

# Mu Performing Arts Booking Contract

448

Rachael Kresha  
Lowell Elementary  
2000 Rice Lake Road  
Duluth, MN 55811  
Ph: 218-336-8895.

*April 2 → 6 Residency*

This contract is between:  
**ORGANIZATION:** Mu Performing Arts and Lowell Elementary  
**Contact Person:** Rachael Kresha  
**Contact Phone:** 218-336-8895,  
**Date of Engagement:** 4/2/2012  
**Time:** TBD  
**Performance location:** Lowell Elementary, 2000 Rice Lake Road Duluth, MN 55811  
**Type of engagement:** Residency  
**Contract Fee:** \$3500

**Terms of payment:** Due prior to or immediately following the performance date. By check, addressed and payable to "Mu Performing Arts", and mailed to Mu Performing Arts at address below. You may also pay online at <http://www.muperformingarts.org/mu-payment>. Please indicate on the check or submission, the name of organization and date of performance. Please do not give any checks to the performers.

**Purchaser will provide:** For performance: 20x20 ft level playing space with minimum 10 ft ceiling clearance, single microphone.  
For residency: Mu will provide practice drums; purchaser will provide a large enough space for all students to comfortably play the drums.

**Performance conditions:** Purchaser acknowledges that the artists of Mu Performing Arts are unable to perform in inclement weather. If the performance is to be outdoors, the Purchaser agrees that it shall provide a reasonable alternate performance site. In the event that the Purchaser is unable or unwilling to provide such a reasonable alternate performance site, the Purchaser agrees that Mu Performing Arts shall be entitled to the entire Contract Fee, shown above, in the event that the performance cannot take place due to inclement weather. For purposes of this agreement, "inclement weather" shall mean rain, snow, extremely damp conditions, or temperatures below freezing.

**Cancellation terms:** For cancellations initiated by the Purchaser, other than cancellations due to inclement weather described in the previous paragraph, the Purchaser agrees that Mu Performing Arts will receive 50% compensation if the engagement is canceled less than 10 days prior to the date of engagement, and full compensation if such performance is canceled less than 3 days prior to the date of engagement.

**Liability:** Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and results thereof. The Purchaser's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.732 et seq., and other applicable law.

**Comments:** No audio or videotaping is allowed without prior approval.

Make checks payable to:  
Mu Performing Arts, 355 Wabasha St. N., #140  
St. Paul, MN 55102  
Federal Employer ID#: 41-1727851  
State ID#: 1246450

For Mu Performing Arts

*Sara Ochs*

Sara Ochs, Office Manager

For Purchaser:

*Bill Hawson*  
Signature

*Bill Hawson*  
name (please print)

Date: *2/16/12*

## TOWER USE AGREEMENT

THIS TOWER USE AGREEMENT (hereafter "Agreement"), is made as of January 6, 2012 (the "Agreement Date"), by and between MIDWEST COMMUNICATIONS, INC., a Wisconsin corporation, with offices at 904 Grand Avenue, Wausau, Wisconsin 54403 (hereinafter referred to as "Midwest"), and User designated below.

### BASIC TERMS

- |      |  |  |
|------|--|--|
| 1.01 | User:  | Duluth Public School District.   |
| 1.02 | User's Business/permitted use:                               | Public School  |
| 1.03 | User's Representative and Address:                           | Ken Willms   |
| 1.04 | Subject Property:  | See Addendum B describing Tower and/or Building(s).  |
| 1.05 | Used Premises:   | See Diagram in Addendum B.   |
| 1.06 | User's Ground Equipment:                                     | See Addendum C.  |
| 1.07 | User's Tower Equipment:                                      | See Addendum D.  |
| 1.08 | Building/Tower Address:                                      | 5 <sup>th</sup> Ave W & 12 <sup>th</sup> St, Duluth MN   |
| 1.09 | Commencement Date:   | Date Midwest authorizes User to commence installation of User's Ground Equipment on the Subject Property, as evidenced by a written notice of commencement issued by Midwest.  |
| 1.10 | Term:  | Beginning on the Commencement Date and ending on the last day of the 12 <sup>th</sup> full calendar month thereafter.  |
| 1.11 | 6-Month Test Period  | No   |
| 1.12 | Security Deposit:  | None   |
| 1.13 | Monthly Fee:   | \$337.50   |
| 1.14 | Utilities:   | User shall be solely responsible for all Utilities (as defined herein) for the Tower Equipment and Ground Equipment.   |
| 1.15 | Taxes, Maintenance, Repairs, Replacements, Maintenance, etc. | User shall pay zero percent (0%) of the property taxes (as defined herein); User shall be responsible for one hundred percent (100%) of all personal property taxes, repairs, replacements, maintenance, and operating expenses of each and every kind attributable to the Ground Equipment and the Tower Equipment in the Used Premises. User shall also pay zero percent (0%) of all Subject Premises' maintenance and repair costs. |


- 1.16 Option(s) to Extend, None
- 1.17 ADDENDA (incorporated herein by reference): A, B, C, D, and E.

IN WITNESS WHEREOF, Midwest and User have caused their duly authorized representatives to execute and deliver this Agreement as of the date first above written.

MIDWEST COMMUNICATIONS, INC.

