



Client: Duluth Public Schools
 Address: 215 N 1st Ave East
Duluth, MN 55802
 Email: douglas.hasler@isd709.org

Contact: Douglas Hasler
 Title: CFO & Exec. Director of Business Services
 Phone: 218- 336-8704
 Fax: _____

THIS AGREEMENT is made and entered into by and between **Duluth Public Schools** (hereinafter referred to as “Client”) and The Eric Ryan Corporation (hereinafter referred to as “ERC”), either referred to as “Party.”

WITNESSETH:

1. ERC OBLIGATION

ERC agrees to review and analyze any utility, telecommunication, and internet/data billings. Billings shall include any electric, gas, water, sewer, cellular (wireless), data, internet, local and long distance billings provided by Client. ERC agrees to serve as a consultant with respect to those billings, as defined below for the locations listed on the attached Schedule A:

- 1.1 ERC will review and analyze all billings provided by Client for billing errors on past billings that may result in refunds or credits and analyze the information provided to see if there are potential future savings. During the utility audit process, ERC will check for, but not be limited to, opportunities such as billing errors, time of use rates, governmental economic riders, utility riders, off-tariff rates, and minimum billing issues. During the Telecommunications audit process, ERC will check for, but not be limited to, opportunities such as billing errors, lines that are not in use, government taxing errors, casual billing, cramming, slamming, and minimum billing issues.
- 1.2 ERC will review any existing contracts with the utility company, energy supplier and telecommunication companies to determine if the pricing is being billed correctly and to make recommendations as to the feasibility of continuing the contract arrangement.
- 1.3 ERC agrees to use its best efforts to obtain natural gas and electricity pricing from third party suppliers in those market areas that are applicable for the locations listed on the attached Schedule A. ERC will evaluate the pricing and market conditions and make recommendations to the Client with regard to that pricing. Upon approval from Client, ERC will implement the recommendation and monitor the billings on a monthly basis to ensure the contracted pricing and volumes are correct.
- 1.4 ERC agrees to use its best efforts to obtain telecommunications pricing (long distance, local landline, circuits, and cable) in those market areas that are applicable for the locations listed on the attached Schedule A. ERC will evaluate the pricing and make recommendations to the Client with regard to that pricing. Upon approval from Client, ERC will implement the recommendation and monitor the billings on a monthly basis to ensure the contracted pricing is correct.

2. ERC COMPENSATION

In consideration of ERC providing the services described herein, Client agrees to pay to ERC a fee of twenty-five percent (25%) of all refunds/credits (for anything not listed on the Exhibit A) recovered as a result of efforts by ERC on Client’s behalf. The same percent shall apply for twelve (12) months for all future billing reductions as a result of the efforts of ERC that are approved for implementation by Client. The future savings period will begin the first date Client is invoiced by ERC for that particular recommendation. Should Client choose to implement any of ERC’s recommendations on its own, ERC has the right to invoice Client according to the terms of this Agreement for any savings realized by Client. Client agrees to pay such fee(s) upon receipt of an invoice from ERC.

3. ADDITIONAL SERVICES

Any projects outside of the Scope of Services as defined in Section 1 will be invoiced at an hourly rate of one-hundred thirty-five dollars (\$135.00). Any projects that are considered outside the Scope of Services will be submitted in writing to the Client and must be approved by both parties before commencement of the services.

4. TERM

This Agreement shall be in effect from the date of execution by ERC through a period of twelve (12) months. Upon expiration, any fees still due as defined in Section 2 will be the obligation of the Client. Should a location listed on the Schedule A sell or close to an unrelated third Party at any time during the term of this Agreement, that location shall be removed from the Schedule A and will no longer be a part of this Agreement. Any outstanding invoices due at the time of removal of said locations will be the obligation of the Client.

CLIENT: _____ Date: _____

ERC: _____ Date: _____



5. CLIENT OBLIGATIONS

Client is under no obligation to implement any of ERC’s recommendations, but must provide written notice within sixty (60) days of presentation with their intentions regarding any recommendations made by ERC during the term of the Agreement. Should Client not provide notice, then ERC shall have the right to estimate savings and invoice for that particular recommendation. Client shall complete the attached Exhibit A at the time of execution of this Agreement in order to notify ERC of any projects or billing issues that Client is working on or plans to be working on to reduce costs or obtain refunds. Client must provide copies of any billings or contracts within thirty (30) days written notice by ERC.

6. EXHIBIT A, PROJECTS AND BILLING ISSUES

Should ERC identify any item not documented in writing by Client on Exhibit A, then ERC shall be entitled to compensation as indicated in Section 2 and Section 9 of this Agreement.

