Replace Damaged Large Doors at Back of Auditorium at Denfeld High School – Sell Hardware, Inc.

Attached are three (3) copies of the Agreement between Independent School District #709 and Sell Hardware, Inc. to provide all labor and material to replace the damaged large doors at the back of the Denfeld high School auditorium per Quote #4194. The total estimated cost of this service is \$15,650.00.

I am recommending approval of the agreement with Sell Hardware, Inc. After review and if you concur, please sign all three copies of the Agreement and return them to the Facilities Management office for processing.

Attachments

FEB 24 2015

AGREEMENT

Revised 6/24/14

THIS AGREEMENT, made and entered into this 19th day of February, 2015, by and between Independent School District No. 709, a public corporation, hereinafter called ISD 709, and Sell Hardware, Inc., 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 ISD 709 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 February 19, 2015 and shall remain in effect until work is complete 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.** *To provide all labor and materials to replace the damaged large doors at the back of the auditorium at Denfeld High School per Quote #4194*
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 response, and Tabulation;
 3. Contractors Insurance Policy;
 4. Supplementary Conditions and Insurance Requirements; and
 5. Any other documents identified by ISD 709.
4. **Background Check .** *(Applies to contractors working independent with students)*
5. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, ISD 709 hereby agrees to reimburse Contractor for its services and expenses in performing said obligations up to a sum not to exceed \$15,650.00. 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 ISD 709 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 ISD 709 has reimbursed Contractor for any expense claimed by Contractor shall not preclude ISD 709 from questioning the propriety of any such item. ISD 709 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 ISD 709 may have to recover funds expended by Contractor for disallowed costs, or to seek other damages.

8. **Ownership of Materials.** ISD 709 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 ISD 709 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 ISD 709. 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 ISD 709.** Contractor hereby agrees to defend, indemnify and hold ISD 709 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 ISD 709 harmless, then in addition to its other damages ISD 709 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 ISD 709 shall be deemed to have been given by depositing the same in writing in the United States Mail care of Kerry M. Leider, ISD 709, Duluth Public Schools, 215 North 1st Avenue East, Duluth, MN 55802. All notices to be given by ISD 709 to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to: Sell Hardware, Inc., Attn: Donald Sell, 117 South 27th Avenue West, Duluth, MN 55806.

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 ISD 709.

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 ISD 709. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws

ISD 709 shall be named an additional insured under said policy and proof of this insurance shall be provided to ISD 709. This insurance shall be in at least the amount of \$1,500,000.

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

23. **Representatives of ISD 709.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>ISD 709 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>ISD 709 Employee</u>	<u>Position</u>
David Spooner	Supervisor of Maintenance and Construction

24. **Protection of ISD 709.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 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. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 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 ISD 709 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 ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

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 ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

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<u>ISD 709 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>ISD 709 Employee</u>	<u>Position</u>
Kerry M. Leider	Property and Risk Manager

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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.

Program Director

W. C. Hanson

CFO/Executive Director of Business Services

Donald A. Bell

By

President

Title

41-0982401

Taxpayer Identification Number