Duluth Public School District

By:   
Name: Paul W Rahmlow  
Title: Chief Financial Officer

By:   
Name: Bill Hanson  
Title: CFO

## ADDENDUM A

### STANDARD TERMS AND CONDITIONS

1. CONDITION PRECEDENT. This Agreement shall be binding on all parties according to its terms unless User is unable, after the exercise of its best efforts, to obtain FCC (as defined herein), and/or Federal Aviation Association ("FAA"), or any other permits or approvals necessary, if any, and User assumes and shall be fully responsible for determining which and, if applicable, how such permits or approvals shall be obtained for the installation of User's Tower Equipment or User's Ground Equipment on the Used Premises; provided, however, that if User pays any fees or other costs to Midwest or any other entity in connection with or during the period of seeking the above-referenced permits or approvals, all of such User fees or other costs paid prior to the exhaustion of efforts to obtain the aforementioned permits or approvals shall not be refunded to User.

2. RIGHT OF USE. Upon receipt of written documentation satisfactory to Midwest that User has obtained all of the required approvals and permits, if any, to add User's Ground Equipment and Tower Equipment to the Used Premises, Midwest shall grant User (a) the right to install in accordance with Paragraph 3 below and operate User's Tower Equipment on designated space on the Tower, (b) the right to use the Used Premises for the installation and operation of User's Ground Equipment with necessary appurtenances, and (c) the right of access to the Subject Property and User's Ground Equipment as provided below.

3. INSTALLATION OF USER'S TOWER EQUIPMENT AND GROUND EQUIPMENT.

(a) User's Tower Equipment will be mounted on the Tower at the elevations shown in Addendum C. User's Ground Equipment will be installed within the Used Space to be designated by Midwest in Midwest's buildings and related facilities located on the Subject Property (individually, a "Building" and collectively, the "Buildings") as such Used Space is diagramed in Addendum B or otherwise specified by Midwest to User.

(b) (i) If it is necessary for User to modify the Tower or Buildings in order to accommodate User's Ground Equipment and/or User's Tower Equipment, User shall pay for the total cost of such design and construction for the Tower and/or Buildings, including, but not limited to, all labor, materials, architectural, engineering, legal, testing, and related construction expenses (including time and expenditures by Midwest's own engineers and attorneys). User shall submit all construction plans to Midwest for approval, which shall not be unreasonably withheld, prior to commencing construction. The payment of all construction costs shall be made by User as such expenses become due.

(ii) User shall ensure that any construction or materialmen's lien or liens placed upon the Subject Property that arise out of or relate to any construction by User is or are released, in writing, within ten (10) days of the filing of the lien. In the event such lien is not released within ten (10) days of filing, Midwest may, at its sole option, declare User in default and/or pay any amounts for the release of the lien and bill User for such amount as is paid to release the lien. User agrees to promptly refund to Midwest any amounts paid by Midwest to release such lien or liens.

(c) User shall be solely responsible for (i) the design and installation on the Tower of User's Tower Equipment and on or in the Subject Property of User's Ground Equipment, (ii) all costs and expenses associated with, arising from, or related to the design and installation of User's Ground and Tower Equipment on or in the Subject Property or the Tower, including, but not

limited to, amounts incurred by Midwest, (iii) all costs and expenses of providing the necessary utility connections and metering, (iv) determining the applicability of and obtaining all local and federal permits and approvals for such installation, and (v) all costs and expenses arising from, associated with, or related to obtaining such permits and approvals, including, but not limited to, amounts incurred by Midwest. Notwithstanding the foregoing, User shall utilize the engineer of record for Midwest, or an engineer approved by Midwest for the preparation of such design and for the supervision of such installation. User shall submit all plans for such design and installation to Midwest for its review and approval prior to commencing work; provided, however, that Midwest shall not unreasonably withhold approval of such plans. User shall also be responsible for and agrees to immediately reimburse Midwest upon demand for all costs and expenses incurred by Midwest for engineering and legal services to obtain such approvals.

(d) Midwest shall authorize User to commence installation of User's Ground Equipment and User's Tower Equipment upon approval by Midwest of the plans for each, and upon receipt of satisfactory documentation that User has obtained all necessary local and/or federal permits and/or approvals for installation.

#### 4. PAYMENT TO MIDWEST.

(a) On or before the first day of each calendar month during the Term (as defined below), User shall pay to Midwest, at its offices designated above or at such other place as Midwest shall from time to time designate, a monthly fee (the "Monthly Fee") in the amount specified in the Basic Terms.

(b) In addition to payment of the Monthly Fee as set forth herein, during the Term, User agrees to pay all utility costs as provided in Paragraph 7 and the percentage of taxes and maintenance as set forth above in accordance with Paragraphs 8 and 12.

(c) User shall pay the first Monthly Fee on the Commencement Date (as defined herein). User further agrees to pay to Midwest, upon the date of execution of this Agreement, a security deposit in the amount set forth above which shall be no less than an amount equal to the first six (6) months Monthly Fees. Subject to the terms of Paragraph 21 below, this deposit shall be refundable; provided, however, that any interest earned on the deposit shall be paid to and retained by Midwest.

#### 5. TERM OF AGREEMENT AND TESTING PERIOD.

(a) The Term shall be the period of time specified in Paragraph .10 above (the "Term").

(b) If so indicated in Section 1.11 of the Basic Terms, this Agreement shall initially be effective for a six (6) month test period (the "Test Period"), which shall commence as of the date first set forth above, and this Agreement may remain in effect on a month-to-month basis for a period of time after the Test Period (the Petition Period, as defined below) subject to the terms and conditions set forth in this Paragraph 5).

