

Red Wing Public Schools Services Agreement

This Service Agreement (“AGREEMENT”), is made and entered into on _____, (effective date) by and between Red Wing Arts (“RWA”) located at 418 Levee Street, Red Wing, MN and Red Wing Public Schools (“School District”) located at 2451 Eagle Ridge Drive, Red Wing, MN 55066 and collectively known as the "Parties" for the purpose of providing a consultant to School District to perform the services as described in Exhibit A which is attached hereto and made a part of this Agreement.

WHEREAS, the Parties desire to enter this Services Agreement, thus setting out necessary working arrangements that both Parties agree are necessary to provide services to meet the academic needs of students at Red Wing High School. RWA will be responsible for performing the required services in a timely, thorough, and professional manner.

WHEREAS, under a “school official” exception both FERPA and the MGDPA allow certain contractors, consultants, volunteers, and other parties to access information that would otherwise be classified as private educational data that is not disclosable to the public; and

WHEREAS, consultant affiliated with RWA will be providing services in a manner that meets the relevant requirements to qualify as a “school official” under both FERPA and the MGDPA; and

I. PURPOSE AND SCOPE

The purpose of this Agreement is to improve the availability of a high quality visual arts program; to define the roles and responsibilities of the Parties toward coordination and collaboration to enhance the Arts program; and promote collaboration regarding shared resources as appropriate.

II. TERM

This Agreement shall be effective for the period of September 5, 2023 through June 5, 2024 and may be extended upon written mutual Agreement.

III. AMENDMENT OR CANCELLATION OF THIS MEMORANDUM

This Memorandum of Understanding may be amended or modified at any time in writing by mutual consent of both parties. In addition, the Memorandum of Understanding may be canceled by either party with thirty (30) days advance written notice, with the exception where cause for cancellation may include, but is not limited to, a material and significant breach of any of the provisions contained herein, when it may be canceled upon delivery of written notice to the other party.

IV. CONSIDERATION AND TERMS OF PAYMENT

In consideration of the full and complete performance of the agreed services, the School District agrees to compensate RWA no more than \$16,000.00 in two installment payments. For the first installment, RWA shall invoice the School District within five (5) days of execution of this Agreement in the amount of \$8,500.00 for services performed. For the second installment, RWA shall invoice the School District on January 22, 2024 in the amount of \$8,500 for services performed. This amount assumes RWA's consultant will provide approximately 16 hours/week of staff time. If the scope of work or responsibilities change, both parties agree to amend payment terms.

V. EMPLOYMENT RELATIONSHIP

The School District and RWA acknowledge and agree that Consultant is an independent contractor and not an employee of the School District, and RWA, Consultant or its agents will have any authority to bind the School District or otherwise incur liability on behalf of the School District within express delegation of authority by the School District. The School District shall have no obligation to provide any employee benefits or privileges of any kind or nature to Consultant, including, but not limited to, insurance benefits (medical, liability or workers' compensation), salary, taxes, mileage, pension benefits, or the like.

VI. GENERAL PROVISIONS

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum of Understanding in accordance with the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The parties assume full responsibility for their performance under the terms of this Memorandum.

If at any time either party is unable to perform their duties or responsibilities under this Memorandum of Understanding consistent with such party's statutory and regulatory mandates, the affected party shall immediately provide written notice to the other party to establish a date for resolution of the matter.

VII. COMPLIANCE WITH STUDENT DATA PRIVACY AND RETENTION

The Minnesota Government Data Practices (“MGDPA”) and the Family Educational Rights Privacy Act (“FERPA”) govern all education records and data that RWA and Consultant collects, receives, or maintains in connection with services provided under this Agreement. Accordingly, RWA and Consultant agree to comply with the MGDPA and FERPA in its collection, maintenance, and dissemination of education records and educational data. This provision survives expiration or termination of this Agreement.

1. **Protected Student Data Defined.** “Protected Student Data” means any data defined as “personally identifiable information” contained in educational records as the term is defined in FERPA and its implementing regulations, 20 U.S.C. § 1232g and 34 C.F.R. § 99.31, or “educational data” as defined in the MGDPA, Minnesota Statutes, section 13.32.
2. **Types of Data to be Accessed.** In the course of providing the services described in Exhibit 1, Consultant affiliated with RWA will have a legitimate need to access Protected Student Data in the form of access to Synergy, including grades, attendance, and status of homework completion, as well as subject assessment data. The data described in this Paragraph is subject to disclosure restrictions imposed by FERPA and the MGDPA.
3. **Collection and Maintenance of Assessment Data.** In the course of administering the subject assessments described in Paragraph VII. 2, Consultant affiliated with RWA will have a legitimate need to maintain the data from the subject assessments.
4. **Terms and Conditions Governing Access to Data.** The following terms and conditions govern the manner in which Consultant affiliated with RWA will have access to the data described in Paragraph VII:

a. Only RWA staff with a legitimate educational interest shall be granted access to Protected Student Data in accordance with the terms of the Agreement. Protected Student Data shall not be shared with any employee, agent, volunteer, or other affiliate of RWA who is not an individual associated with RWA as defined in Paragraph VII and who complies with subparagraph (b).

b. RWA and Consultant shall not attempt to use, access, or maintain Protected Student Data for any reason other than purposes legitimately necessary for its staff to provide the services referenced in Exhibit A.

c. Upon termination of this Agreement, RWA and Consultant must not retain any Protected Student Data collected or maintained pursuant to this Agreement. The parties will work collaboratively to determine whether any data maintained by RWA and Consultant should be returned to the District and to develop procedures and a reasonable timeline for the destruction of data that need not be returned pursuant to the School District's General Data Retention Schedule. RWA and Consultant must not retain any of the District's Protected Student Data for more than 30 days after the termination of this Agreement.

