

**MINNESOTA LITERACY COUNCIL  
ADULT BASIC EDUCATION TECHNOLOGY SERVICES**

THIS AGREEMENT by and between (consortium manager) \_\_\_\_\_

Duluth ABE

hereinafter referred to as "ABE Program," and the Minnesota Literacy Council, hereinafter referred to as "MLC", is entered into this 20<sup>th</sup> day of June, 2016, for the period of July 1, 2016 to June 30, 2017.

MLC agrees to:

1. Provide access to MABE (soon to be renamed) software and companion files that meet current Minnesota and National Reporting System (NRS) guidelines as of May 1, 2016.
2. Offer staff training as necessary, including the following:
  - On-site training for new ABE Programs (for as many staff as required);
  - Approximately 4 user meetings (2 hrs/each) at the Minnesota Literacy Council;
  - telephone technical support;
  - Unlimited e-mail support.
3. Host the application and data files, which includes the following:
  - Files are stored on a secure server with redundant power and connectivity;
  - Backups of the entire system are performed nightly with versions kept both on- and off-site;
  - Backups of input data are performed twice a day;
  - Data is protected with SSL data encryption.
4. Provide support for the software including the following:
  - Ongoing software bug fixes;
  - Updated software security patches;
  - Implementation of new standard reports – custom report requests will be implemented if feasible;
  - Addition of new NRS tables;
  - Assistance with creating and formatting required Minnesota Department of Education (MDE) ABE reports;
  - Annual migration of student and class data to new terms;
  - Annual creation of entry NRS levels based on state ABE policy.
5. Burlington English and Edmentum Support and Administration Services
  - Offer access to Burlington English and Edmentum on-line learning system (number of seats to be determined).
  - Training – new user training, in-service training
  - Admin – create new teacher accounts, maintain student database
  - Reporting – run usage reports for consortia and/or state staff on request
  - Phone/email support – available to answer questions from teachers ("How do I...?")
  - Tech support – assist teachers with technical difficulties, refer to and/or contact ST Tech Support as necessary to resolve problem
6. Provide each consortia one Northstar Sponsor site license, which includes:
  - A Northstar portal through which consortia clients can access the assessments.
  - The ability to administer Northstar assessments in a proctored environment, and to award certificates to those passing at 85% or higher.
  - A database that will include the test results of all those accessing the assessments through the consortia portal.
  - An admin portal which includes access to online proctor training and other resources.
  - Support and technical assistance.

ABE Program agrees to:

1. Pay an annual fee for the use of Burlington English, Edmentum, NorthStar, MABE and related technical support/training within thirty (30) days of billing date. The fee will be based on enrollment data submitted to MDE from the previous program year.
2. Create user IDs and passwords for member ABE Programs.
3. Designate specific user access to reporting services through Visual Studios. Since these users will have access to all of ABE Program's members' data, this access must be closely controlled.
4. Limit the use of MABE software to the purchasing ABE Consortium members only. The ABE Consortium member may have unlimited users within its ABE service area. Manuals and forms may be copied as necessary.
5. Ensure data integrity and security by performing the following activities:

- Create a system for ensuring passwords are secure and changed when staff changes occur;
- Notify MLC staff if announced updates have not been implemented in ABE Program's system;
- Report software bugs in a timely manner and provide appropriate information for use in troubleshooting;

Additional Terms and Conditions

MLC will retain all rights to the MABE system, including software (and any modifications to the software), reports and manuals. No portion of the software or accompanying materials may be reproduced, distributed or sold without written permission from MLC.

The software code will be available to users. However, if ABE Program modifies the code or restricts access by the software developer contracted by MLC to the code, MLC will not provide any of the support listed as a responsibility in Items 1, 4 and 5 under the "MLC agrees to" heading (including implementing reports). In addition, if ABE Program wants to convert back to standard MABE software code in the future, the entire cost of conversion will be the responsibility of that ABE Program. ABE Program agrees to notify MLC if it decides to modify the code.

ABE Program assumes all responsibilities for data submitted to the State of Minnesota; MLC and its assigns are not liable for any calculation errors, omissions or financial penalties that may result from the use of the software.

See Attachment A for the End-User License Agreement which is herein incorporated into this agreement.

The Consortium manager signing this agreement is responsible for distributing a copy of this agreement and the End-User License agreement to all ABE Programs within the consortium and ensuring that all comply with the terms and conditions under these agreements.

Hold Harmless:

ABE Program will indemnify and hold harmless MLC, its officers and employees from all claims, actions or suits of any character brought on account of any claimed or alleged injuries or damages received by any person or property resulting from any act of commission or omission by ABE Program.

Neither ABE Program nor MLC will bring a legal action against the other more than two years after the cause of action.

Amendment or Changes to Agreement

Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by both parties. This includes significant modifications to the attached software license.

Cancellation:

Either party may cancel with 30 days written notice. In the event of termination, all documents and software shall be destroyed by ABE Program. There shall be no further obligation of MLC to ABE Program. A portion of the annual fee may be refunded at MLC's discretion.

Entire Agreement:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, between the Parties with respect to the transactions contemplated hereby.

Severability

The invalidity of any one or more of the words, phrases, sentences, clauses, sections or subsections combined in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part hereof, and, in the event that any one or more of the words, phrases, sentences, clauses, sections or subsections combined in this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, section or sections, of subsection or subsections had not been inserted.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year mentioned above.

ABE Program

Minnesota Literacy Council  
700 Raymond Avenue Suite 180, St. Paul, MN 55114

Bill Hanson CFD  
Authorized Representative - printed name/title

Bill Hanson  
Authorized Representative - signature

william.hanson@isd709.org  
Email address

Eric Nesheim  
Executive Director

Attachment A  
End User License Agreement for MABE Database  
Version PY 16-17

PLEASE READ THIS LICENSE CAREFULLY BEFORE USING THIS SOFTWARE. BY USING THIS SOFTWARE, YOU AGREE TO BECOME BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, DO NOT USE THIS SOFTWARE.

The MABE Database is licensed, not sold, to you, ABE Program, by the Minnesota Literacy Council (MLC) and its successors for use only under the terms of this License. MLC and its successors reserve any rights not expressly granted to you.