(c) During the Test Period, User shall determine whether transmission of User's signal(s) is technically feasible as transmitted from the Tower using engineers satisfactory to Midwest. If User determines, in its sole discretion, that its transmission is not technically feasible as transmitted from the Tower, then User shall notify Midwest, no later than fifteen (15) days prior to the end of the Test Period, that User intends to terminate this Agreement effective upon the date that User receives approval from the Federal Communications Commission ("FCC") to relocate User's Ground Equipment and Tower Equipment to a location other than Midwest's Tower;

provided, however, that User must, within fifteen (15) days of the date of notifying Midwest of User's intent to terminate this Agreement, file its petition with the FCC and provide a copy to Midwest, requesting the FCC's authority to relocate User's transmission equipment; and, provided further, that User must exercise its best efforts to prosecute its application by the FCC of User's petition.

(d) If (i) User fails to timely notify Midwest of its intent to terminate this Agreement as set forth in Subparagraph 5(c)(i) above, (ii) User fails to petition the FCC, as set forth in Subparagraph 5(c)(i) above, (iii) User's petition to the FCC as contemplated by Subparagraph 5(c)(i) above is denied, or (iv) Midwest determines, in its sole discretion, that User is not exercising its best efforts as set forth in Subparagraph 5(c)(i) above, then at Midwest's option this Agreement shall terminate or shall continue in full force and effect through the end of the Term.

(e) During the Test Period, all terms and conditions of this Agreement shall remain in full force and effect with the exception of Subparagraphs 5(a) above. If User exercises its right to notify Midwest of its intent to terminate this Agreement pursuant to Subparagraph 5(c)(i) above, then during the period while User's relocation petition is pending before the FCC (the "Petition Period"), the terms and conditions of this Agreement shall remain in full force and effect on a month-to-month basis, with the exception of Subparagraphs 5(a) and 5(b) above. If User's petition is granted, then this Agreement shall terminate on the date User is authorized by the FCC to relocate its equipment.

(f) If User's petition to the FCC is granted and this Agreement is terminated as set forth in this Paragraph 5, then upon the termination date, User agrees promptly to pay to Midwest, as liquidated damages, an amount equal to six (6) times the Monthly Fee then in effect, plus all other expense reimbursements that have been demanded by Midwest pursuant to this Agreement. User and Midwest have negotiated and agreed upon this amount of liquidated damages, not as a penalty, but in recognition of the unique nature of, and User's unique use of the Subject Property, the difficulty anticipated in securing a satisfactory replacement user or users, and the risk of loss of rentals (particularly in view of the fact that the portion of the Subject Property utilized by User likely would be vacant for a period of at least six (6) months), and the losses, costs, and expenses, and fees associated with User's initial installations on the Subject Property and the retaking of possession and reletting User's portion of the Subject Property. The parties have agreed that this amount is a reasonable estimate of damages (including the value of lost opportunity due to User's use of the space on and in the Subject Property) and is not, nor is it intended to be, a penalty.

6. ACCESS TO EQUIPMENT. User shall have the nonexclusive right for ingress and egress across the Subject Property and inside the Building for maintaining User's Ground Equipment. User shall also have access to the Tower for the purpose of maintaining User's Tower Equipment. Compliance with all local and federal safety regulations and laws shall be stringently followed and satisfied by User and, emergencies notwithstanding, Midwest must be notified in advance of any planned maintenance. Notwithstanding the preceding rights granted in this Section 6, User's non-emergency maintenance of the Ground Equipment or Tower Equipment which requires Midwest equipment in the Subject Property to be turned off shall occur only during non-prime hours (11pm to 5 am), and shall be scheduled with Midwest by User not less than thirty (30) days in advance.

Midwest shall, at its own discretion, control access to the Tower and Building at all times, and Midwest shall limit access to the Tower and Building to qualified individuals skilled in the climbing and repairs of said structures.

7. UTILITIES. User shall use reasonable efforts to provide electrical power to User's Ground Equipment and User's Tower Equipment on a separately metered basis, the use of which shall be billed to User and paid directly by User to the electrical power provider when due and prior to delinquency.

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User shall be responsible for installation and payment of all other utilities and emergency power equipment required by its use of its Ground Equipment and Tower Equipment ("Utilities"). In the event that User's electrical power is not separately metered by the utility company, Midwest shall determine the monthly allocation of power expenses attributable by the method of using the power consumption as marked on User's Ground Equipment and Tower Equipment in watts. User shall thereafter pay the prorata share of such expenses on a per-month basis in addition to the Monthly Fee (as applicable) to be paid by User. User agrees to pay this amount to Midwest as a part of its Monthly Fee. As described further in Subparagraph 21(b) below, Midwest shall have the right, and User shall ensure that it provides Midwest with the means, to shut off the electrical power or Utilities to User in the event of default by User. Midwest makes no representations or warranties as to the availability of standby on-site generator power at any time.

8. TAXES. User shall pay a pro-rata share equal to zero percent (0%) of all real estate taxes, assessments, or levies assessed or imposed against the Subject Property, including the Buildings and Tower. User shall pay all personal property or other taxes assessed or imposed against User's Ground Equipment and User's Tower Equipment.

9. REPRESENTATIONS AND WARRANTIES OF USER. User represents and warrants as follows:

(a) User will not, by the installation or operation of its Ground Equipment or Tower Equipment, cause any interference with or degradation of Midwest's operation or signal or cause any interference to other users on the Tower or at the Subject Property.

(b) User has knowledge of Midwest's equipment on the Subject Property and of the other users and their equipment on the Subject Property.

(c) User will take all necessary precautions to protect itself, its contractors, agents, employees and third persons from injury in the installation, operation, and maintenance of User's Ground Equipment and User's Tower Equipment and that User will conform to the applicable requirements of federal, state, and local laws or agreements governing such activity.