5. **Redisclosure of Protected Student Data.** In the course of performing the services described in Exhibit A, the Parties agree that RWA Consultant providing services to the District shall not redisclose Protected Student Data to any person or party other than a District official with a legitimate need to access the data unless disclosure is specifically authorized or required by law.

6. **Policies and Procedures to Protect Data.** The Parties agree to comply with the following policies and procedures to protect the privacy of Protected Student Data:

a. RWA and Consultants shall not disclose Protected Student Data except as provided in Paragraph VII. 5.

b. RWA and Consultant shall at all times comply with School District Policy 515 – Protection and Privacy of Pupil Records, to the extent applicable.

c. RWA and Consultant shall develop its own policies, procedures, and systems to implement appropriate safeguards to protect the privacy of Protected Student Data.

VIII. LIMITATION OF LIABILITY

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum of Understanding.

IX. ARBITRATION/MEDIATION DISPUTE RESOLUTION

The Parties to this Memorandum of Understanding agree that should any dispute arise through any aspect of this relationship, including, but not limited to, any matters, disputes or claims, the parties shall confer in good faith to promptly resolve any dispute. In the event that the parties are unable to resolve the issue or dispute between them, then the matter shall be mediated and/or arbitrated in an attempt to resolve any and all issues between the parties.

The parties agree that any claim or dispute that arises from or through this agreement, the relationship or obligations contemplated or outlined within this agreement, if not resolved through mediation, shall then go to and be resolved through final and binding arbitration. Any decision reached by the Arbitrator shall be final and binding and, if required, may be entered as a judgment in any court having jurisdiction.

In the event that any court having jurisdiction should determine that any portion of this Agreement to be invalid or unenforceable, only that portion shall be deemed invalid and not effective, while the balance of this Agreement shall remain in full effect and enforceable. This Agreement shall be interpreted and governed by and in accordance with the Federal Arbitration Act 9 U.S.C. §1-16.

X. NOTICE

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such address as one may have furnished to the other in writing.

XI. INSURANCE

Certificates evidencing insurance obtained shall be furnished upon request. RWA will obtain and maintain a comprehensive general liability policy that names the School District as an additional insured. The limits of the policy will include one million five

hundred thousand dollars (\$1,500,000) for each occurrence, covering bodily and personal injury and property damage.

XII. GOVERNING LAW

This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of Minnesota.

XIII. SEVERABILITY CLAUSE

In the event that any provision of this Memorandum of Understanding shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this Memorandum shall be determined to be unlawful or otherwise unenforceable, the remainder of the Memorandum shall remain in full force and effect, so long as the clause severed does not affect the intent of the parties. If a court should find that any provision of this Memorandum to be invalid or unenforceable, but that by limiting said provision it would become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

XIV. ASSIGNMENT

Neither party to this Memorandum of Understanding may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, whose approval shall not be unreasonably withheld.

XV. MUTUAL INDEMNIFICATION

To the extent permitted under the laws of the State of Minnesota, each party agrees to defend, indemnify and hold the other party, its board members, officers, administrators, employees, consultants, representatives, insurers, volunteers, agents, subcontractors and independent contractors, harmless from any and all claims of action, including reasonable attorney fees and expenses, arising of any act or omission on the part of the other party or its board members, officers, employees, consultants, representatives, insurers, volunteers, agents, subcontractors or independent contractors under this Agreement. The parties agree and acknowledge that the duty to defend and indemnify survives the termination or expiration of this Agreement.

XVI. AMENDMENT/MODIFICATION

This Agreement may be amended or modified only by a writing executed by the Parties. No custom or practice of the Parties at variance with the terms hereof will have any effect.

XVII. ENTIRE UNDERSTANDING

The herein contained Memorandum of Understanding constitutes the entire understanding of the Parties pertaining to all matters contemplated hereunder at this time. The Parties signing this MOU desire or intend that any implementing contract, license, or other agreement entered into between the Parties subsequent hereto shall supersede and preempt any conflicting provision of this Memorandum of Understanding whether written or oral.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Red Wing Arts

DATE: _____

By: _____

Emily Guida Foos

Its: Executive Director

Independent School District, No. 256

DATE: _____

By: _____

Its: Chair

DATE: _____

By: _____

Its: Clerk

EXHIBIT A

Perform the services of a ceramics Art Teacher at Red Wing Public Schools