1. LICENSE.

- A. Subject to the terms and conditions of this agreement, MLC grants ABE Program, and the programs within its consortium, a non-transferable, non-exclusive right and license to use the Software and Documentation, including all changes, modifications, improvements, corrections and updates thereto.
  - B. ABE program may assign unlimited users within the specific ABE service area.
  - C. MLC retains and owns all rights, title and interest including, but not limited to, copyright, patent, and all other intellectual property rights in:
    - The Software and Documentation;
    - Any and all changes, modifications, improvements, corrections, updates and derivative works of the Software and Documentation by whomever made or created them.
  - D. ABE Program is responsible for:
    - Supervising, managing and controlling ABE Program's use of the Software and Documentation;
    - Assuring proper machine configuration, audit controls, and operating methods;
    - Implementing sufficient procedures to satisfy the Minnesota Department of Education's ABE Program requirements for security and accuracy of input and output, as well as restarts and recovery in the event of a malfunction;
    - Purchasing software and maintaining adequate network capabilities that may be required to run the MABE application;
    - Installing and purchasing adequate communication lines used in connection with the Software.
  - E. ABE Program understands that technically advanced persons (including "hackers" who have malicious intentions, and "power users" who have productive intentions) may defeat whatever security measures are built in to protect the integrity of tables, queries, and other Application objects, and shall not hold MLC responsible for fixing any security-breach related problems within the scope of this Agreement.
2. SOFTWARE UPDATES AND MODIFICATIONS. MLC and the Developer are committed to increasing the functionality of MABE as needed by the user community. Requests for updates and modifications (including reports) should be submitted to MLC's MABE Administrator. The Administrator and the Developer will then evaluate the requested change in terms of the importance of the change and its effect on overall Software functionality. Changes that pass this scrutiny may then be completed. MLC does not guarantee that all requested changes will be implemented.

3. **RESTRICTIONS.** Any custom enhancements to the Protected Products requested by and/or paid for by ABE Program become part of the Protected Product and therefore owned by MLC, who has exclusive ownership rights to the Program Code, and retains the right to reuse and/or resell the Program Code, including selling part or all of the Program Code to third parties. ABE Program may not sell, rent, lease, sublicense, assign, or transfer the license the Program Code enhancements, in whole or in part.

In addition, if ABE Program makes any custom enhancements then MLC has no further responsibility to support or maintain the MABE Database for this ABE Program.

4. **TERMINATION.** This License is effective until terminated. This License will terminate immediately without notice from MLC, its successors, or judicial resolution if you fail to comply with any provision of this License. Upon such termination your user ID and access will be terminated.

See the "Cancellation" heading on the Service Agreement for voluntary termination options.

Sections 6, 7 and 8 of this agreement will survive any termination.

5. **PASSWORDS.** To gain access to and use the Software, you may be required to create a log-in ID and password. You are responsible for activity that occurs under your log-in ID. MLC has no obligation or responsibility with regard to your use, distribution, disclosure, or management of log-in information.
6. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR WARRANTIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, MLC AND ITS SUCCESSORS EXPRESSLY DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
7. **LIMITATION OF REMEDIES AND DAMAGES.** In no event will MLC, its parent or subsidiaries, successors, or any of the licensors, directors, officers, employees, contractors or affiliates of any of the foregoing be liable to you for any consequential, incidental, indirect or special damages whatsoever (including, without limitation, damages for loss of program income, program interruption, loss of program information), whether foreseeable or unforeseeable, arising out of the use of or inability to use the Software, or any subsequent updates, upgrades or enhancements or accompanying written materials, regardless of the basis of the claim and even if MLC, its successor, or MLC's representative or successor has been advised of the possibility of such damage.
8. **GENERAL.** This License will be construed under the laws of the State of Minnesota, except for that body of law dealing with conflicts of law. If any provision of the License shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this License will remain in full force and effect. If the Software is supplied to the United States Government, the Software is classified as 'restricted computer software' as defined in clause 52.227.19 of the FAR. The United States Government's rights to the Software are as provided in clause 52.227.19 of the FAR.

# Minnesota Literacy Council

700 Raymond Ave, Ste 180  
St Paul, MN 55114

# Invoice

Date	Invoice #
6/29/2016	4772

Phone #

651-645-2277 x223

### Bill To

Duluth ABE  
Attn: Patricia Fleege  
215 N First Ave E  
Duluth, MN 55802

P.O. No.

Quantity	Description	Rate	Amount
1	MABE, Burlington English & Edmentum Online Software Support and 1 Northstar Digital Literacy Sponsorship for each consortium for fiscal year 2016-2017	7,860.80	7,860.80
		<i>OK to pay 9/2/16</i>	
		<i>04-520-005-322-000-182000</i>	
		<i>Patricia Fleege</i>	
		<b>Total</b>	<b>\$7,860.80</b>

DATE: 09/15/16

**Men As Peacemakers**  
In School Programming Contract

**From:**

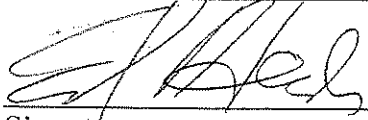
Name: Men As Peacemakers (Ed Heisler)  
Address: 205 West 2<sup>nd</sup> Street, Suite 15  
Duluth, MN 55802  
**Federal EIN: 41-1841689**

**TO:**

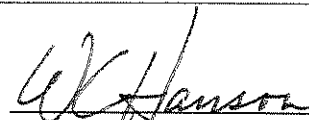
Duluth Public Schools -- ISD 709

This contract supports two in school programs offered annually by Men As Peacemakers at Duluth Public Schools-Boys Restorative Program and Girls Restorative Program. Both programs welcome students who may be struggling in school, and are designed to support the social emotional development of participants, while contributing to their success in school. This contract amount reflects approximately 7% of total program costs, but represents an important investment by the school district that will strengthens MAP's abilities to secure additional funders.