10. INSURANCE. User shall procure and maintain comprehensive public liability insurance, and shall name Midwest as an additional insured, covering all of User's operations and activities on Subject Property, including but not limited to, the operations of outside contractors and the operation of vehicles and equipment, with limitations of not less than \$5,000,000 for injury to persons, and \$2,000,000 for property damage. Each of the foregoing limitations shall be for each occurrence and shall not be an aggregate limit in the policy or policies. User shall also cause any outside contractors to procure workmen's compensation insurance and to procure comprehensive liability insurance complying with this Paragraph 10. A certified copy of the required insurance policy or policies (or certificate(s) in lieu thereof) and all renewals shall be furnished to Midwest biannually.

11. LIABILITY AND INDEMNIFICATIONS.

(a) All of User's operations, including User's Ground Equipment, Tower Equipment, personnel, and agents, User's contractors and subcontractors, and their employees on the Subject Property shall be at the sole risk of User. Midwest shall not be liable for any loss of or damage or injury to any person or property sustained by User or others (whether associated with User or otherwise) in or about the Subject Property and caused by User or User's operations, or caused by any defects now or hereafter existing in or with respect to the Subject Property, or due to any improvements or repairs or operations of User, and without limiting the generality of the foregoing, regardless of whether such conditions, damage, loss, or injury is or are caused by fire, electromagnetic radiation, the bursting or leaking of water, gas, sewer, plumbing or steam pipes, or

fixtures or from any act or neglect of any other person or persons, or due to the happening of any accident from whatsoever cause in or about the Subject Property.

(b) User shall, at its expense, indemnify, defend, and hold Midwest and Midwest's heirs, successors, and assigns (collectively, the "Midwest Indemnified Parties") harmless from and against and with respect to any "Damages to Midwest Indemnified Parties." The term "Damages to Midwest Indemnified Parties" as used herein shall include any claim, demand, action, cause of action, loss, cost, expense, liability, injury, administrative order, consent agreement and order, penalty, interest, or damage, including, without limitation, attorneys' fees, and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims, and judgments resulting from, occurring in connection with, or arising out of User's Business, User's occupancy or use of the Subject Property, the transactions contemplated by this Agreement, any act or omission of User, including, but not limited to, User's conduct of operations on the Subject Property, the neglect or default of User, any event or occurrence in or upon the Subject Property affecting User or User's Equipment, the happening of any accident to User's employees, agents, subcontractors, or contractors or User's Equipment from whatsoever cause in or about the Subject Property, or claims of any nature, brought by any person(s), corporation(s), partnership(s), governmental entity or entities, or any other body or association, based upon, arising out of, or related to User's attempt(s) to, or failure to, obtain or comply with any of the federal or local approvals or permits as referenced in this Agreement.

12. MAINTENANCE ON SUBJECT PROPERTY AND EQUIPMENT. Midwest shall provide all necessary maintenance and repairs for the Subject Property, including but not limited to Tower lighting and markings, but not including User's Ground Equipment or Tower Equipment located in the Used Premises or otherwise on the Subject Property. User shall be assessed annually the percentage of such maintenance and repair costs as set forth in the initial terms and User agrees to promptly pay to Midwest its share of such costs.

User, at its own expense, shall carry out the maintenance of User's Ground Equipment and Tower Equipment. Maintenance shall be conducted by User in accordance with reasonable engineering practices and standards to assure that at all times User's Ground and Tower Equipment is in conformance with the requirements of the Federal Communications Commission and all other public authorities with jurisdiction over User.

User shall not be permitted to store or house equipment on any portion of Subject Property, other than that specified under the terms of this Agreement and further detailed in Addenda C and D.

13. ALTERATIONS.

(a) Midwest and Midwest's other users of the Subject Property may from time to time and at any time conduct additions, deletions, or modifications to the Tower and the Buildings or to its own equipment and facilities on the Subject Property. Subject to Paragraph 16 below, Midwest agrees not to make additions, deletions, or modifications to its own facilities or those of any other party which will harmfully interfere with User's use hereunder.

(b) With the prior approval of Midwest, which shall not be unreasonably withheld, User may make alterations, deletions, or modifications to User's Ground Equipment or Tower Equipment located on the Subject Property; provided, however, that the general scope of the work or alteration does not alter the physical types of equipment or its locations as detailed in Addenda B and C.

(c) In connection with User's proposed alterations, deletions, or modifications, Midwest may, at its option, require analysis and review of the proposed changes by Midwest's

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engineers or consultants prior to the approval of any alterations, deletions, or modifications of User's equipment on the Subject Property. User agrees to promptly reimburse Midwest for any expenses incurred by Midwest in such analysis and review.

14. OBSTRUCTION. In the event User's signal path is unavoidably obstructed by future construction of a physical structure, User shall have the right to terminate this Agreement upon prior written notice to Midwest; provided, however, that User shall first be required to make its best efforts to relocate its Tower Equipment on the Tower to available alternative elevations at no expense to Midwest.

15. LIENS. User shall, at its expense, indemnify, defend, and hold the Midwest Indemnified Parties harmless from any lien upon the Subject Property arising out of or related to User's activities on the Subject Property or related in any way to User's Ground Equipment or User's Tower Equipment.

16. DAMAGE TO THE BUILDINGS, THE TOWER, OR TOWER CONSTRUCTION.

(a) In the event that the Tower or Buildings is or are destroyed or damaged by fire, lightning, windstorm, explosion, collapse, aircraft, or other vehicle damage, earthquake, riots, acts of war, acts of God, or other casualty, Midwest shall have the option to terminate this Agreement without payment to User of a penalty or damages of any nature whatsoever. If Midwest elects to reconstruct or repair the Tower or Buildings after such damage, Midwest shall, upon completion of such reconstruction or repair, give permission to User to resume use of the Tower and Buildings pursuant to the terms and conditions of this Agreement. If Midwest cannot repair and make the Tower and/or equipment buildings usable within one hundred twenty (120) days of the date of destruction or damage, User shall have the option to terminate this Agreement.

