

AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of October, 2020 ,by and between Independent School District #709, a public corporation, hereinafter called District, and Gordon Jourdain, 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:

1. Dates of Service. This Agreement shall be deemed to be effective as of October 14th, 2020, and shall remain in effect until June 9th, 2021 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. Contractor will utilize their unique knowledge and perspective as a First Language Ojibwe Speaker to provide culturally responsive Ojibwe language and cultural curriculum development supports on a weekly basis for the Misaabekong Ojibwe Immersion Program staff (3 teachers and 2 assistants). The contractor will be available via scheduled GoogleMeets and GoogleDocs sessions with the Misaabekong staff for translation of conceptual frameworks, philosophies, vocabulary, and story elements as they apply instructional strategies, prepare learning materials, and develop learning targets and assessments as part of the Ojibwe immersion programming provided to students in grades 1-4 in all learning models. It will not be necessary for the Contractor to meet in-person or at the school site.

3. Background Check. *N/A*

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 the contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. 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 \$7,200.00 (Seven-thousand two-hundred dollars) at a rate of \$75.00/hour (seventy-five dollars).

Contractor is 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 TIN is provided.

5. 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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. **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: ISD 709, Duluth Public Schools, Attn: American Indian Education Office and Office of Education Equity, 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 to: **Gordon Jourdain**; 7278 Morris Thomas Road W. Cloquet, MN 55720 (218) 576-8688

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

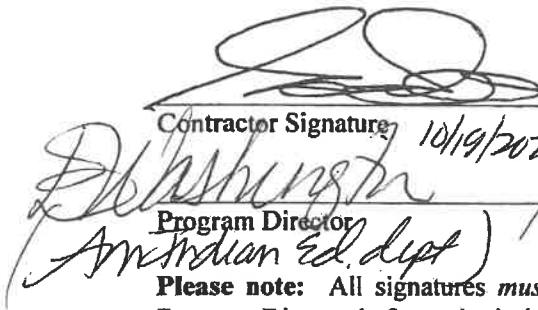
Workers' Compensation Insurance: Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

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.

18. Conflict of Interest and Fiduciary Duty: All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.


 Contractor Signature: 10/19/2020 / Will Honick SSN/Tax ID Number: "OEE" Date: 10/14/2020
 Program Director: Am Indian Ed. Dept Date: 10/19/2020

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | | |
|---------------|--------------|----------------|----------------|----------------|----------------|----------------|--------------|
| 01 | E | 005 | 605 | 320 | 305 | 340 | (AIE budget) |
| 01 | E | 005 | 605 | 320 | 305 | 340 | |
| XX | X | XXX | XXX | XXX | XXX | XXX | |
| 01 | E | 005 | 640 | 313 | 305 | 315 | (OEE BUDGET) |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding


 CFO / Superintendent of Schools / Board Chair Date: 10/30/20

AGREEMENT

Revised 3/3/15

THIS AGREEMENT, made and entered into this 29th day of September, 2020, by and between Independent School District No. 709, a public corporation, hereinafter called ISD 709, and, **Bimbo Bakeries USA, 720 Prior Avenue North, St. Paul, MN 55104** 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. This Agreement shall be deemed to be effective as of November 1, 2020, and shall remain in effect until June 30, 2021, (with an additional one (1) year term by mutual agreement of both parties) 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.** Bid-1288 – Bakery Products per specifications and the response provided to the Bid.
3. **Contract Documents.** It is understood that this Contract consists of the following:
 1. Printed Memoranda of Agreement and Title Sheet;
 2. Advertisement for Bids, Quotes, RFP's, 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. **Reimbursement.** 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.
5. **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.

6. **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.

7. **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.

8. **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.

9. **Indemnity and defense of ISD 709.** Contractor shall indemnify, hold harmless and defend ISD709, its employees, agents, successors and assigns, and their respective shareholders, directors, officers, employees and agents against and in respect to any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities, general losses, costs and reasonable attorneys' fees, court costs and litigation expenses (collectively "Liabilities") which may arise out of, relate to or result from any act or omission of the Contractor.

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.

10. **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 Tony Kelekovich, 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: Bimbo Bakeries USA, 720 Prior Avenue North, St. Paul, MN 55104.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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 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 ISD 709 are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

15. **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.

16. **Cancellation.** ISD 709 option per conditions outlined in the termination section of Bid-1288 specifications.

17. **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.

18. **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> |
|-------------------------|--|
| Cathy Erickson | CFO/ Executive Director of Business Services |

19. **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.

20. **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.

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



Signature

Cathy Erickson

CFO/Executive Director of Business Services

Signature

Name – Please Print

Title – Please Print

Taxpayer Identification Number

02-E-005-770-701-490-000

INDEPENDENT SCHOOL DISTRICT NO. 709
Duluth Public Schools
Historic Old Central High School - 215 N. 1st Avenue E.
Tel. (218) 336-8738 Duluth, Minnesota 55802-2069 Fax (218) 336-8777

MEMORANDUM

To: Cathy Erickson, CFO/Executive Director of Business Services
From: Tony Kelekovich,^{TK} Supervisor of Purchasing
Subject: Bid-1288 Bakery Products
Date: September 29, 2020

Bids for the production and delivery of bakery products for Child Nutrition – District Wide for the period November 1, 2020 through June 30, 2021 were advertised in the Duluth News Tribune and sent to five (5) area vendors.

There were two (2) responses with the following results for the first year:

| <u>VENDOR</u> | <u>AMOUNT</u> |
|-------------------------------|-------------------------------|
| BIMBO BAKERIES USA (SARA LEE) | \$ 14,685.00 (Five (5) Items) |
| PAN-O-GOLD | \$ 16,075.00 (Five (5) Items) |

The Child Nutrition Department (Pam Bowe) and the Purchasing Department (Tony Kelekovich) analyzed the bids.

It is recommended that the low bid meeting specification as submitted by Bimbo Bakeries USA in the total (estimated) amount for the first year of \$ 14,685.00 be accepted. The second year renewal by mutual agreement is subject to the same conditions shown in the specifications.

Fund: 02 E 005 770 701 490 000

Program: Child Nutrition – District Wide

Fund Custodian: Pam Bowe

VENDOR LIST/TABULATION

BID-1288 BAKERY PRODUCTS

| | |
|--|--------------|
| Bimbo Bakeries USA (Sara Lee) Superior WI | \$ 14,685.00 |
| Great Harvest Bread Company Duluth MN | No Response |
| Johnson's Bakery Duluth MN | No Response |
| Pan-O-Gold Baking Co Duluth MN | \$ 16,075.00 |
| Positively 3rd Street Bakery Duluth MN | No Response |

AGREEMENT

THIS AGREEMENT, made and entered into this 1 day of September, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Gary Logergen, 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 here or attach as appropriate)*

- Dates of Service.** This Agreement shall be deemed to be effective as of September 1, 2020 and shall remain in effect until September 30, 2021, 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.
- Performance.** *(insert or attach a list of programs/services to be performed by contractor)*
Community education catalog delivery, 3 times per year.
- 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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

- 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 \$ 350 ~~hourly~~ per delivery and \$ 1800 in total.

Contractor is 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 TIN is provided.

5. **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.

6. **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.

7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. **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.