7. EXCLUSIVITY/NON-COMPETE

Client hereby agrees to engage ERC as its exclusive agent for the services defined in Section 1 for the duration of this Agreement. Client agrees that during the term of this Agreement, it shall not engage any other third party as its agent for the purchase of energy services or pricing of telecommunications services without prior notice and obtaining written consent from ERC. Client also agrees not to negotiate with any suppliers or telecommunications providers without the express written consent of ERC.

8. ASSIGNMENT

This Agreement, and any fees due as a result of services provided herein, shall be binding upon and inure to the benefit of the respective Parties, their heirs, executors, administrators, successors and assigns.

9. EVENT OF DEFAULT

If any Event of Default shall occur ERC reserves the option to terminate all obligations under this Agreement (including any obligation to provide further services), and, at ERC’s option, all indebtedness, invoiced and to be invoiced prior to the termination of the Agreement, will become immediately due and payable. Client shall be liable for all monetary damages including direct, indirect, special and consequential associated with the default. An “Event of Default” shall be defined but not limited to the following:

- 9.1 Any payments due to ERC from Client that are more than ninety (90) days past due.
- 9.2 Failure to approve or disapprove savings opportunities presented within sixty (60) days.
- 9.3 Failure to provide bill copies or request for information within thirty (30) days after the request. Should Client fail to provide bill copies for savings verification purposes, ERC reserves the right to estimate and invoice for savings.
- 9.4 Client engages third party as its agent for the purchase of energy related and/or telecommunications services without notification or written consent.

10. REMEDY OF BREACH

In any Event of Default or breach of the Agreement terms by either party, the aggrieved party must provide the defaulting party with written notice of the alleged breach, whereupon the defaulting party will have fourteen (14) days from receipt of said notice to cure such breach. If the defaulting party fails to cure the breach, the aggrieved party may provide written notice of its intent to terminate the contract. Prior to actual termination, the parties will attempt to resolve the matter amicably through mutual discussions within seven (7) days after receipt.

11. LIMITATION OF LIABILITY

In no event shall ERC be liable to Client for consequential damages. ERC’s maximum liability under this Agreement shall not exceed ERC’s compensation from Client during the six (6) months prior to the incident giving rise to the claim.

CLIENT: _____ *Date:* _____

ERC: _____ *Date:* _____



12. CHOICE OF LAW/VENUE

Subject to the Arbitration clause in Section 13, this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to its conflicts or choice of law provisions, and, in the case of any claims or disputes arising under this Agreement, the parties agree that venue shall lie exclusively in the Courts of St. Louis County, Minnesota.

13. ADDITIONAL ARBITRATION

Notwithstanding the Choice of Law/Venue provision herein, any controversy or claim arising out of or relating to this contract, or the breach thereof, involving an amount in excess of the jurisdictional limits for hearings before District Justices in St. Louis County, MN shall be settled by arbitration administered by the American Arbitration Association (AAA) in accordance with its then-current Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties agree to employ the expedited procedures set forth in Sections E1-E10 of the Commercial Arbitration Rules of the American Arbitration Association or any successor provisions, provided that the arbitration shall be conducted in St. Louis County, Minnesota.

14. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties and supersedes all prior representations, agreements, arrangements and understandings between the parties, whether oral or written. This Agreement may be modified only by a writing signed by all parties.

15. NOTICES

Except as otherwise expressly provided herein, all notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed sufficient when mailed by United States mail, delivered by Federal Express or similar overnight delivery service, or delivered in person to the Party to which it is to be given, at the address of such Party set forth below, or to such other address as the Party shall have furnished in writing in accordance with the provisions of this Section:

If to ERC:

**The Eric Ryan Corporation
Mary DeCaria
1 Early Street, Suite A
PO Box 473
Ellwood City, PA 16117**

If to Client

**Name
Attention
Address**

Client affirms that it has read this Agreement in its entirety and agrees to the terms and conditions contained herein.
Client Agreed to and Accepted this _____ day of _____, 2018

THE ERIC RYAN CORPORATION

DULUTH PUBLIC SCHOOLS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

The persons who have executed this Agreement represents and warrant that they are authorized to bind the party for whom they sign and that no further action is required to authorize or make this Agreement effective and enforceable according to its terms. This Agreement will take full effect on the date of execution by ERC.



EXHIBIT A

Client: *Duluth Public Schools*

Projects/Billing Issues:

List all items Client is currently working on. ERC will not work on nor share in the savings directly related to the billing issues listed below. Should ERC identify any item not documented in writing by Client on Exhibit A, then ERC shall be entitled to compensation as indicated in Section 2 of this agreement:

Project/Billing Issue Client is Currently Working On	Account Number	Utility/Telecom Vendor

CLIENT: _____ *Date:* _____

ERC: _____ *Date:* _____