(b) If the Tower height is raised, or the Tower or Buildings on the Subject Property is or are in need of repair, or the Tower or Buildings on the Subject Property is or are damaged by fire, lightning, windstorm, explosion, collapse, aircraft, or other vehicle damage, earthquake, riots, acts of war, acts of God, or other casualty, and construction, reconstruction, or repair are necessary, and such construction, reconstruction, or repair cannot reasonably be undertaken without dismantling User's Equipment, then Midwest may remove User's Equipment and interrupt User's broadcasting or communications activities, but must have the equipment reattached at the same height as it previously was installed as soon as reasonably possible and no later than one hundred twenty (120) days after the removal date, unless User is entitled to increase the height of its Tower Equipment pursuant to this Agreement. User shall be entitled only to a pro-rata reduction of its Monthly Fee (as applicable) for such time as it is unable to conduct its normal broadcasting or communications activities as a result of total or partial destruction or repair or reconstruction, or construction activities connected with raising the Tower height. In the event that User's Tower Equipment or User's Ground Equipment or the antennas, Tower, or Building housing User's Tower Equipment or Ground Equipment is or are destroyed or damaged by construction, repair, or reconstruction activities or by fire, lightning, windstorm, explosion, collapse, aircraft, or other vehicle damage, earthquake, riots, acts of war, acts of God, or other casualty so as to interfere with or totally negate normal operation of User's Ground Equipment or Tower Equipment, User agrees to not hold Midwest liable for any claim, damage, financial loss, or incidental or consequential damages or expenses resulting or arising from or in any way related to business interruption, property damage, or personal injury caused by such aforesaid circumstances.

17. EMINENT DOMAIN. If the whole of the Subject Property upon which the Tower and Building are located is acquired or condemned by any public authority, then the terms of this Agreement shall cease and be terminated as of the date the right to possession shall have vested in the public authority. Midwest shall be entitled to the entire amount of any condemnation award, except User shall be entitled to make a claim for and retain a condemnation award based on and attributable to the expense of removing User's property from the Subject Property. In the event of a partial condemnation, so that the Subject

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Property remains usable for radio broadcasting or other communications, then Midwest shall be entitled to the entire award and User shall have no claim for any award.

18. ASSIGNMENT. User shall not sublease, assign, mortgage, or otherwise encumber its rights in the Subject Property or this Agreement, without the express written consent of Midwest, which may be withheld for any or no reason. In the event of a violation of this section, in addition to any other rights or remedies available to Midwest, User shall pay to Midwest for revenue generated from any such sublease, assign, or similar transfer.

19. RIGHT OF USER TO REMOVE ITS EQUIPMENT IN EVENT OF TERMINATION. In the event either party terminates this Agreement in accordance with the provisions herein, and provided that User is not in breach or default of this Agreement at the time of such termination, User shall remove User's Tower Equipment and Ground Equipment from the Subject Property within thirty (30) days of the date of such termination. Such removal shall be conducted at User's sole expense and in accordance with the pertinent requirements of this Agreement. In the event User is in default or breach of the Agreement, User agrees that Midwest may remove such equipment at User's expense after the expiration of the thirty (30) day period and hold the equipment as security for any amounts owed by User pursuant to this Agreement. If User fails to collect such equipment from Midwest and pay all amounts due to Midwest within three (3) months of its removal from the Site, such property of User shall be deemed abandoned and Midwest may thereafter dispose of such property in Midwest's sole discretion.

In the event of any alteration, modification, or deletion of User's Tower Equipment by User pursuant to Paragraph 13, or removal of User's Tower Equipment pursuant to this Paragraph 19, User shall be required, at its sole expense, to return all affected portions of the Subject Property to their original condition prior to User's occupancy or alteration.

20. EVENTS OF DEFAULT OR BREACH BY USER. The occurrence of any of the following events shall constitute a default or breach on the part of User hereunder ("Event of Default"):

(a) User fails to pay any amounts due and owing to Midwest, including, but not limited to the Monthly Fee, utility expenses, maintenance fees, taxes, or any other amounts required pursuant to this Agreement, when due and payable, or fails to immediately replenish any and all amounts drawn down by Midwest from User's deposit as set forth below in Subparagraph 21(c).

(b) User fails to remove any lien pursuant to the provisions of Subparagraph 3(b)(ii) above.

(c) User shall (i) become insolvent, (ii) voluntarily suspend transaction of its business or operations, (iii) file a voluntary petition in bankruptcy or a voluntary petition to reorganize or a voluntary petition to effect a plan or other arrangement with creditors, (iv) file an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to any bankruptcy law, (v) be adjudicated bankrupt, or shall make an assignment for the benefit of creditors, or shall apply for or consent to the appointment of any receiver or trustee of all or a part of its property, or (vi) institute dissolution or liquidation proceedings.

(d) An order shall be entered approving an involuntary petition to reorganize User or to effect a plan or other arrangement with User's creditors or appointing a receiver or trustee for User of all or a part of its property; a writ or warrant of attachment, execution, distraint, levy, possession, or any similar process shall be issued by any court of competent jurisdiction against all or a part of the property of User, which writ or warrant shall not be dismissed or a stay of foreclosure obtained within sixty (60) days of the issuance thereof.