10. **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: ISD 709, Duluth Public Schools, Attn: Community Education and Services, 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 to (mailing address with zip) Gary Lagergren, 2340 Hoover Street, Duluth, MN 55811.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

GARY A Logengren 10/12/20
 Contractor Signature SSN/Tax ID Number Date
[Signature] 10/14/20
 Program Director Date

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 16 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|-----|-----|-----|-----|-----|-----|
| 04 | 505 | 005 | 321 | 000 | 130 | 500 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

Catherine Gebro 10/20/2020
 CFO / Superintendent of Schools / Board Chair Date

Memorandum

To: Cathy Erickson
CFO/Executive Director of Business Services

From: David J. Spooner
Manager of Facilities

Date: October 13, 2020

Re: Braun Intertec Corporation - Proposal for Geotechnical Evaluation –
Central High School

Attached please find two (2) copies of the Agreement between Braun Intertec Corporation and ISD #709 to provide a preliminary geotechnical evaluation for the former Central High School location. The total cost of this work is a lump sum of \$8,750.00. Additional requests and services to be reimbursed as defined in Proposal QTB127531.

Recommendation:

I am recommending that Cathy Erickson, CFO/Executive Director of Business Services enter into an agreement with Braun Intertec Corporation to perform the work scope as defined in the attached Agreement for a lump sum amount of \$8,750.00.

If you concur, please sign the two (2) copies and return to Facilities Management for processing.

Sincerely,



David Spooner
Manager of Facilities
Enclosures

AGREEMENT

THIS AGREEMENT made and entered into this 7th day of October, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Braun Intertec Corporation, 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:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of October 7, 2020 and shall remain in effect until project 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.** Provide a preliminary geotechnical evaluation at the former Central High School location as defined in the attached proposal QTB127531 dated September 30, 2020.

This Contract consists of the following:

1. Printed Memorandum of Agreement and Title Sheet;
2. Contractor's proposal QTB127531;
3. Contractor's Insurance Policy;
4. Any other documents identified by District.

3. **Background Check.** *N/A (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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **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 as defined in Scope of Services per Proposal QTB127531 for a lump sum of \$8,750.00. Additional requests and services to be reimbursed as defined in Proposal QTB127531.

Contractor is 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 TIN is provided.

5. 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 and all required backup documentation by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. 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: ISD 709, Duluth Public Schools, Attn: David Spooner, 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 to Braun Intertec Corporation, 4511 West First Street, Suite 4, Duluth, MN 55807.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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 vendor requirements apply to this Contract, 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.

15. **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.

16. **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.

17. **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.

18. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

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 listed as the certificate holder and 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 the amount of at least \$1,500,000 per occurrence.

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

20. **Representatives of District.** 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> |
|-------------------------|---|
| Cathy Erickson | CFO/Executive 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 | Manager of Facilities |

21. **Protection of District.** 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.

22. **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.

23. Conflict of Interest and Fiduciary Duty: All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.


 Braum Intertec Corporation 1146183
SSN/Tax ID No. 10/13/2020
Date


 Program Director 10/13/20
Date

Please note: All signatures *must* be obtained AND the following *must* be completed by Program Director before submission to the CFO for review and approval. This contract is funded by the following budget:

| | | Varies By Site Receiving Services | | | |
|----|-----|---|-----|-----|-----|
| 05 | 005 | 850 | 000 | 305 | 000 |


 CFO/Superintendent/Board Chair 10/20/2020
Date

Amendment to Agreement



In reference to the Agreement made by and between Independent School District #709 ("District") and Braun Intertec Corporation ("Contractor") and dated October 7, 2020, such agreement is hereby amended in the following manner.

1. **Section 7. Ownership of Materials.** Add the following paragraph: "Programming prepared by Contractor under this Agreement are not intended or represented to be suitable for reuse by the District or others on extensions or modifications of the Project or on any other project. Any such reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the District's sole risk, and the District agrees to hold Contractor harmless as to all costs and liability arising out of such unauthorized use. Any such verification or adaptation will entitle Contractor to further compensation at rates to be agreed upon by the District and Contractor."

2. **Section 9. Indemnity and Defense of the District.** Add the following to this section: "...to the extent caused by Contractor's negligent acts, errors or omissions. If claims, losses, damages, or judgments are found to be caused by the joint or concurrent negligence of the District and Contractor, they shall be borne by each party in proportion to its own negligence. Contractor's aggregate liability for all claims arising out of its Professional or Pollution Incident Liability and its defense obligation is limited to the lesser of those damages actually incurred and paid as a result of Consultant's negligence, or \$50,000. In no event shall either party be liable for special, incidental, consequential, or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees, or the cost of capital, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act."

The undersigned agree that the terms of this amendment are made effective as of October 7, 2020.

10/13/2020
Date

 10/20/2020
Independent School District #709 Dgs 10/13/20

Braun Intertec Corporation

Memorandum

To: Cathy Erickson
CFO/Executive Director of Business Services

From: David J. Spooner
Manager of Facilities

Date: October 5, 2020

Re: RW Fern Associates Inc. - Proposal for Professional Services – LTFM -
Ordean East Middle School Entrance Doors

Attached please find two (2) copies of the Agreement between RW Fern Associates Inc. and ISD #709 to provide architectural and construction administration services for the Ordean East Middle School exterior door replacement project. The total cost of this work is a lump sum of \$8,850.00 and is a FY21 Board Approved LTFM Ten-Year Plan project.

Recommendation:

I am recommending that Cathy Erickson, CFO/Executive Director of Business Services enter into an agreement with RW Fern Associates Inc. to perform the work scope as defined in the attached Agreement for a lump sum amount of \$8,850.00.

If you concur, please sign the two (2) copies and return to Facilities Management for processing.

Sincerely,



David Spooner
Manager of Facilities
Enclosures

AGREEMENT

THIS AGREEMENT made and entered into this 30th day of September, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and RW Fern Associates 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 the District 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 September 28, 2020 and shall remain in effect until project 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.** Provide architectural and construction administration services for the Ordean East Middle School exterior door replacement project as defined in the attached proposal dated September 25, 2020.

This Contract consists of the following:

1. Printed Memorandum of Agreement and Title Sheet;
2. Contractor's proposal;
3. Contractor's Insurance Policy;
4. Any other documents identified by District.

3. **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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **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 for a lump sum of \$8,850.00.

Contractor is 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 TIN is provided.

5. 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 and all required backup documentation by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. 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: ISD 709, Duluth Public Schools, Attn: David Spooner, 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 to RW Fern Associates Inc., 5517 Grand Ave., Duluth, MN 55807.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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 vendor requirements apply to this Contract, 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.

15. **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.

16. **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.

17. **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.

18. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

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 listed as the certificate holder and 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 the amount of at least \$1,500,000 per occurrence.

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

20. **Representatives of District.** 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> |
|-------------------------|---|
| Cathy Erickson | CFO/Executive 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 | Manager of Facilities |

21. **Protection of District.** 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.

22. **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,

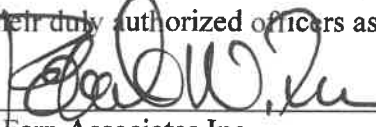
material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

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.

23. Conflict of Interest and Fiduciary Duty: All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

 47-1893827 10/1/20
 RW Fern Associates Inc. SSN/Tax ID No. Date

 10/6/20
 Program Director Date

Please note: All signatures *must* be obtained AND the following *must* be completed by Program Director before submission to the CFO for review and approval. This contract is funded by the following budget:

| | | Varies By Site Receiving Services | | | |
|----|-----|---|-----|-----|-----|
| 05 | 335 | 865 | 382 | 305 | 000 |

 10-6-20
 CFO/Superintendent/Board Chair Date



SALES CONTRACT
CONTRACT #45900
October 29, 2020

IXL Learning
777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404

CUSTOMER

Kathi Marshall
Congdon Park Elementary
3116 East Superior Street
Duluth, MN 55812

UPGRADE INFO

| Salesperson | Account # | Quote # | Upgrade duration |
|------------------|-------------|----------------|---------------------|
| Stephanie Kortan | A19-2572243 | 2572243-1020-3 | Through Sep 1, 2022 |

PAYMENT PLAN

| | Amount | Invoice date |
|---------------|-----------------|-------------------|
| Installment 1 | \$5,270 (50%) | November 29, 2020 |
| Installment 2 | \$5,270 (50%) | June 24, 2021 |
| TOTAL | \$10,540 | |

Price valid until November 29, 2020

ACCEPTANCE OF SALES CONTRACT

This is a binding agreement of payment between IXL Learning and the Purchaser. Your signature indicates that you have received, reviewed and accepted the attached Terms and Conditions of Sale and that you agree to pay the full upgrade price listed above within 60 days of the invoice date. Without a signature, your order may not be processed.