2016 Peer Education Contract	AMOUNT
<p><b>1. Provide Boys Restorative Programming (Boys Group) at a minimum of 2 schools.</b> Boys Groups is an in-school community mentoring program for 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grade boys. This primary prevention program connects caring adults in local elementary schools to help boys broaden their understanding of masculinity and to make better connections with themselves, their schools, and their community. These connections help them succeed both academically and socially, and support the development of boys into leaders in preventing violence and promoting positive peer cultures.</p> <ul style="list-style-type: none"> <li>Boys Group serves 80-120 boys on an annual basis.</li> <li>Programming is provided through MAP staff and volunteers weekly or twice weekly based on school schedule.</li> <li>Boys Group is currently provided at Laura MacArthur, Myers Wilkins, and Lincoln Park Middle School. MAP is interested in exploring other expansion possibilities.</li> </ul> <p><b>2. Provide Girls Restorative Programming (Girls Group) at Denfeld High School and Lincoln Park Middle School.</b> Girls Group is an in school program that creates inclusive and confidential spaces where girls develop authentic, supportive relationships while exploring their identities, building resiliency, and succeeding in high school. Girls also become peer leaders in sexual violence prevention, promoting healthy relationships, and addressing issues of violence and inequality facing girls and women.</p> <ul style="list-style-type: none"> <li>Girls Group serves approximately 90-100 girls on an annual basis.</li> <li>Programming is provided through MAP staff and volunteers on a weekly basis for each grade level.</li> <li>Program coordinators are also housed in school to provide one on one support/advocacy to girls.</li> <li>Participants are invited to participate in multiple field trips exploring potential careers, college, activities, and community resources.</li> <li>Programming is provided at Denfeld High School and Lincoln Park Middle School</li> </ul>	<p><b>\$10,000 Total</b></p>

  
\_\_\_\_\_  
Signature  
Executive Director  
\_\_\_\_\_  
Title  
Men As Peacemakers Signatory

9/15/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature  
CFO  
\_\_\_\_\_  
Title  
ISD 709 Signatory

9/19/16  
\_\_\_\_\_  
Date

## PARKING LOT USE AGREEMENT

THIS AGREEMENT made as of the 7<sup>th</sup> day of June, 2016, by and between The Duluth Congregational Church, Minnesota, a non-profit corporation, CHURCH, and Independent School District No. 709, a public corporation under the laws of the State of Minnesota, DISTRICT;

WITNESSETH, that in consideration of the rent reserved herein and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. The Church hereby agrees, and District hereby accepts and takes, without any obligation on the part of the Church to make any improvements, the shared use of up to Forty (40) parking spaces in the parking lot located at 3833 East Superior St.
2. The term of the Agreement shall be from September 6, 2016 until June 8, 2017 or until terminated by either party upon 60 days written notice.
3. As and for payment for the above described shared use, District agrees to pay the Church a reimbursement of the cost of operating and maintenance of the parking lot which cost is agreed to equal the sum of TWO HUNDRED EIGHTY DOLLARS (\$280.00) per month.
4. Church warrants that it has good title to the above described premises and has the right to enter into this joint use agreement, and that so long as District is not in default under this Agreement, the District will be entitled to quiet and peaceful enjoyment of the parking lot premises and shall not be disturbed or interfered with by Church or by any person claiming by, through or under the Church.
5. By entering into this Agreement, District shall not be liable for the payment of any taxes, assessments or other impositions imposed upon said lands, District's liability being solely that for the payment of cost described herein above.
6. Upon the termination of this Agreement through forfeiture or through lapse of time or any other means, District shall surrender its use of the above described premises to Church in as good a condition as received, reasonable wear and tear excepted.
7. District shall name the Church as additional insured upon its policy of liability insurance, and to the extent of such insurance and to the limits therein provided, or to the limits set forth in Minnesota Statute §466.04, whichever limits are greater, agrees to indemnify and save Church harmless from any claims, demands, actions or causes of action arising out of District's use and occupancy of said premises.
8. The use of said parking lot shall be for the shared use of the Church and District from 7:00 a.m. until 5:30 p.m. on weekdays during the term of this Lease. At other hours and times, the Church shall be entitled to the exclusive use of said premises.
9. The use of said parking lot shall be designated for the exclusive use of the Church on occasion during the period of 7:00 a.m. until 5:30 p.m. on weekdays during the term of this Agreement for the purposes of conducting funerals or other special events by the Church providing at least 24 hour advance notice to the District (East High School Principal).

Parking Lot Use Agreement Between

The Duluth Congregational Church and Independent School District No. 709

10. The District agrees that during the term of this Agreement it will provide labor to monitor, pick up and dispose of refuse left in the lot by the District's users during the period from 7:00 a.m. until 5:30 p.m. on weekdays during the term of this Agreement.

11. The District agrees to manage the use of the Church Parking Lot by the District's students and/or other users authorized by the District, thru the issuance of parking permits that shall be visibly displayed in each vehicle that is authorized by the District to park in the lot according to the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CHURCH:

THE DULUTH CONGREGATIONAL CHURCH

BY: Carol Thibault

Carol Thibault, Church Moderator

DISTRICT:

INDEPENDENT SCHOOL DISTRICT NO. 709

BY: William C. Hanson

William C. Hanson

Director of Business Services



## AGREEMENT

**THIS AGREEMENT**, made and entered into this **8<sup>th</sup> day of September, 2016**, by and between Independent School District #709, a public corporation, hereinafter called District, and **Jessica Vargason**, an independent contractor, hereinafter called Contractor.

**THE PURPOSE OF THE AGREEMENT** is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows: (insert as appropriate)

1. **Dates of Service.** This Agreement shall be deemed to be effective as of **September 8, 2016**, and shall remain in effect until **June 30, 2017**, 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.** Please see attached job description.

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.

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 at the rate of **\$27.00 per hour up to a sum not to exceed \$12,000**. 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 care of Pam Rees, ISD 709, Duluth Public Schools, 215 North 1<sup>st</sup> 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

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

**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.

**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  
DULUTH HEAD START

CONTRACTOR

~~Chair~~

Title

*Jessica Vargas*

~~Clark~~

Title

*Nutritionist / Dietitian*

Program Director

Taxpayer Identification Number

*W.C. Hanson*  
Director of Business Service

**DULUTH HEAD START  
JOB DESCRIPTION**

**JOB TITLE:** Head Start Nutritionist/Dietitian

**IMMEDIATE SUPERVISOR:** Head Start Director

**DEPARTMENT:** ISD 709 E-12 Operations

**PAY GRADE ASSIGNMENT:** \$27.00 per hour

**MINIMUM QUALIFICATIONS:** Minimum Bachelor's degree in health, nutrition or related field and possesses a current registration with the Commission on Dietetic Registration of the American Dietetic Association or be eligible, registered and ready to take the examination. Have a current valid driver's license and access to reliable transportation.