(e) User shall fail to perform or comply with any other condition, term, or provision of this Agreement and such failure is not cured with thirty (30) days of such failure.

21. TERMINATION BY MIDWEST. In addition to the remedies as otherwise set forth herein, or as may be available to Midwest at law or in equity, upon the occurrence of an Event of Default, Midwest may do any of the following:

(a) Midwest may terminate or suspend this Agreement. If Midwest chooses to terminate this Agreement, Midwest shall send written notice of termination to User, which termination shall be effective when sent. If Midwest chooses to suspend this Agreement, Midwest shall notify User in writing and such suspension shall take effect when sent. The suspension shall remain in effect until Midwest determines, in its sole discretion, that the Agreement should be resumed. Midwest may, at its option, terminate this Agreement at any time during a suspension period.

(b) Midwest may shut off power to User's Ground Equipment and/or Tower Equipment, prohibit access to User's Ground Equipment and/or Tower Equipment, and require User to cease use of the Subject Property. For purposes of allowing the implementation of such power shut-off, the construction and installation of User's electrical power lines shall provide Midwest with access at all times to the circuit breaker for such lines, including, but not limited to, any necessary keys and password or access codes. User hereby waives any and all claims for damages of any nature whatsoever, including, but not limited to, actual damages and incidental and consequential damages against Midwest should Midwest invoke its rights under this Agreement to shut off power and prohibit access to User's Ground Equipment and/or Tower Equipment. User shall not have the right to remove any of User's property from the Subject Property while User is in default under this Agreement. In the event of default, the liability of User for all User amounts as required in the Agreement for the balance of the Term and for damages for default shall not be extinguished.

(c) Midwest may draw down the unpaid amount from User's deposit (paid to Midwest pursuant to Subparagraph 4(c) above). User agrees to replenish the deposit amount by the amount drawn down immediately following the date the deposit is drawn down, which Midwest shall provide User with notice of. In the event User fails to do so, that portion of the deposit drawn down by Midwest shall not be refunded to User upon termination. The remaining balance, excluding interest, shall be refunded to User upon termination, unless Midwest retains the remainder of the deposit as a partial set-off against other obligations of User under this Agreement.

(d) In the event Midwest's interest in the Subject Property is transferred to a third party, and said third party and User are unable to reach an agreement on the terms and conditions for User's continued use of the Tower and/or Buildings, then, unless expressly assumed in writing by the transferee, this Agreement shall terminate upon the date of transfer by Midwest. Midwest shall ensure that User, unless in default or breach of this Agreement, is able to gain access to remove its property from the Subject Property pursuant to Paragraph 19 above.

22. HOLDING OVER. If, for any reason, User continues to use any portion of the Subject Property after the termination or expiration of this Agreement, unless otherwise agreed in writing, such use shall be subject to immediate termination by Midwest at any time, and all of the other terms and provisions of this Agreement (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period. All other payments shall continue under the terms of this Agreement. In addition, User shall be liable for all damages incurred by Midwest as a result of such holding over. No holding over by User, whether with or without the consent of Midwest, shall operate to extend this Agreement except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for User to continue use of any portion of the Subject Property.

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23. SUBORDINATION. This Agreement is subject to and subordinated to all present and future leases, mortgages, deeds of trust, encumbrances, and use agreements affecting the Subject Property.

24. QUIET ENJOYMENT.

(a) For so long as User shall not be in breach or default with respect to this Agreement and/or this Agreement is not terminated pursuant to Paragraph 21, User shall have peaceful and quiet possession of those portions of the Subject Property User is entitled to use pursuant to this Agreement. Midwest retains the right to alter the Tower structure or any portion of the Buildings contained on the Subject Property, including, but not limited to, raising the height of the Tower.

(b) Subject to all other terms and conditions of this Agreement, in the event Midwest raises the height of the Tower, User may relocate its Tower Equipment to a higher location on the Tower only in accordance with all other terms and conditions of this Agreement.

(c) In the event Midwest sells or transfers its interest in the Subject Property or the Tower or the Buildings to a third party, User's right to quiet enjoyment shall be subject to the provisions of Subparagraph 21(d).

25. MIDWEST'S GRANT OF RIGHTS. Nothing in this Agreement shall be construed as in any way limiting the right of Midwest to lease, sublease, sell, or grant rights for the use of any of the Subject Property or other property to any person, including any other radio, television, or other communications entities, either temporarily or permanently. User represents that the rights of existing Tower users are known to and recognized by User. User acknowledges and agrees that it has no right to exclusive use or possession of the Subject Property.

26. LIMITATION OF LIABILITY OF OFFICERS, DIRECTORS, SHAREHOLDERS, AND OTHER AGENTS OF MIDWEST. Any obligation or liability whatsoever of Midwest which may arise at any time under this Agreement or any obligation or liability which may be incurred by Midwest pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had as to the property of, its shareholders, officers, directors, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

27. NONWAIVER; CUMULATIVE REMEDIES. No course of dealing between Midwest and User shall operate as a waiver of any of Midwest's rights or any of User's rights under this Agreement. No delay or omission on the part of either party in exercising any right under this Agreement shall operate as a waiver of such right or any other right hereunder. No waiver shall be binding unless it is in writing and signed by one authorized to execute this Agreement or comparable agreements for the signing party. A waiver by any party in any instance of any of the terms or conditions of this Agreement or of any breach or default of this Agreement shall not constitute a waiver of such terms or conditions for the future or a waiver of any subsequent breach or default hereunder. All remedies, rights, undertakings, obligations, and agreements hereunder shall be cumulative, and none of them shall be in limitation of any other remedy, right, undertaking, obligation, or agreement of either party.