Acknowledged and agreed to:

AUTHORIZED SIGNATURE

Cathy Edson

DATE

10/30/20

Please contact IXL Learning with any questions regarding this sales contract:
Toll-free (855) 255-8800 | Direct (650) 372-4300 | E-mail orders@ixl.com
Completed sales contracts should be faxed to (650) 372-4301 or e-mailed to orders@ixl.com.



TERMS AND CONDITIONS OF SALE

THIS IS A LEGAL DOCUMENT ("SALES CONTRACT") BETWEEN THE PURCHASER SHOWN ABOVE ("YOU") AND IXL LEARNING ("SELLER"). PLEASE READ THIS AGREEMENT CAREFULLY. YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT, AS WELL AS BY THE WEBSITE TERMS OF SERVICE, WHICH ARE INCORPORATED BY REFERENCE. NO VARIATION OF THESE TERMS AND CONDITIONS ARE BINDING ON SELLER UNLESS AGREED TO IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF IXL LEARNING.

1. **PRICING:** The quoted purchase price of the license is valid through the "Price valid until" date on page 1. This price is not binding on IXL unless you have accepted it by sending us an executed Sales Contract by that date.
2. **PAYMENT:** If IXL decides to accept your Sales Contract, we will issue you an invoice. Complete payment of the amount of the stated purchase price is due within sixty (60) days of the invoice date. If payment is not received by the Seller within 60 days, the invoice is considered past due. IXL licenses with past due payments will be put on hold and are subject to termination. Termination does not relieve the Purchaser of the obligation to pay fees due to the Seller.

The full invoice amount must be paid either by check or by credit card. We accept Visa, MasterCard, American Express, and Discover.

All checks should be mailed to:

IXL Learning
777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404

Credit card payments may be made by phone at (855) 255-8800.

Any late payment will incur interest at the rate of the lesser of 1% a month or the maximum permissible by law.

3. **CANCELLATION AND REFUND:** No cancellation will be accepted, and no refund issued, if it is more than thirty (30) days beyond the date of purchase for the license referenced in this Sales Contract. For cancellations and refunds of the license tendered under this Sales Contract to be accepted, the Seller must receive written notification of the cancellation within 30 days of purchase. Cancellations requested outside of the 30-day period will not be refunded, and the Purchaser will be responsible for completing the purchase as stated in the Sales Contract.
4. **LICENSES:** IXL grants you the right to provide access, through unique log-in IDs, to no more individuals than the quantity indicated on the first page. The terms and conditions of use for each of these individuals are governed by our websites Terms of Service. You agree to be responsible for their accounts, to monitor their use of their accounts, and to indemnify, defend, and hold us harmless for any claims arising out of or related to their use of IXL Learnings website and services. To the extent that these individuals are minors, you consent to our collection of their personal information as described in our Privacy Policy.

Classroom and Site licenses will be activated immediately upon receipt of your payment unless another date is specified or agreed to by IXL. Activation confirmation will be sent to the e-mail address provided by the school or individual completing the purchase.

If an individual who has an IXL account through a Classroom or Site license purchased by you is no longer affiliated with you, you may request that we deactivate the individuals account, or no longer associate it with your license, so that that license can be reassigned to another individual associated with your institution.

If you are a teacher, you represent and warrant that you have permission and authorization from your school and/or district to use the Services as part of your curriculum, and for purposes of Childrens Online Privacy Protection Act ("COPPA") compliance, you represent and warrant that you are entering into these Terms on behalf of your school and/or district.

5. **PRIVACY:** If you are a school, district, or teacher, you acknowledge and agree that you are responsible for complying with COPPA, meaning that you must obtain advance written consent from all parents or guardians whose children under 13 will be accessing the website and services and you represent and warrant that you have obtained that consent. When obtaining consent, you must provide parents and guardians with our Privacy Policy. You are to keep all consents on file and provide them to us if we request them.

6. **DISCLAIMER OF WARRANTIES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT:**
- a. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS. IXL EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
 - b. IXL MAKES NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.
 - c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
 - d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IXL OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.
- Some states do not allow certain limitations on warranties, so certain of the above limitations may not apply to you.**
7. **LIMITATION OF LIABILITY:** YOU EXPRESSLY UNDERSTAND AND AGREE THAT IXL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES RESULTING FROM THE USE OR INABILITY TO USE THIS SERVICE. IN ALL INSTANCES, DAMAGES SHALL BE CAPPED AT ONE MONTHS FEES.
8. **SEVERABILITY:** If any provision of this agreement is deemed invalid, illegal, or unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions of this Sales Contract, which shall remain in full force and effect.
9. **ARBITRATION:** You agree that any dispute or claim you may have against IXL arising out of or related to this Sales Contract or the use of Services must be submitted to arbitration, before a single arbitrator appointed by JAMS/Endispute and conducted according to their rules in San Francisco, CA, USA, and that the determination of any such arbitrator shall be binding. The courts located in San Francisco, CA, USA, have exclusive jurisdiction over any judicial proceedings related to this agreement, and you waive any claim that such a court is an improper venue, inconvenient, or lacks jurisdiction over you.
10. **GOVERNING LAW:** The Sales Contract and the relationship between you and IXL are governed by the laws of the State of California without regard to conflict of law provisions.
11. **ENTIRE AGREEMENT:** This Sales Contract, which incorporates the Terms of Service by reference, is the final expression of the agreement between Purchaser and Seller and supersedes all prior representations, understandings, and agreements between the Purchaser and Seller relating to its subject matter. This Sales Contract cannot be modified, amended, or changed except in writing and signed by IXL.



WOLF RIDGESM

ENVIRONMENTAL LEARNING CENTER

Program Contract

School Groups

| | |
|---|---|
| Erica Wittmers-Graves | erica.wittmers-graves@isd709.org |
| Lester Park School 5300 Glenwood Street, Duluth MN 55804 | Is the Coordinator's name correct? If not, please correct below: New Coordinator name: Email Address: |
| <p>Deposit: You have made a reservation to stay for April 14, 2021 - April 16, 2021 with 100 participants. To hold your reservation we require a deposit of \$1,500.00. This contract is valid for 30 days after receipt.</p> <p>Cancellation Policy: Cancellations require 60 days' notice prior to your scheduled arrival date to receive a full deposit refund. <i>*Notify us immediately if you need to cancel this reservation.</i></p> | |

By signing below, I agree to the terms listed above:

| | | |
|--|---|-------------|
| Printed Name: | Title: | |
| Signed Name | Date | |
| Billing Contact: Billing email address: | Billing Address: | |
| Cardholders Name: [] same as billing contact | Cardholders address: [] same as billing address | |
| Credit Card # | Exp Date: | CVV: |
| If unable to pay at this time, when can we expect your deposit? | | |

Catherine Erickson, CFO

Return to: 6282 Cranberry Rd - Finland, MN 55603 or fax to: 218-353-7762

Today's Date: October 22, 2020

AGREEMENT

THIS AGREEMENT, made and entered into this 21st day of September, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Mickelson Consulting LLC, 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: *See Attached.*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of September 21st, 2020 and shall remain in effect until June 30, 2021, 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.** *See Attached*

3. **Background Check.** *NA, no student contact.*

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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **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 \$ 7,500 in total.