**DESIRED QUALIFICATIONS:** Coursework and/or experience with families from a variety of social and cultural backgrounds and families living in economic poverty. Ability to demonstrate effective verbal and written communication skills and to work independently.

**DUTIES AND RESPONSIBILITIES:**

Overseeing program operations and compliance with Head Start Performance Standards and regulations in the area of food and nutrition;

Consult with the Health & Nutrition Services Coordinator

Review all child files for dietary and nutritional needs;

Develop monthly menus for breakfast, lunch and snack that meet nutritional guidelines and work with school district food service department to coordinate meal service;

Reflect cultural and ethnic preferences, and include a wide variety of foods;

Work with food service, nurse and families on special diets for identified food allergies

Monitor food safety practices;

Train staff on food safety and proper serving procedures in accordance with Head Start performance standards;

Monitor hemoglobin levels, height and weight on all children in order to identify potential problems and provide follow-up

Monitor and coordinate oral health activities in the program

Provide nutrition counseling and education to individual parents regarding the nutritional needs of their children;

Provide information and materials for nutrition education activities in the classroom;

Coordinate and provide nutrition education at parent meetings;

Consult with teachers regarding concerns about children's eating;

Update and revise nutrition area of the program plan;

Serve as liaison to nutrition and food resources in the community;

Member of Head Start Health Advisory Committee;

Other duties as assigned by supervisor.



...where theory  
meets practice...

### INDIVIDUAL OR AGENCY – INTERPRETER AGREEMENT

This Consultant Agreement is by and between Digiterp Communications and ISD 709. Services to be provided and other details have been listed below.

Name/Agency: Doug Bowen-Bailey/Digiterp Communications

Address: 728 East 7<sup>th</sup> Street Duluth MN 55805

Telephone #(s): (218) 310-7940

Social Security or  
Federal ID Number: \_\_\_\_\_

Description of Service  
to be Provided: Interpreting Services as needed by the school district  
Population to be  
Served: students and staff requiring ASL-English interpreting Services

Location and times of Services: Any ISD 709 location

Required Qualifications: Nationally Certified Interpreter File Folder # if Needed: MRID Member

Date(s) of Service: August 17, 2016 – June 30, 2017

Rate of Pay: \$40 per hour for services – Minimum of two hours per assignment

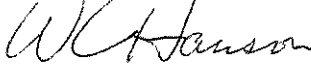
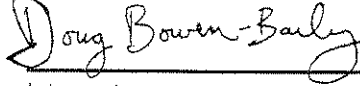
Invoicing Procedure: send invoices to Michelle Porter

Cancellation Requirements: Organization reserves the right to cancel this agreement due to severe weather or low enrollment. In either case, organization assumes no financial obligation for this agreement

Relationship: The parties hereto are independent contractors. Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership. The provider shall not become an employee of the Agency (BRIC) by acting under this Agreement and the provider shall be responsible for the payment of any taxes, fees or costs resulting from the above compensation. If the compensation reaches \$600 or more, a 1099 will be issued to this provider at the end of the calendar year.

Miscellaneous: This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of MN. This Agreement may not be assigned without the written consent of the other party. Any copy of this document shall be considered to have the binding and legal effect of an original document.

#### SIGNATURES

	
9/20/16	8/16/16
ISD 709 Representative	Interpreter
Date	Date

RECEIVED

SEP 15 2016

HUMAN RESOURCES

INDIVIDUAL OR AGENCY - INTERPRETER AGREEMENT

This Consultant Agreement is by and between KY Interpreting Services and ISD 709. Services to be provided and other details have been listed below.

Name/Agency: KY Interpreting Services

Address: 3251 Dahl Rd. Duluth, MN 55824

Telephone #(s): (218) 393-3504

Social Security or Federal ID Number: 26-3754494

Description of Service to be Provided: Interpreting Services as needed by the school district

Population to be Served: students and staff requiring ASL-English interpreting Services

Location and times of Services: Any ISD 709 location

Required Qualifications: Nationally Certified Interpreter File Folder # If Needed:

Date(s) of Service: 2016-2017

Rate of Pay: \$ 45.00/hour


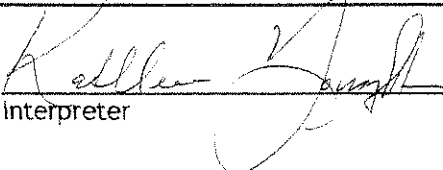
Invoicing Procedure: Payment due upon receipt of invoice

Cancellation Requirements: Organization reserves the right to cancel this agreement due to severe weather or low enrollment. In either case, organization assumes no financial obligation for this agreement

Relationship: The parties hereto are independent contractors. Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership. The provider shall not become an employee of the Agency by acting under this Agreement and the provider shall be responsible for the payment of any taxes, fees or costs resulting from the above compensation. If the compensation reaches \$600 or more, a 1099 will be issued to this provider at the end of the calendar year. This contract is not to exceed \$5,000.00.

Miscellaneous: This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of MN. This Agreement may not be assigned without the written consent of the other party. Any copy of this document shall be considered to have the binding and legal effect of an original document.

SIGNATURES

	<u>9/15/16</u>		<u>Aug 28 2016</u>
ISD 709 Representative	Date	Interpreter	Date

## CONTRACT FOR IN SCHOOL NURSING SERVICES

This AGREEMENT is made and entered into this 21st day of September, 2016, by **BAYADA Home Health Care, Inc.**, with a service office located at 110 Second Street South, Suite 306, Waite Park, MN 56387 (hereinafter referred to as **BAYADA**) and **Duluth School District**, located at 215 N. 1st Avenue East, Duluth, MN 55802 (hereinafter referred to as **SCHOOL**).

**BAYADA** is a home health care agency, engaged in the business of providing professional nursing services and **SCHOOL** has identified a need for an in **SCHOOL** nurse to provide basic nursing care to its students.

WHEREAS, it is the desire of both parties to make provision for on site nursing services in accordance with the terms of this Agreement.