28. MISCELLANEOUS.

(a) If and when included within the term "User," as used in this Agreement, there is more than one person, firm, corporation, or other similar entity, each shall be jointly and severally liable for the obligations of User.

(b) All notices required or permitted to be given under this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to the parties at their addresses first written above. Either party may by like notice change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(c) Except as otherwise expressly provided in this Agreement or as otherwise may be required by applicable law, Midwest retains the absolute right to withhold any consent or approval for any or no reason.

(d) Neither this Agreement nor a memorandum hereof shall be filed by or on behalf of User in any public record. Midwest may prepare and file, and upon request by Midwest, User shall execute and deliver to Midwest, a memorandum of this Agreement.

(e) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any addenda or amendments hereto.

(f) The submission by Midwest to User of this Agreement shall have no binding force or effect, shall not constitute an option for the leasing or use of the Subject Property (or any portion thereof), nor confer any right or impose any obligations upon either party until execution and delivery of this Agreement by both parties.

(g) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

(h) Any amount not paid by User within five (5) days after its due date in accordance with the terms of this Agreement shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or fifteen percent (15%) per year. It is expressly the intent of Midwest and User at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Agreement. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Agreement, or contracted for, charged, taken, reserved, or received with respect to this Agreement, then it is Midwest's and User's express intent that all excess amounts theretofore collected by Midwest be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to User), and the provisions of this Agreement immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(i) Construction and interpretation of this Agreement shall be governed by the laws of the state of where the Tower is located.

(j) Time is of the essence as to the performance of the parties' obligations under this Agreement.

(k) All exhibits and addenda attached hereto are hereby incorporated into this Agreement and made a part hereof. In the event of any conflict between such exhibits and addenda and the terms of this Agreement, such exhibits and addenda shall control.

A. User hereby represents and warrants to Midwest that it has authority to and is duly authorized to enter into this Agreement.

29. ENTIRE AGREEMENT AND SEVERABILITY. This Agreement contains the full understanding and entire agreement between the parties with respect to the subject matter hereof and this Agreement supersedes any previous agreements, contemporaneous writing, or discussions between the parties. The terms and conditions of this Agreement may not be amended, nor any of its provisions waived, except by a writing executed by both parties. If any provisions of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.

30. OPTION TO EXTEND. If this Agreement provides for any option to extend the Term in the Basic Terms, so long as User is not in default under the terms of this Agreement, if User desires to exercise such option, User shall exercise each such option by written notice to Midwest, no less than one hundred twenty (120) days prior to the expiration of this Agreement by its terms, stating in definite terms that User is exercising its option to extend the term of the Agreement. If User exercises such option to extend, any such extension shall be on the same terms and conditions as set forth herein; provided, however, that to the extent one (1) or more such options are exercised, the number of options granted to User first set forth above shall be correspondingly reduced; provided further that the Monthly Fee shall continue to increase as first set forth above.

**ADDENDUM B**

**SUBJECT PROPERTY**  
**[PLUS DIAGRAM OF USED PROPERTY]**

**ADDENDUM C**  
**USER'S GROUND EQUIPMENT**

Number of Standard Racks 1  
30" Height 20" Width 19" Depth

Number of Power Connections 1 (120 VAC at 20 Amps)

Battery Power configuration: SELF CONTAINED

Portable Generator configuration: N/A

Additional Information:

Approved: User \_\_\_\_\_  
Date \_\_\_\_\_

Midwest \_\_\_\_\_  
Date \_\_\_\_\_



**APPENDIX D**  
**USER'S TOWER EQUIPMENT**

Antenna Location # \_\_\_\_\_

Tower Location (legal): \_\_\_\_\_

Elevation to Ground: \_\_\_\_\_

Antenna Type: 4 Bay Dipole

Manufacturer: Andrews - DB-224

Description: VHF 150-160 MHz

Azimuth: Omni

Frequency Gain: 150-160 MHz 6 DB GAIN

Input Power: 60

Polarity: VERTICAL

Effective Radiated Power: 240

Transmission Line: 1/2" Helax

Transmitter Type: Motorola MTR 2000

Transmitter Frequency: TBD

Receiver Frequency: TBD

Approved: User \_\_\_\_\_  
Date \_\_\_\_\_

Midwest \_\_\_\_\_  
Date \_\_\_\_\_

## **ADDENDUM E**

### **SPECIAL CONDITIONS**

Structural Enhancement, if required. User covenants and agrees that prior to the installation of User's Tower Equipment, User shall, at User's sole cost and expense, reinforce or cause to be reinforced the Tower, by engineers or contractors approved by Midwest, in accordance with the requirements or recommendations, if any, set forth in the results of the structural engineering analysis prepared by Midwest, all cost and expense of which shall be immediately reimbursed to Midwest by User on demand..



3805 Grand Avenue South, Minneapolis, MN 55409  
(612) 822-3422 • FAX (612) 822-3585  
origins@originsonline.org • www.originsonline.org

## Responsive Classroom

### Origins Letter of Agreement

Date: 1/12/2012

Contract 9679

The Origins Program, Inc. hereby agrees to provide consultation / training, and the client agrees to accept and pay for said consultation / training as follows:

Client: Lowell Elementary School  
Address: 2000 Rice Lake Rd.  
Duluth, MN 55811-4822  
Main Phone: 218-733-2164  
Contact: Maki, Jerry  
Title: Principal  
Phone: 218-336-8895 x 2940  
Email: jerry.maki@duluth.k12.mn.us

**Fees:**

RC Full-day Consulting	1 Day @ \$1,500.00	\$1,500.00
Travel Expense	1 estimate @ \$400.00	\$400.00
		<b>Total: \$1,900.00</b>

**Description of Work:**

Date	Time	Consultant	Description
2/17/2012	8:00-4:00	Lindsey Lynch	RC Full-day Consulting

**Terms:**

This agreement obligates the purchaser to full payment for services delineated in this document, including Exhibit A and/or B, if applicable. A purchase order must accompany the signed agreement. Work is invoiced as scheduled and performed, with payment due within 30 days of the invoice date. Rearrangement or cancellation of dates within the year requires prior written agreement from The Origins Program.