Contractor is 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 TIN is provided.

5. **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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. 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: ISD 709, Duluth Public Schools, Attn: Brian Kazmierczak, 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 to (mailing address with zip) Lincoln Park Middle School, 3215 W 3rd Street, Duluth, MN 55806 Attention Brian Kazmierczak, Principal.

11. 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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

Middleton Consulting Karene Middleton 10/1/2020
 Contractor Signature SSN/Tax ID Number Date

[Signature] 10/13/2020
 Program Director Date

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

X Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 225 | 211 | 317 | 305 | 000 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

_____ Check if the contract will be paid using Student Activity Funds

_____ Check if the contract is a no-cost contract such as a Memorandum of Understanding

Cathryn Elson 10-20-20
 CFO / Superintendent of Schools / Board Chair Date

MICKELSON CONSULTING LLC
Barnum, MN

Lincoln Park Middle School – Restorative Practice Project Proposal
2020/2021 School Year

| Summary Information | |
|--|---|
| Activity Name: | LPMS Restorative Practices Project |
| Today's Date: | October 27, 2020 |
| Prepared By: | Laraine Mickelson – Paul Mickelson |
| Presented To: | Callie Devriendt |
| Summary: | Lincoln Park Middle School is committed to Restorative Practices as a model that values relationships, equity, and the resolution of conflict. The mission statement developed last year states: <i>“Restorative Practices at Lincoln Park Middle School exists to build community through meaningful relationships and being responsive to challenges in a way that is safe, equitable and ensures accountability and honors the voices of all.”</i> Our work for the 2020/2021 school year will build on this mission. |
| Recommendations: Mickelson Consulting is prepared to provide the services and resources noted within the categories of Structure, Skill & Support. | <p>Structure</p> <ul style="list-style-type: none"> • Meet monthly with the RP Core Team to reengage the strategic plan. • Identify current barriers to RP engagement. Restructure where possible. • Review and update the three strategies from year 2019/2020. • Review and update team’s roles/responsibilities. • Review and update behavior response plan inside RP protocol. • Review and update quality assurance needs. <p>Skill</p> <ul style="list-style-type: none"> • Identify new staff that need training and provide training. • Develop and engage “monthly minis” to enhance skill. • Create topic vignettes for role-play opportunities. • Establish protocol for proactive connections with students and parents in a safe, courteous on-line atmosphere. • Establish and practice RP harm repair scenarios and engage staff, student, parent conversation. • Establish and practice RP relationship building scenarios and engage staff, student, parent conversation. <p>Support</p> <ul style="list-style-type: none"> • Contribute to current staff support circles. • Survey staff regarding support needs and engage plan. • Establish and facilitate connection circles with parents. • Create and facilitate RP support “moments” with students and staff. • Assist staff with student check-in circles. • Use RP videos/RP themed movies as stress relief. |
| Resources Needed: | <ul style="list-style-type: none"> • Approval to proceed. • Schedule staff into training opportunities. • Access to RP Core Team |
| Fees: | Fees: |

| | |
|--|--|
| | <p>\$25 per hour for meetings, planning, and preparation time for trainings and meetings.</p> <p>\$75 per hour for direct service offerings.</p> |
| Comments: | <p>✓ Additional external resources are helpful. Mickelson Consulting has access to Kay Pranis (MN expert in Circle) and Marg Thorsborne (Australian expert in RP Strategic Planning). Training opportunities can be scheduled to enhance skill and knowledge with these experts.</p> |
| <p>Contact Information:</p> <p>Paul Mickelson – Paul@Mickelsonconsulting.org 218-310-7681</p> <p>Laraine Mickelson – Laraine@Mickelsonconsulting.org 218-390-1707</p> | |

AGREEMENT

THIS AGREEMENT, made and entered into this 8th day of September , 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and Amy Hansen , 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 here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of September 30th, 2020, and shall remain in effect until November 18th, 2020, 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.** Facilitator for Mandarin Club via Seesaw at Laura MacArthur elementary school. The contractor will provide facilitated lessons and activities that will include counting numbers, greetings, vocabulary, writing Chinese characters, games, songs, dance, and Chinese folktales etc.

3. **Background Check.** *(N/A)*

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 the contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **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 \$400.00 (four-hundred dollars) at a rate of \$20.00/hour (twenty dollars).

Contractor is 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 TIN is provided.

5. 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.

6. 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 the 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. 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: ISD 709, Duluth Public Schools, Attn: Office of Education Equity , 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 to (mailing address with zip & phone#) **AmyHansen; 13047 Glenhurst Ave Savage, MN 55378 / phone # 952-769-4873**

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

Amy Hansen

Contractor Signature

SSN/Tax ID Number

Date 9/22/20



Program Director

10/5/2020
Date

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 605 | 313 | 305 | 311 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding



CFO / Superintendent of Schools / Board Chair

10/6/20

Date

AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of September , 2020 , by and between Independent School District #709, a public corporation, hereinafter called District, and Lai Xin Stoewer , 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 here or attach as appropriate)*

1. **Dates of Service.** This Agreement shall be deemed to be effective as of September 30th , 2020, and shall remain in effect until November 18th, 2020 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.** Facilitator for Mandarin Club via Seesaw at Laura MacArthur elementary school. The contractor will provide facilitated lessons and activities that will include counting numbers, greetings, vocabulary, writing Chinese characters, games, songs, dance, and Chinese folktales etc.

3. **Background Check.** N/A

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 the contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **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 \$400.00 (four-hundred dollars) at a rate of \$20.00/hour (twenty dollars).

Contractor is 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 TIN is provided.

5. 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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. Independent Contractor. Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. 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.

10. 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: ISD 709, Duluth Public Schools, Attn: Office of Education Equity , 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 to: **Lai Xin Stoewer**; 41 Molly Lane Esko, MN 55733 (218) 464-7886

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

Workers' Compensation Insurance: Contractor must provide Workers' 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.

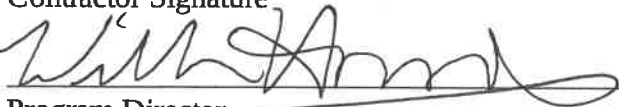
Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.



_____ 09/22/2020____
 Contractor Signature SSN/Tax ID Number Date

 Program Director _____ 10/5/2020____
 Date

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 605 | 313 | 305 | 311 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

_____ Check if the contract will be paid using Student Activity Funds

_____ Check if the contract is a no-cost contract such as a Memorandum of Understanding


 _____ 10/6/20____
 CFO / Superintendent of Schools / Board Chair Date



Duluth Public Schools

**Statement of Work for:
Video Production of
Commercials**

PREPARED FOR:

Katie Kaufman, Duluth Public Schools

PREPARED BY:

Jake Sturgis, Captivate Media + Consulting

PREPARED DATE:

October 27, 2020

This Statement of Work (SOW) is between Duluth Public Schools and Capture Video LLC d/b/a Captivate Media + Consulting (“Captivate”), effective October 27, 2020 (the “Agreement”). This SOW is subject to the terms and conditions attached hereto. Any term not otherwise defined herein shall have the meaning specified in the Agreement. In the event of any conflict or inconsistency between the terms of this SOW and the terms of this Agreement, the terms of this SOW shall govern and prevail.

1. Client Information

Duluth Public Schools
 C/o Katie Kaufman
 215 North 1st Ave. East
 Duluth, MN 55802

2. Project Overview

Captivate and Client agree to the below project summary, the project contract price, and the more detailed production outline.

| Project Name | Type of Media | Duration | First Draft | Final Delivery |
|-------------------|---------------|------------|-------------------|-------------------|
| :30 School Heroes | Video | 30 seconds | November 20, 2020 | December 2, 2020 |
| :30 Enrollment | Video | 30 seconds | December 9, 2020 | December 16, 2020 |
| :10 School Heroes | Video | 10 seconds | December 9, 2020 | December 16, 2020 |
| :10 Enrollment | Video | 10 seconds | December 9, 2020 | December 16, 2020 |

Period of performance

The work will be performed between the effective day on the contract through December 15, 2020.