THEREFORE, in consideration for the mutual covenants expressed herein, **BAYADA** and **SCHOOL** agree to the terms and conditions outlined herein:

### I. RESPONSIBILITIES OF BAYADA

- A. Qualifications of Personnel. The Nurse supplied by **BAYADA** shall be a Registered Nurse (RN) or Licensed Practical Nurse (LPN) who shall hold a current license, registration or certification to practice in the State of New Jersey, and shall provide services pursuant to the applicable state laws.
- B. Personnel Records Inspection. **BAYADA** shall make available for inspection, upon the request of **SCHOOL**, the personnel files of its nurse who is providing onsite services. The contents of such file will include:
1. Verification of current licensure or certification as applicable; and
  2. Completed application for employment or resume; and
  3. Verified references; and
  4. Evidence of annual performance evaluation; and
  5. A criminal record check, conducted upon hire, if required by state law; and
  6. Evidence of at least one, annual in-service education or training in accordance with applicable state regulations.
- C. Service. **BAYADA** shall provide an RN or LPN to **SCHOOL** on a substitute basis. The RN/LPN will provide basic nursing services to **SCHOOL**'s students currently attending schools located within **SCHOOL**'s district. **SCHOOL** acknowledges and understands that **BAYADA** cannot guarantee services. All services will be provided subject to the availability of a qualified nurse. Upon execution of this Agreement, **SCHOOL** will provide **BAYADA** with a schedule of the **SCHOOL** calendar including all scheduled days off.



- D. Place of Performance. **BAYADA** will provide services primarily at schools located within **SCHOOL**'s district. **SCHOOL** acknowledges and understands that **BAYADA** cannot guarantee services. All services will be provided subject to the availability of a qualified nurse.
- E. Insurance.
1. **BAYADA** shall maintain general liability and professional liability coverage for any negligent acts or omissions of **BAYADA** employees which may give rise to liability under this Agreement.
  2. **BAYADA** shall maintain, at its sole expense, Workers' Compensation insurance for its employees.
- F. Indemnification. **BAYADA** agrees to indemnify and hold harmless **SCHOOL** from all bodily injury and/or property damage claims arising out of the sole negligence of **BAYADA**, acting through its directors, agents, and employees.
- G. Payment of Personnel. **BAYADA**, as an employer, shall remain responsible for the payment of wages and other compensation, reimbursement of expenses and compliance with Federal, State and local tax withholdings, Workers' Compensation, Social Security, employment and other insurance requirements for its personnel.
- H. Policies and Procedures. **BAYADA** will follow the **SCHOOL**'s policies and procedures while providing care in the **SCHOOL** setting.

## II. RESPONSIBILITIES OF SCHOOL

- A. Payment for Services. **SCHOOL** will remain responsible to compensate **BAYADA** for services rendered pursuant to this Agreement. Section III hereunder shall govern billing terms and compensation.
- B. Insurance.
1. **SCHOOL** shall maintain at its sole expense valid policies of general liability insurance, covering the negligent acts or omissions of **SCHOOL** acting through its directors, agents, employees or other personnel which may give rise to liability under this Agreement.
  2. **SCHOOL** shall maintain, at its sole expense, Workers' Compensation insurance for its employees.
- C. Indemnification. **SCHOOL** agrees to indemnify and hold harmless **BAYADA** from all bodily injury and/or property damage claims arising from any act or omission of **SCHOOL**, acting through its directors, agents, employees or other personnel.
- D. Equipment and Supplies. **SCHOOL** will supply **BAYADA**'s RN/LPN with all necessary equipment, tools, materials and supplies (including teaching materials and supplies) necessary to perform services under this Agreement.

- E. Employment Status. **SCHOOL** understands and agrees that the RN/LPN is an employee of **BAYADA** and **SCHOOL** will not attempt to solicit the RN/LPN to work privately for **SCHOOL**, without written authorization from **BAYADA**, during the term of this Agreement and for one (1) year following its termination or expiration. **SCHOOL** recognizes the recruiting, training and retention expenses that **BAYADA** encounters as an employer and acknowledges that **BAYADA** is not a placement or referral service. Should **SCHOOL** desire to hire one of **BAYADA**'s employees, **SCHOOL** agrees to provide **BAYADA** with written notice and pay a liquidated damages fee equal to four (4) months of the specific employee's annual gross salary or \$5,000.00 whichever is greater. This fee shall apply to any **BAYADA** employee **SCHOOL** wishes to hire.
- F. Compliance Program. **BAYADA** values honesty and confidentiality in all business interactions. In order to assure adherence to these values, **BAYADA** maintains a corporate compliance program, designed to detect and prevent illegal and unethical activities, including breaches of confidentiality. **SCHOOL** agrees to abide by this program, and understands its obligation to report questionable activities involving **BAYADA**'s employees to the local office Director named below or to the Compliance Hotline at 1-866-665-4295.

### III. BILLING AND COMPENSATION

- A. **SCHOOL** agrees to compensate **BAYADA** at a rate of \$60.00/hour for RN Complex services or \$50.00/hour for LPN Complex services provided under this Agreement. **SCHOOL** payments to **BAYADA** may not exceed \$20,000 per school year.
- B. **BAYADA** shall forward to **SCHOOL** an itemized bill on a weekly basis.
- C. **SCHOOL** agrees to pay submitted bills within sixty (60) days of receipt. Any bill not paid within the sixty (60) day period will be considered delinquent. **BAYADA** reserves the right to pursue any collection remedies in an attempt to resolve a delinquent account. **SCHOOL** agrees to reimburse **BAYADA** for all collection costs, including attorneys' fees and expenses.

### IV. TERM AND TERMINATION

- A. This Agreement will come into effect beginning on September 1, 2016 and will remain in effect through August 31, 2017. This Agreement may be extended upon the written consent of each party outlining the terms and time for extension.
- B. Either party may terminate this Agreement, for any reason, upon thirty (30) days prior written notice.
- C. Either party may terminate this Agreement for cause due to the occurrence of one of the following events by giving ten (10) days prior written notice:
1. Dissolution or bankruptcy of either **BAYADA** or **SCHOOL**.
  2. Failure of either **BAYADA** or **SCHOOL** to maintain the insurance coverages required hereunder.