Travel expenses will be invoiced separately, if applicable. Travel expenses may include mileage, meals, lodging, airfare, parking, cab or public transportation, tolls, meals, rental car, fuel, and materials shipping. Payment of invoice(s) is due within 30 days of the invoice date.

Signature: The Origins Program

A handwritten signature in black ink, appearing to read 'Dr. Terrance Ross', written over a horizontal line.

Dr. Terrance Ross

Title: Executive Director Date: 1/19/2012

Signature: Host School / District

A handwritten signature in black ink, appearing to read 'Bill Hanson', written over a horizontal line.

Print Name: Bill Hanson

Title: CFO Date: 2/6/12

**Memorandum Of Agreement  
2011-12 School Year**



affiliated with the  
Young Audiences Arts for Learning network

This agreement, by and between COMPAS, Inc. (hereafter "COMPAS"), and **Lowell Music Magnet** (hereafter "Program Site") is hereby entered into and shall become effective as of the date of last signature.

It is Mutually Agreed as Follows:

1. COMPAS shall provide Program Site with an artist residency of 5 days in length. Site shall select the artist (s) from the Roster active in the COMPAS Residency program, as identified on the COMPAS website.

Deborah Elias is/are the artist(s) tentatively identified for this residency. COMPAS shall provide the necessary artist direction, instruction, supervision, resource materials and logistical arrangements.

2. In consideration of the services performed by COMPAS, Program Site shall pay COMPAS a total of **\$1700.00**, due and payable to COMPAS prior to the start of the residency.

3. Program Site shall abide by the stipulations of the program model as identified in the 2011-12 Residency Program materials furnished to Program Site by COMPAS, including, but not limited to:

- a. adherence to the guidelines of the COMPAS residency format, as described in detail in the 2011-12 Residency Program materials;
- b. advance preparation of a residency schedule for the artist, which shall adhere to the guidelines of one of the four COMPAS residency models (Traditional, Saturation, Extended, and Collaboration). Under these guidelines, residencies typically include no more than four classroom sessions per day, at least two of which shall be on-going classes with Core Groups meeting each day of the residency; one hour of teacher-artist contact (in-service workshops or individual or small group meetings with teachers); one community event;
- c. appropriate administrative or technical support (i.e., typing and photocopying for writing residencies, art supplies and adequate work space for visual arts residencies, adequate rehearsal space for music and dance residencies, etc.);
- d. the assignment of a teacher or other legally responsible and duly authorized adult to each classroom in which the artist works during the residency;
- e. arranging and paying for lodging for artists who travel more than 60 miles one way from their home.
- f. completion of the new and improved residency evaluation form by contact person and core group teachers for each residency.

4. COMPAS shall be responsible for the payment of all artist and transportation fees with the exception of materials and cartage costs. Unless otherwise arranged, these will be billed directly to the school by the artist.

5. Any works produced as a part of a COMPAS residency are subject to reprint by COMPAS at its discretion in any future COMPAS publication.

Residency Dates

5/7-11/12

6. If, after the artist has been selected and residency dates established, it becomes necessary to change some or all of the dates because of

a) artist illness or other unforeseen circumstance beyond the control of COMPAS, COMPAS shall, at its option, either:

- 1) reschedule the missed day(s) with the same artist, or another, acceptable to Program Site, if the original artist is not available; or
- 2) bill Program Site on a prorated basis for the amount of the residency actually completed.

b) inclement weather or other unforeseen circumstances beyond the control of Program Site, COMPAS shall reschedule the missed day(s) with the same artist, or another, acceptable to Program Site, if the original artist is not available. **Program Site shall be billed for residency days interrupted by such circumstances.**

Program Site shall be responsible for informing the artist (at home or at local lodging) and COMPAS of any change, conflict or cancellation of Program Site that shall affect the residency as scheduled. In event of artist illness, the artist shall inform Program Site and COMPAS.

7. Residency dates shall not be changed or cancelled due to circumstances or conflicts that could have been foreseen and/or prevented by Program Site. **Program Site shall be billed for residency days interrupted by such circumstances.**

8. Program Site agrees not to contract separately with identified COMPAS Roster Artist(s) for a period of at least two years following the completion of this project.

9. This Agreement shall become effective as of the date of signature of both parties, and shall be completed upon receipt by COMPAS of payment and required evaluation materials from Program Site.

10. COMPAS, as a non-profit organization, is reliant on granted or contributed funds from outside sources. The ability of COMPAS to carry out its responsibilities identified in this contract is dependent on receipt of outside funding. If these funds are not forthcoming, are rescinded or terminated, COMPAS reserves the right to terminate this agreement on ten days notice without penalty to COMPAS.

Agreed To By:

  
Robert Arthur Olsen, Executive Director  
COMPAS

Oct 4, 2011  
Date

  
Authorized Program Site Official Signature

3/1/2012  
Date

Bill HANSON CFO  
Name and Title (Typed or Printed, Please)

\_\_\_\_\_  
Program Site Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Program Site Address

\_\_\_\_\_  
City, State, Zip