Description

Client has an agreement with a local television station to air advertisements. Company will create two :30 commercials and two :10 social media videos around the themes of School Heroes and Student Enrollment. Company will create scripts for the videos that Client will approve before production begins.

Company will need one day of production to gather interviews and b-roll on site. Client will supply archive photos and videos that help support the project, if needed.

Deliverable Materials

- Captivate will deliver four videos as described above as an .mp4 file as well as the accompanied closed caption files (.srt) in English.

3. Project Timeline

Captivate understands there are a lot of moving parts for every project. We've created a timeline of when we need specific elements provided to us. It is important Client meets each of the deadlines listed below.

| Item | Description | Deadline |
|---|--|----------------------|
| 1. Contract is signed | Representative from Duluth Public Schools will sign contract | By October 29, 2020 |
| 2. Story development begins | We will meet to discuss roles and expectations for the project. We will also create a schedule and discuss the elements needed for production. | By October 29, 2020 |
| 3. Video production process begins | We will start the video production process | By November 9, 2020 |
| 4. Video production process is complete | All on-site video as well as any user-generated videos will be completed by this date | By November 13, 2020 |
| 5. First draft of :30 School Hero video | We will deliver the first draft of the video for you and your team to review. | By November 20, 2020 |
| 6. Second draft of :30 School Hero video | We will deliver the second draft of the video for you and your team to review. | By November 25, 2020 |
| 7. Final version of :30 School Hero video | We will deliver the final version of the video for you and your team to review. | By December 1, 2020 |
| 8. Delivery of video | We will deliver the final version of the video and .srt files. | By December 2, 2020 |

The post-production of the other videos will take place following the completion of the :30 School Hero video, which is the highest priority. All of the other videos will be delivered within two weeks of the completion of the :30 School Hero Video.

4. Project Costs and Payment

Client agrees that fees for the work performed as outlined in this SOW shall be paid as invoiced by Captivate.

Company will perform the Services set forth in Section 2 above in the amount of \$3,750, to be paid by Client as follows:

- Amount due upon signing Agreement: \$1,875
- Due upon final completion and delivery of Deliverables: \$1,875

Revisions

□ The scope set forth in Section 2 above includes Company making two (2) rounds of revisions to the video, provided the revisions are made within the scope of the approved video script. Client requested revisions beyond such scope will be invoiced at a rate of \$160 per hour.

Fees for additional services (i.e. Services not set forth in Section 2 (above) that are requested by Client and performed by Company shall be invoiced in arrears at the rate of \$160 per hour.

4. Services Term. The term of this Schedule shall commence on the Schedule Effective Date and continue for a period of no more than 60 days.

CAPTIVATE MEDIA + CONSULTING

Terms and Conditions

This Master Services Agreement is effective on the date last written and is by and between Duluth Public Schools ("Client"), and Capture Video, LLC, a Minnesota limited liability company dba Captivate Media + Consulting ("Captivate").

1. DEFINITIONS

1.1. "Client Materials" means scripts, storyboards, product props, production notes, music, talent, creative guidance, releases, and recordings to be used in the Services and/or Deliverables.

1.2. "Confidential Information" means all nonpublic information disclosed by Client to Captivate, including without limitation, Captivate IP, products, services, tools, techniques, processes, strategic information, customer lists, supplier lists, documentation, data, designs, drawings, technical information, and client lists. Confidential information shall not including information which was previously lawfully known to Captivate, information which becomes publicly available other than by unauthorized disclosure, information developed by Captivate independent of Captivate's access to Confidential Information, or information received by Captivate from a third party.

1.3. "Deliverables" means any and all work product, video, reports, artwork, graphics, animations, materials and other deliverables created or developed by Captivate in the performance of the Services.

1.4. "Services" means the services described in the Statement of Work.

2. SERVICES AND DELIVERABLES

2.1. Client hereby retains Captivate to provide the Services and provide the Deliverables set forth in the applicable Statement of Work.

3. FURNISHING OF MATERIALS, SERVICES, AND RELEASES

3.1. Client shall supply Captivate with all Client Materials as outlined in Section 3 above so Captivate has needed assets to create video for Client.

3.2. Client shall be solely responsible for obtaining all consents, release, waivers and assurances (written and otherwise) from all participants provided by Client to Captivate for inclusion in any production pursuant to this Agreement, including without limitation from the parents or guardians of participants who are minors, as necessary for Client to comply with the terms of this Agreement. Client acknowledges and agrees that, as between Client and Captivate, any failure to obtain such consents, releases, liability waivers, or assurances shall be the sole responsibility and liability of Client. In addition, and without limiting the terms of the foregoing, Captivate shall have the right in its discretion to have each participant sign a written waiver and release directly between each participant and Captivate.

4. CHANGES IN SPECIFICATIONS

4.1. Captivate reserves the right to edit Deliverables at its discretion, provided that Client shall have the right to approve all final Deliverables. If at any time, Client desires to make any changes or variations to the Deliverables, or from any material or work in progress, and such changes result in additional cost to Captivate, Captivate agrees to notify Client of the amount before any such additional costs are incurred and Captivate shall proceed only after receiving approval (written or oral) from Client. Reimbursement for such additional costs shall be payable in accordance with the terms of this Agreement for final payment.

5. OWNERSHIP

5.1. Captivate shall retain all ownership of Captivate's products, software, hardware, video, artwork, graphics, designs, intellectual property, ideas, designs, methodologies, and all patent, copyright, trademark and other intellectual property rights owned or developed prior to the execution of this Agreement or developed separately therefrom ("Pre Existing Captivate IP").

5.2. Subject at all times to Client's satisfaction of its payment obligations under this Agreement, any and all photographs, negatives, video footage, images, renderings and other related materials created or produced by Captivate in connection with the Deliverables shall be deemed a "work made for hire" under Title 17 of the United States Code, as amended. To the extent that any portion of the work is not a work made for hire, Captivate hereby grants an irrevocable, royalty-free, worldwide license in in the Work. Client shall not reverse engineer, deconstruct, or make derivatives of Pre Existing Captivate IP.

5.3. Until notified in writing by Client, Captivate shall have a revocable license to use the Deliverable strictly for promotional purposes.

5.4. Client shall obtain, pay for, and maintain insurance covering all intellectual property right infringement that arise from any and all uses of the Deliverables. Client will obtain and maintain insurance coverage with respect to Client jobs at no cost to Captivate and name Captivate as a "named insured" on said policies prior to commencement of preproduction.

6. CONFIDENTIALITY

6.1. Captivate shall use the Confidential Information solely for the purposes of administering and otherwise implementing the terms of this Agreement and in the course of performing Captivate's obligations or the exercise of its rights. Captivate shall restrict disclosure of Confidential Information solely to those persons and entities with a need to know in the ordinary course of performing the contemplated services.

7. INDEPENDENT CONTRACTOR

7.1. It is understood that Captivate is an independent contractor hereunder and Captivate agrees, warrants and represents that the Deliverables referred to in this Agreement shall be produced in compliance with all national, state and local laws. Nothing in this Agreement shall constitute an employment relationship between Captivate and Client.

8. PAYMENT

8.1. Client understands that the specified terms of payment under this Agreement are based upon timely cash payments within 30 days. If Client chooses to defer payment beyond the due date, Captivate may, at its sole discretion, charge Client as additional consideration an amount equal to the current prime rate +2% (as charged by Captivate's bank from time to time) on unpaid amounts until paid, compounded monthly. Ownership of all items created under this Agreement does not transfer from Captivate to Client until full payment is received.