3. Breach by **BAYADA** or **SCHOOL** of any of the material provisions in this Agreement.

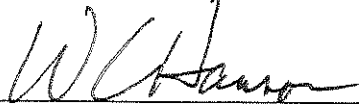
#### V. ADDITIONAL TERMS

- A. Governing Law. This Agreement will be construed and governed in all respects according to the laws of the State of New Jersey.
- B. Relationship to Parties. The parties enter into this Agreement as independent contractors. Nothing contained in this Agreement will be construed to create a partnership, joint venture, agency or employment relationship between the parties.
- C. Assignment. This Agreement may not be assigned by either party, in whole or in part.
- D. Modification of Terms. No amendments or modifications to the terms of this Agreement will be binding unless evidenced in writing and signed by an authorized representative of each party hereto.
- E. Notices. Any Notice given in connection with this Agreement will be given in writing and will be delivered either by hand or by certified mail, return receipt requested, to the other party, at the party's address listed above. Any party may change its address as stated herein by giving Notice of the change of address in accordance with this Paragraph.
- F. Confidentiality. Except for acknowledging the existence of this Agreement, the parties understand and agree that the terms of this Agreement, including all payment terms, shall be kept confidential unless disclosure is required by law or the parties agree, in writing, to such disclosure. All methods and mode of conduct of business for **SCHOOL** and **BAYADA** are to be kept confidential by **SCHOOL** and **BAYADA** and not disclosed to any other party or used in part or whole without the permission of **SCHOOL** and/or **BAYADA**.
- G. Entire Agreement. This writing evidences the entire Agreement between **BAYADA** and **SCHOOL**; there are no prior written or oral promises or representations incorporated herein. Each Attachment, Fee Schedule, Exhibit or other documents referenced herein and/or attached to this Agreement are incorporated herein as if the same was set out in full in the text of this Agreement. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or electronic (email) transmission shall be effective as delivery of a manually executed counterpart hereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
Tina Gonterman  
Division Director  
*Signing with authority for*  
**BAYADA Home Health Care, Inc.**

Date: 9/28/16

  
*Signing with authority for*  
**Duluth School District**

## STATEMENT OF WORK NO. RSP 00184

Pursuant to the Professional Services Agreement, dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 ("Agreement"), by and between RSP & Associates, LLC. ("Consultant"), and Duluth Public Schools, ISD 709, Saint Louis County, State of Minnesota ("Client" or "District").

CONSULTANT hereby submits this Statement of Work as a request for Professional Services under Section 2.0 of the Professional Services Agreement. The terms and conditions set forth in the Agreement are incorporated by reference and shall supersede any conflicting terms herein. This Statement of Work shall have effect only when signed by CLIENT and CONSULTANT.

The subject matter of this Statement of Work and the terms and conditions specifically applicable thereto are as follows:

**1.0 Description of Professional Services.** Professional services provided by Consultant to Client may include, but are not limited to, Consultant's designing, preparing, writing or analyzing one or more of the following: Board Redistricting Report, Boundary Reports, Demographic Reports, Enrollment Reports, Facilitation/Presentations, Facility Staffing Report, Maps, Site Analysis Reports or other analysis/reports as may be necessary to perform and carry out all of Consultant's obligations set forth in this Statement of Work. Any options shall be mutually agreed upon by the parties, and evidenced by an addendum hereto setting forth the descriptions, delivery dates, and prices for the same.

**2.0 Purpose of Professional Services.** The purpose of professional services is to assist and provide the client the following products, services, or analysis which are further defined in the Statement of Work section 7.0 and 10.0:

- 2.1 Enrollment Analysis
- 2.2 Boundary Analysis
- 2.3 Public Facilitation

**3.0 Project Management.**

3.1 Work Plan. All products will be a work in progress that will meet the deadlines stated in the Deliverable section (7) of the contract unless both the Client and Consultant agree upon another schedule.

3.2 Work Plan Management. At the request of the Client, the Consultant will provide a description of the status of a particular project.

3.3 Communications. All communications regarding any of the projects should be made to the consultant, Robert S. Schwarz, or those individuals in 4.2

#### **4.0 Change Control.**

4.1 Procedure. Changes to this Statement of Work may be made only in compliance with the terms of Section 19.0 of the Professional Services Agreement.

4.2 Client Changes. Only the following individuals may authorize changes for the Client:

Mr. William Gronseth, Superintendent  
Duluth Public Schools, ISD 709

4.3 Consultant Changes. Only the following individuals may accept on behalf of Consultant any changes requested by the Client:

Robert Schwarz, Owner

**5.0 Technical Specifications.** Each report will be provided in hard copy and digitally in a PDF format unless otherwise notified by the Consultant.

**6.0 Quality Standards.** The products delivered to the Client will be of the highest quality and considered final after being presented and reviewed by the Client and any requested changes are made by Consultant.

#### **7.0 Deliverables.**

7.1 Consultant Deliverables Defined. The following are products, services or analysis that will be created by the Consultant under the Agreement.

a. The Enrollment Analysis and Report assists the District in understanding how the projected enrollment impacts capacity at each of its facilities. The report has analysis that projects the enrollment at each facility for the next five years with current boundaries. It includes tables, graphs, charts, and maps. Meetings with County and City planners, and developers are utilized to discuss land use, development policies, building permit trends, and future development plans to accurately factor for those variables in the Enrollment Projection Model.

b. Boundary Analysis provides redistricting options that are based on the Student Forecast Model (SFM) enrollment projections generated in the Enrollment Analysis Report. The report will document the public process, benchmark each option with respect to the boundary criteria the Board approves, and ultimately assist the District in understanding the possible solutions for the enrollment change to include, better utilization of existing facilities, the timing when new facilities or additions should be built, when new sites should be purchased, and/or if a bond referendum should be held. Large print maps and 11 x 17 maps are utilized to facilitate group discussions. (Option)

c. The Boundary Public Facilitation has consultant leading the facilitation process. The process will allow detailed exploration of options to better utilize facilities, grade configuration, or attendance area realignment. The consultant has created a process that integrated the following elements: Board of Education,

Administration, Committee, Community, and Consultants. The process will have two Board of Education meetings, five committee meetings, and two public forums. The process will include maps, charts, and discussions to provide a comprehensive recommendation to the Board of Education. (Option)

7.2 Client Deliverables Defined. The following are data or services to be provided by the client.

- a. The following Saint Louis County Auditors and Assessors data with the extensions of dbf, prj, sbn, sbx, shp, and shx are requested:
  - City Boundaries
  - County Boundaries
  - Plat and Subdivision Boundaries
  - School District Boundaries
  - Zip Code Boundaries
  - Census Boundaries
  - Roads
  - Parcels
  - Parcel Attribute fields
  - Public School Point Data
  - Private School Point Data
- b. The following city: Duluth, data with the extensions of dbf, prj, sbn, sbx, shp, and shx are requested:
  - Roads with Geocode attributes
  - Infrastructure (Water, Sewer, Electricity, and Gas)
  - Zoning Attributes
  - Long Range Planning attributes
- c. Other GIS or data files as needed to complete the reports, studies, or analysis
- d. Digital files produced by the Client that will assist in completing the scope of services.

7.3 Deliverables Date. Below are the dates for the Deliverables the Consultant will provide the Client:

- a. Enrollment Analysis – November 2016
- b. Boundary Analysis – March 2017 (Option)
- c. Public Facilitation – March 2017 (Option)

## 8.0 Pricing Terms.

8.1 Payment. The Statement of Work will be performed in the 2016/17 school year totaling Fifty Thousand Five Hundred and no/100 (\$50,500.00) plus travel and other reimbursable expenses. These services will be billed as follows:

- 2016/17 School Year
- There are three components to be completed beginning in the 2016/17 school year.
- Upon completion of the Enrollment Analysis Client will pay Consultant Thirteen Thousand and no/100 (\$13,000.00).
- The Client has the **option** of having the Consultant provide boundary analysis. Upon completion of the Boundary Analysis Client will pay Consultant Six Thousand and no/100 (\$6,000.00). This option is subject to school board approval.
- The Client has the **option** of having the Consultant facilitate a boundary process. Upon completion of the Public Facilitation Client will pay Consultant Thirty-one Thousand Five Hundred and no/100 (\$31,500.00). This option is subject to school board approval.

a. The above breakdown does not include the cost of all expenses associated with the final production of the work and the Deliverables. These printing expenses for the Enrollment Analysis will be charged to the Client not to exceed Five Hundred Dollars and no/100 (\$500.00) per report. Large Format printing is at the rate of \$42.00 per print (36 inches x 42).

b. Travel expenses will be submitted with the appropriate documentation for the Client to submit payment to the Consultant.

8.2 Contingency. The payment plan stated in 8.1 is contingent upon the Client utilizing Consultant services for the specified amount of time or providing the following data:

a. If the Client is unable to provide the requested data as stated in 7.2, the Consultant will charge the Client the cost associated with obtaining the information in 7.2 which is not included in the prices listed in section 8.1, but only upon consent by the Client.

8.3 Additional Services. Any additional services shall be authorized in writing by Client prior to initiation and compensated at the rate of \$120.00 per hour unless otherwise negotiated by both parties. Public meetings RSP would need to attend not included in the services listed in 10.0 are Three Thousand and no/100 (\$3,000.00) plus any travel expenses.

9. **Consultant Content.** Consultant Content shall consist of at least the following:

- 9.1 Enrollment Projection Model
- 9.2 Population Projection Model

### 9.3 Analysis Work Products



## Work Product.

- 9.1 Enrollment Analysis
  - a. Includes detailed analysis of the District enrollment.
  - b. Information about the Model Methodology
  - c. Information about the Types of Growth
  - d. Information about the residential development activity expected in the District.
  - e. 5-Year Enrollment Forecast
  - f. Tables with a likely projection for each facility in the District.
  - g. Maps that identify future growth areas.
  - h. Maps of current boundary and Facility enrollment history.
  
- 10.2 Boundary Analysis (Option)
  - a. Utilization of the Student Forecast Model (SFM) methodology.
  - b. Create as many as five options
  - c. Calculate the SES students for the 1<sup>st</sup> year.
  - d. The final product will have tables with likely Reside enrollment projection for each facility in the District.
  - e. Maps will be created for each boundary scenario.
  
- 10.3 Public Facilitation (Option)
  - a. Utilize the data and maps generated in 10.1 and 10.2 to facilitate a public process
  - b. Two meetings with Board of Education (one at the beginning and one at the end of the process)
  - c. Maximum five meetings with a boundary committee
  - d. Two public forums to educate and receive community comment
  - e. Includes time for meeting preparation and follow-up after meetings
  - f. Assist the District in understanding the possible solutions for the enrollment change to include, better utilization of existing facilities, the timing when new facilities or additions should be built, when new sites should be purchased, and when a bond referendum should be held.
  - g. Validation of community values to be introduced or integrated into the planning process

**11. Client Content.** Client Content may consist of the following elements:

- 11.1 Digital student data for each student with at minimum the fields of address, grade, gender, and ethnicity.
- 11.2 Digital shape-file of parcels in the District.
- 11.3 Digital street centerlines file for all streets in the District that has the appropriate fields for accurate geocoding.
- 11.4 Digital shape-file of all school sites in the District.
- 11.5 Digital shape-file of the current school boundaries for each attendance area.
- 11.6 City and County Future Planning Maps of the area within the District.
- 11.7 Any other data, images, programming, photographs, illustrations, graphics, audio clips, video clips, or text necessary for the completion of the project.

**[Remainder of page left blank intentionally. Signature pages follow.]**

The parties have executed this Statement of Work by their duly authorized representatives  
as of \_\_\_\_\_, 20\_\_.

**CONSULTANT**

RSP & ASSOCIATES, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CLIENT**

Duluth Public Schools, ISD 709, Saint Louis County, State of Minnesota

By: \_\_\_\_\_

Title: School Board Chair

Date: \_\_\_\_\_

By: 

Title: Superintendent

Date: 9/14/14

By: \_\_\_\_\_

Name: \_\_\_\_\_  
School Board Clerk

## PROFESSIONAL SERVICES AGREEMENT

Between

**RSP & Associates, LLC**

and

**Duluth Public Schools, ISD 709, Saint Louis County, State of Minnesota**

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date"), by and between RSP & Associates, LLC, a Kansas limited liability company ("Consultant"), and Duluth Public Schools, ISD 709, a Minnesota public school corporation located in Saint Louis County, State of Minnesota ("Client").

### Recitals

A. Client desires Consultant to provide certain professional services as described in the written Statement of Work (as defined below) as may be agreed upon by the parties in accordance with the terms of this Agreement (the "Professional Services"), and Consultant desires to provide such Professional Services.

B. The terms and conditions of this Agreement shall apply to and govern all Professional Services and Deliverables provided by Consultant to Client.