9. INDEMNIFICATION

9.1. Captivate agrees to indemnify, defend, and hold harmless Client and its officers, employees, agents and licensees from and against any and all claims, actions, damages, liabilities and expenses arising out of the breach of any obligations, warranty or representation of Captivate in this Agreement.

9.2. Client agrees to indemnify, defend, and hold harmless Captivate and its officers, employees, agents and licensees from and against any and all claims, actions, damages, liabilities and expenses, arising out of the breach of any obligation, warranty, or representation of Client in this Agreement.

10. LIMITATION OF LIABILITY AND DISCLAIMER

10.1. Disclaimer: EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CAPTIVATE DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, OR ENDORSEMENTS OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT) WITH REGARD TO THE SERVICE OF DELIVERABLES.

10.2. Limitation of Liability: EXCEPT WITH RESPECT TO CAPTIVATE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CAPTIVATE OR ITS AFFILIATES, EMPLOYEES, MEMBERS, MANAGERS, GOVERNORS, AGENTS, CONTRACTORS, SUPPLIERS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS BE LIABLE FOR ANY DAMAGES EXCEPT TO THE EXTENT OF ACTUAL, DIRECT DAMAGES BY CLIENT, NOT TO EXCEED FEES PAID BY CLIENT TO CAPTIVATE UNDER THE AFFECTED SCHEDULE.

10.3. CLIENT HEREBY ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY IN THIS SECTION ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT

AND THE SERVICES AND DELIVERABLES WOULD NOT BE PROVIDED TO CLIENT ABSENT SUCH DISCLAIMERS AND LIMITATIONS OF LIABILITY.

10.4. Any claims arising in connection of this Agreement must be brought within one (1) year of the date of the event giving rise to such action.

11. TERM AND TERMINATION

11.1. The term of this Agreement will commence upon signature of this Agreement and remain in effect until terminated in accordance with the terms of this Agreement.

11.2. Termination for Convenience: either party may terminate this Agreement for convenience and without cause at any time upon at least thirty (30) days prior written notice to the other party.

11.3. Termination for Cause: in the event that this Agreement is terminated for cause, it shall result in the immediate ceasing of all Services under the State of Work. In the event that either party makes an assignment of all or substantially all of its assets for the benefit of creditors, or becomes the subject of a voluntary or involuntary bankruptcy or the subject of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such actions are not dismissed within sixty (60) days of filing, the other party may immediately terminate the Agreement for cause.

11.4. Termination for Material Breach: either party may terminate this Agreement for cause if the other party breaches a material term or condition and fails to cure such breach within thirty (30) days of the date that written notice of the breach is provided to the breaching party.

11.5. Effect of Termination: Unless otherwise provided, Client shall promptly pay for all Services performed by Captivate under the applicable Statement of Work up to and including the effective date of termination. If Client has pre-paid Services on a fixed fee basis, Captivate shall refund any unearned fees as of the effective date of termination. Notwithstanding the foregoing, any deposit paid by Client shall be nonrefundable.

12. CANCELLATION

12.1. A cancellation or postponement is defined as a rescheduling of the production to a later specific date caused or directed by Client or a total cancellation of the project. If Captivate blocks out a specific period of time with the agreement that it represents a firm commitment from the Client, then Captivate makes no further efforts to sell the time.

12.2. Cancellation and Postponement: 3-Tap Editing Project

12.2.1. If notice of cancellation or postponement is given more than halfway through the production schedule of the job, Client shall be liable to Captivate for the full cost of the job as bid.

12.2.2. If notice of cancellation or postponement is given less than halfway through the production schedule of the job, Client shall be liable to Captivate for all out of pocket costs, full creative fees as bid, full production fee on the job as bid.

13. CONTINGENCY AND WEATHER DELAYS

13.1. A contingency day is any day where a scheduled media/film shooting has been prevented from occurring due to circumstances beyond the control of Captivate. These circumstances may include but should not be limited to:

- (1) Weather conditions (rain, fog, sleet, hail, or any adverse condition that is not consistent with the prescribed shooting conditions desired by the Client)
- (2) Injury, illness, or absence of client-supplied elements (e.g. key talent, color correct products)
- (3) "Force majeure" (meaning but not limited to, earthquake, riot, fire, flood, volcanic eruption, acts of war, strikes, labor unrests, civil authority, terrorism, and acts of God);
- (4) "Client insured Re-Shoots" (any additional days for a job insured by the Client, who is therefore authorizing the expenditure". The Client should be provided with a contingency day cost which should be approved prior to proceeding with that shoot day.

13.2 Captivate recognizes its obligation to minimize contingency day liabilities and will apply accepted industry cancellation practices.

13.3 Captivate will quote the maximum exposure figure (a "not to exceed" figure) as a contingency day cost. This will be a cost per day figure. However, this figure does not include the cost of premiums for crew or suppliers (i.e., should the contingency day fall on weekends, holidays or premium days based on consecutive employment).

14. TAXES

14.1 Any sales tax, use tax, or other tax payable on the production and delivery of the items created under this Agreement shall be the responsibility of Client who shall pay, defend and hold harmless Captivate from payment of any such taxes.

15. ASSIGNMENT

15.1 This Agreement may not be assigned by either party without the written consent of the other.

16. DISPUTE RESOLUTION

16.1 Any controversy or claim arising out of or related to this Agreement shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules conducted in Hennepin County, Minnesota by an arbitrator selected under the Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Section shall not apply to any cause of action for which a party may be entitled to injunctive relief. The prevailing party in any legal action shall be entitled to attorney's fees and costs in connection with the legal proceedings.

17. MODIFICATION

17.1 This Agreement and any Addends attached hereto shall constitute the entire agreement between Producer and Client. Any amendments hereto must be in writing and signed by each party.

18. CAPTIONS

18.1 The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement or of any provision hereof.

19. NO WAIVER

19.1. Failure of any party to this Agreement to exercise any rights shall not constitute a waiver of those rights.

20. ENFORCEABILITY

20.1. If one or more of the provisions of this Agreement shall be held unenforceable, it shall not affect the enforceability of the other provisions.

21. APPLICABLE LAW

21.1. This Agreement shall be governed by, construed and enforce according to the laws of the state of Minnesota, without regard to its conflict or choice of law principles. Any action arising out of or relating to this Agreement shall be brought only in the state and federal courts of Hennepin County, Minnesota, and all parties expressly consent to such court's jurisdiction and irrevocably waive any objection with respect to the same.

Agreed and signed:

Client:

Capture Video LLC dba Captivate Media + Consulting

Catherine A. Erickson

Jacob Sturgis

By: Catherine A Erickson

By: Jacob Sturgis

Its: CFO

Its: Founder & CEO

Date: 10 / 29 / 2020

Date: 10 / 27 / 2020

01-E-012-107-000-305-107

AGREEMENT

THIS AGREEMENT, made and entered into this 29th day of September, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Concordia Community Arts Playcare, 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:

- 1. Dates of Service.** This Agreement shall be deemed to be effective as of September 21, 2020 and shall remain in effect until April 29, 2021, 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.** WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet the needs documented in Individualized Education Program (IEP)

Whereas the AGENCY is duly qualified to perform these services for an integrated preschool program as determined by the student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming (3 days per week) Tuesday, Thursday, and Friday following the Duluth Schools District calendar.

The AGENCY shall perform these services at: **2501 Woodland Avenue, Duluth, MN 55803.**

The approximate date the service will begin is **September 21, 2020** and shall not extend beyond **April 29, 2021**; the contract not to exceed a total of **79 Days** (attending 3 Days per Week - Tuesday, Thursday, and Friday. The District will pay 3 days per week @ \$200.00 per month).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) 215 North 1st Avenue East, Duluth, MN 55802, on the 15th of each month for the preceding month.

3. 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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. 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 \$200.00 monthly and \$1,600.00 in total.

Contractor is 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 TIN is provided.

5. 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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. **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.

10. **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: ISD 709, Duluth Public Schools, Attn: Jason Crane, 215 North 1st Avenue East, Duluth, MN 55802. Invoices may be emailed directly to ap.vendor@isd709.org.

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 to Concordia Community Arts Playcare, 2501 Woodland Avenue, Duluth, MN 55803.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:


Workers’ Compensation Insurance: Contractor must provide Workers’ 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.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

| | | |
|---|-------------------|---------|
| Contractor Signature | SSN/Tax ID Number | Date |
|  | | 9/30/20 |
| Program Director | | Date |

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 211 | 000 | 393 | 000 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

| | |
|---|---------|
|  | Date |
| CFO / Superintendent of Schools / Board Chair | 10-5-20 |

AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of October, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Concordia Community Arts Playcare, 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:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of September 21, 2020 and shall remain in effect until January 8, 2021, 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.** WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet the needs documented in () Individualized Education Program (IEP)

Whereas the AGENCY is duly qualified to perform these services for an integrated preschool program as determined by the student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming 3 days per week following the Duluth Schools District calendar.

The AGENCY shall perform these services at: **2501 Woodland Avenue, Duluth, MN 55803.**

The approximate date the service will begin is **September 21, 2020** and shall not extend beyond **January 8, 2021**; the contract not to exceed a total of **5 Months** (attending 3 days per week from 8:30 am to 3:30 pm). The District will pay 3 days per week @ \$547.00 per month).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) 215 North 1st Avenue East, Duluth, MN 55802, on the 15th of each month for the preceding month.

3. 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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. 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 \$547.00 monthly and \$2,735.00 in total.

Contractor is 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 TIN is provided.

5. 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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. **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.

10. **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: ISD 709, Duluth Public Schools, Attn: Jason Crane, 215 North 1st Avenue East, Duluth, MN 55802. Invoices may be emailed directly to ap.vendor@isd709.org.

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 to Concordia Community Arts Playcare, 2501 Woodland Avenue, Duluth, MN 55803.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:


Workers’ Compensation Insurance: Contractor must provide Workers’ 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.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

| | | |
|---|-------------------|----------|
| Contractor Signature | SSN/Tax ID Number | Date |
|  | | 10/12/20 |
| Program Director | | Date |

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 211 | 000 | 393 | 000 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

| | |
|---|----------|
|  | Date |
| CFO / Superintendent of Schools / Board Chair | 10/12/20 |

AGREEMENT

THIS AGREEMENT, made and entered into this 13th day of October, 2020, by and between Independent School District #709, a public corporation, hereinafter called District, and Creation Station Child Care, 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:

1. **Dates of Service.** This Agreement shall be deemed to be effective as of September 21, 2020 and shall remain in effect until December 5, 2020, 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.** WHEREAS, THE SCHOOL DISTRICT has determined that it is necessary to retain the services of a qualified agency to meet the needs documented in the Individualized Education Program (IEP)

Whereas the AGENCY is duly qualified to perform these services for an integrated preschool program as determined by the student's IEP team.

NOW THEREFORE, the parties agree as follows:

The AGENCY shall provide the following services: Preschool programming daily (2 days per week) Tuesdays and Thursdays following the Duluth Schools District calendar.

The AGENCY shall perform these services at: **2101 Trinity Road, Duluth, MN 55811.**

The approximate date the service will begin is **September 21, 2020** and shall not extend beyond **December 5, 2020**; the contract not to exceed a total of **20 Days** (attending 2 days per week - Tuesdays and Thursdays from 8:30 am to 2:30 pm). The District will pay 2 days per week @ \$35.00 per day).

The SCHOOL DISTRICT shall monitor the services of the AGENCY provided as follows: Supervision will be provided by the Special Education Director located in the Special Services Department. Student attendance will be provided to the Early Childhood Special Education (ECSE) program at Historical Old Central High School (HOCHS) 215 North 1st Avenue East, Duluth, MN 55802, on the 15th of each month for the preceding month.

3. 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.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. 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 \$35.00 per day and \$700.00 in total.

Contractor is 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 TIN is provided.

5. 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.

6. 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.

7. Ownership of Materials. The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, 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.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. 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.

9. **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.

10. **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: ISD 709, Duluth Public Schools, Attn: Jason Crane, 215 North 1st Avenue East, Duluth, MN 55802. Invoices may be emailed directly to ap.vendor@isd709.org.

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 to Creation Station Child Care, 2101 Trinity Road, Duluth, MN 55811.

11. **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.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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:

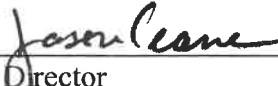
Workers’ Compensation Insurance: Contractor must provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer’s Liability.

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.

18. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District’s website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

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.

| | | |
|---|-------------------|----------|
| Contractor Signature | SSN/Tax ID Number | Date |
|  | | 10/14/20 |
| Program Director | | Date |

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

_____ Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

| | | | | | | |
|----|---|-----|-----|-----|-----|-----|
| 01 | E | 005 | 211 | 000 | 393 | 000 |
| XX | X | XXX | XXX | XXX | XXX | XXX |

_____ Check if the contract will be paid using Student Activity Funds

_____ Check if the contract is a no-cost contract such as a Memorandum of Understanding

| | |
|---|------------|
|  | 10/20/2020 |
| CFO / Superintendent of Schools / Board Chair | Date |

September 26, 2020

Superintendent John Magas
Duluth Public Schools
215 N. 1st Avenue East
Duluth, MN 55802

Dear Superintendent Magas,

The purpose of this letter is to inform you that Intermediate School District 287 has an agreement with the Minneapolis school district that authorizes Intermediate School District 287 to provide educational services at the CRTC program located 143 East 19th Street in Minneapolis.

The Minnesota Department of Education requires an educational services agreement between your district and District 287 in order for your students to access Intermediate District 287 educational services. If you wish District 287 to provide the educational services for your students while they are attending the CRTC Program please sign the enclosed agreement and return by October 9, 2020. The Agreement can also be scanned and emailed back to Katie Ha at krha@district287.org.

Pursuant to Minnesota Statute 125A.15 and 125A.51, the district of residence for a child who is placed in a care and treatment center outside of the district of residence may choose to meet its educational obligation outside of the program provided.

Sincerely,

DocuSigned by:

Melissa Brateng

CAF4E2C10788468...

Melissa Brateng

Director of Special Education

DocuSigned by:

Amanda Klutman

187512C5958A488...

Amanda Klutman

Principal of Care and Treatment

763-205-7612

adklutman@district287.org

Encl: Agreement to Provide Educational Services

AGREEMENT TO PROVIDE EDUCATIONAL SERVICES

This Agreement to Provide Educational Services ("Agreement") is made between **Duluth School District** and Intermediate School District 287 ("the Intermediate"). The purpose of this Agreement is to set forth the respective obligations of the parties in the provision of educational services to students who are placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview and/or providers of day treatment mental health services located within member districts of Intermediate School District 287.

WHEREAS, Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview own and operate facilities in member districts of Intermediate District 287, and are authorized to provide day treatment services to children with mental health needs as a Children's Therapeutic Services and Supports (CTSS) provider; and

WHEREAS, pursuant to Minn. Stat. §125A.15, the district of residence for a child who is placed at a day treatment center outside of the district of residence remains responsible for providing appropriate educational services to the child, and may satisfy its obligation by contracting with the district where the day treatment program is located and paying tuition to that district; and

WHEREAS, the Intermediate provides educational services to students placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview programs pursuant to an agreement with the member district; and

WHEREAS, from time to time a student who is a resident of **Duluth School District** is placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview and in need of educational services; and

WHEREAS, the Intermediate is authorized to provide special education and other educational services to students pursuant to Minn. Stat. chapter 136D at the request of a participating district; and

WHEREAS, the Intermediate has a history of providing appropriate general and special education services to children placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview programs, including children who have been identified as having disabilities and in need of special education and related services; and

WHEREAS, **Duluth School District** finds it is financially and educationally appropriate to contract with the Intermediate to provide special and general education services to its residents who are placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview and therefore requests that the Intermediate provide these services to its residents placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview;

The District is an equal opportunity educator and employer

NOW THEREFORE, the Parties hereby agree as follows:

Intermediate's Responsibilities:

1. The Intermediate will provide all necessary education services and programming to **Duluth School District's** residents placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview including, but not limited to, curriculum planning, development, implementation and review; hiring, performance evaluation and supervision of education staff; tuition billing; ensuring the transfer of necessary education records at both admission and discharge; and coordination of educational services and programming as they relate to the Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview mental health programs. The educational services and reporting will comply with the requirements of the Minnesota Department of Education and applicable state and federal law.
2. During the regular academic year and if required during a portion of the summer, the Intermediate will provide general and special education services and related services to **Duluth School District's** students placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview. The beginning and ending times of instruction shall be established by the Intermediate in order to insure maximum utilization of Intermediate and Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview staff, and shall be consistent with the Intermediate calendar as established by its governing board.
3. The Intermediate and **Duluth School District** agree that the Intermediate will have no further obligation to provide educational services to the students pursuant to this agreement, if the student no longer attends Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview.
4. The Intermediate will be responsible for contracting with Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview for appropriate instructional space (classrooms) and related space necessary to fulfill the terms of this Agreement;
5. The Intermediate will be responsible for furnishing all equipment, supplies and personnel necessary to fulfill the terms of this Agreement. The Intermediate will be responsible for ensuring that its employees are properly licensed for their positions, and for ensuring that criminal history background checks are performed in accordance with Minn. Stat. section 123B.03;
6. Where a student has been identified as a student with a disability in need of special education services, the Intermediate will be responsible for implementing the student's IEP. The Intermediate will comply with the obligation to identify students who are in need of special education and related services, which have not previously been identified. In cases where a student requires special education services, the Intermediate will be responsible for notifying **Duluth School District** that an individual education plan is being developed and provide **Duluth School District** an opportunity to participate in the plan's development, in accordance with Minn. Stat. §125A.05(c);
7. The Intermediate will be responsible for maintaining appropriate records of student enrollment and billing tuition for the special education it provides to students placed at Allina Health, Headway,

The District is an equal opportunity educator and employer

Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview in accordance with the procedures required by the Minnesota Department of Education;

8. The Intermediate will be responsible for maintaining appropriate records of student enrollment and billing **Duluth School District** for the provision of general education services it provides to students placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview in accordance with the procedures required by the Minnesota Department of Education;

District's Responsibilities:

9. **Duluth School District** agrees to pay the Intermediate for the invoiced costs associated with providing education and related services to its residents, within 30 days of receipt of an invoice for the services.

Responsibility for Due Process Hearings and Complaints:

10. A parent or district is entitled to a due process hearing conducted by the state when a dispute arises over the identification, placement or the provision of a free appropriate public education to a child with disabilities, in accordance with Minn. Stat. §125A.09 1, subd. 12. The Intermediate agrees to notify **Duluth School District** within one business day of learning of any request for a due process hearing on behalf of any of **Duluth's** residents placed at Allina Health, Headway, Hennepin County, Nexus, PrairieCare, Volunteers of America, Paragon, and Fairview. The Intermediate further agrees not to request a due process hearing unless the resident district agrees to the hearing request. In the event a due process hearing is requested, the Intermediate agrees to act in good faith and to cooperate with the resident district, making its staff available as witnesses and to prepare for any hearing, producing all educational records and other relevant documents, and providing an administrator to attend the hearing, as needed. The Intermediate will provide its own attorney(s) at its discretion and be responsible for its own attorneys' fees.
11. Should a complaint be brought with the Minnesota Department of Education or other state or federal agency with oversight responsibility for educational agencies, the Intermediate District will notify **Duluth School District** within one business day, and will answer the complaint. Should compensatory education or other relief be awarded as a result of a complaint, the Intermediate agrees to provide and/or pay for such relief and bill **Duluth School District** therefore.

Liability for Own Acts and Recognition of Independent Entities:

12. Each party assumes responsibility for the acts and omissions of its officers, agents, and employees, while acting within the scope of their employment connected to the performance of services or obligations under this Agreement, if such acts or omissions result in claims, lawsuits or judgment for death, bodily injuries, personal injuries or property damage suffered by persons while such services and obligations are being performed hereunder.

The District is an equal opportunity educator and employer

13. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of partnership between the parties hereto or as constituting the Parties as agents for each other, or representatives or employees of other for any purpose or in any manner whatsoever. The Parties shall remain independent with respect to all services and obligations performed under this Agreement.
14. Any and all personnel of the Intermediate while engaged in the performance of any work, services or obligations under this Agreement shall have no contractual relationship with the Department nor shall be considered as employees of **Duluth School District**. Any and all claims that may arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, or agents of the Intermediate, arising out of the employment or alleged employment, including without limitation, claims of discrimination against the Intermediate or its officers, agents, contractors or employees shall in no way be the responsibility of **Duluth School District**. Such personnel or agents of the Intermediate shall not require nor be entitled to any compensation rights or benefits of any kind from **Duluth School District**, including tenure rights, medical or hospital care, sick and vacation leave, disability, severance pay, PERA, or teachers' retirement benefits. Any personnel or agents of **Duluth School District** while engaged in the performance of any services under this Agreement shall likewise have no contractual relationship with the Intermediate, nor be considered employees of the Intermediate.

Data Practices:

15. All data collected, created, received, maintained, or disseminated for any purposes by the activities of **Duluth School District** and the Intermediate in the performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13, as amended.

Effective Date, Termination, and Modifications:

16. This Agreement shall be in force and effect from July 1, 2020 until terminated pursuant to the provisions of this Agreement.
17. Either Party may terminate this Agreement as of June 30 of 2022, provided that notice of termination is provided by February 1 of the year of termination.
18. Any alterations, variations, modification, or waivers of provisions of this Agreement shall be valid only when they have been mutually agreed upon and reduced to writing, duly signed, and attached as an amendment to this Agreement.
19. The Parties' failure to insist upon strict performance of any part of this Agreement or to exercise any right herein contained shall not be a waiver or relinquishment of such covenant, agreement, stipulation or right, unless the Parties consent thereto in writing.

Notices:

The District is an equal opportunity educator and employer

- 20. Any notice or demand, which may or must be given or made by a party hereto, under the terms of this Agreement or any statute or ordinance, shall be in writing and shall be sent by U.S. Mail or hand delivered to the other party, addressed as follows:

To the Intermediate: Exec. Director of Business Services, Mae Hawkins
 Intermediate District 287
 1820 Xenium Lane N.
 Plymouth, MN 55441

INTERMEDIATE SCHOOL DISTRICT 287

DocuSigned by:
 Signature: Mae Hawkins
 Position: Executive Director of Business Services
 Date: 10/5/2020 | 9:18 AM PDT

To: John Magas
 Superintendent
 Duluth Public Schools
 215 N. 1st Avenue East
 Duluth, MN 55802

DULUTH SCHOOL DISTRICT

DocuSigned by:
 Signature: Catherine A. Erickson
 Position: Executive Director of Business Services
 Date: 10/8/2020 | 12:02 PM CDT

The District is an equal opportunity educator and employer