### Agreement

The parties agree as follows:

**1.0 Definitions.** The following terms, when used in this Agreement, shall have the following meanings:

1.1 Agreement. "Agreement" shall mean this document, all Exhibits referenced herein and attached hereto, and all Statements of Work made pursuant to Section 3.

1.2 Client Content. "Client Content" shall mean anything provided by Client or its agents for incorporation into the Deliverable(s), including, but not limited to, any data, images, programming, photographs, illustrations, graphics, audio clips, video clips, or text, including all Intellectual Property rights therein.

1.3 Confidential Information. "Confidential Information" shall mean, with respect to a party hereto, (i) all information listed or identified as a "confidential record" or "trade secret," pursuant to the terms of Minnesota Code Chapter 22 or other information protected by FERPA, 20 U.S.C. Section 1232g. Confidential Information may include, but is not limited to, the Client Content and Consultant Content.

1.4 Consultant Content. "Consultant Content" shall mean anything provided by Consultant or its agents, including, but not limited to, any data, images, programming, computer code, photographs, illustrations, graphics, audio clips, text, scripts, applets, procedures, solutions, designs, techniques, methods, methodologies, tools, processes, templates, improvements and other know-how and materials (collectively, "Solution Assets"), that are made, conceived, or developed by or for Consultant prior to or

independent of any Professional Services, any enhancements and modifications to and new Solution Assets created or acquired in the performance of Services that have generic application in the urban planning profession or are not unique to Client, and the Intellectual Property rights in any of the foregoing.

1.5 Work Product. "Work Product" means anything made, conceived, or developed by Consultant after the Effective Date in connection with the performance of Professional Services hereunder, including, but not limited to any data, images, programming, computer code, photographs, illustrations, graphics, audio clips, text, scripts, applets, procedures, improvements, and other materials, including the Intellectual Property rights therein. Work Product does not include Consultant Content, Client Content or any third-party content.

1.6 Deliverable. "Deliverable" shall mean any item, software, Work Product, documentation, service, or material provided by Consultant to Client pursuant to this Agreement or any Statement of Work. Deliverables may be a combination, as appropriate, of Client Content, Consultant Content, Third Party Content, and Work Product.

1.7 Intellectual Property. "Intellectual Property" shall mean all inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how (whether or not protectable under trade secret laws), techniques and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret, or other laws, including without limitation all new or useful art, combinations, discoveries, formulae, manufacturing techniques, business methods, technical developments, artwork, software, programming, applets, scripts, and designs.

## 2.0 Services.

2.1 Professional Services. Client retains Consultant to provide, and Consultant agrees to provide, pursuant to this Agreement, the Professional Services specifically described in such Statement of Work as signed by both parties and attached to and incorporated into this Agreement.

2.2 Performance of Services. Consultant represents and warrants that: (i) it shall complete all tasks identified in a Statement of Work unless this Agreement is terminated as permitted by this Agreement; (ii) all services provided by Consultant to Client (including without limitation any support or explanation) will be performed in a timely, competent, professional, and workmanlike manner, using qualified Personnel in conformity with standards generally accepted in the planning profession; and (iii) Consultant is the lawful owner or licensee of any software or other programs used by Consultant in the performance of the services called for in this Agreement and has all rights necessary to convey to Client the license granted herein.

**3.0 Statement of Work.** "Statement of Work" shall include the following: The Statement(s) of Work shall include, as appropriate, description, background, scope, management approach, technical approach, quality approach, roles and responsibilities of each party, Deliverables, equipment and items (if any) to be delivered pertaining to the Deliverables, the equipment on which the Deliverables are to operate, any interfaces to be created, operating systems to be used, acceptance testing methodology, methods of delivery, a schedule of performance dates and milestones (including delivery dates for each Deliverable), and such pricing and payment terms as may be agreed to by the parties. The Statement(s) of Work may include such additional terms and conditions as the parties may wish to include; provided, however, that such terms do not conflict with the terms of this document. Any changes to the terms of this document must be made pursuant to Section 19.0 (Amendment) herein. In the event of a conflict between the terms of this Agreement and a Statement of Work, the terms of this Agreement shall govern, unless this Agreement specifically states that such provision may be varied or modified in the Statement of Work, in which case the Statement of Work shall govern. All Statements of Work shall be effective only when executed by both parties. All fully executed Statements of Work shall be deemed to be attached to and incorporated into this Agreement and governed by the terms of this Agreement.

**4.0 Deliverables.**

4.1 Development/Delivery of Deliverables. Development of the Deliverables, if any, shall proceed according to the Statement of Work, provided that Client delivers or provides access to all necessary information, equipment, materials and other items identified in a Statement of Work as being provided by Client in a timely fashion, and if not, then Consultant's obligations which are dependent on such shall be extended to reflect such delay. Consultant shall deliver the Deliverables to Client for approval as provided in Section 4.2 on the dates as specified therein.

4.2 Delivery of Deliverables. Consultant may deliver a draft of the Deliverables, if requested, to Client no later than one week prior to the Deliverables Date set forth in Section 7.3 of the Statement of Work. Consultant shall meet with Client to review the draft of the Deliverables, and shall thereafter deliver a true and complete copy of the Deliverables to Client no later than the Scheduled Delivery Date set forth in the Statement of Work.

**5.0 Change Orders.** A Statement of Work may be amended by the parties in a writing executed by both parties. During the term of a Statement of Work, Consultant will work with Client to make any changes to the scope of services required in a particular Statement of Work which are requested by Client. If Consultant reasonably believes that any change request, individually or collectively, is not feasible or would materially affect Consultant's ability to timely complete, or complete within budget, an agreed upon component of the services to be performed by Consultant, then the change shall be subject to approval by Consultant, which approval shall not be unreasonably withheld, and relevant changes to any timelines or milestones and compensation specified in the Statement of Work shall be negotiated to equitably adjust for the changes in scope as well.

**6.0 Term of Agreement.** This Agreement shall be effective from the Effective Date until terminated as provided for in Section 7, Termination, below.

**7.0 Termination.**

7.1 This Agreement may be terminated by either party immediately if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach (if such breach is curable) within thirty (30) days of receipt of the notice specifying the nature of the default.

7.2 This Agreement may be terminated by either party for any reason by providing the other party with sixty (60) days prior written notice.

**8.0 Effect of Termination.**

8.1 Payment of Fees. In the event of a termination by either party, but subject to any rights and remedies available to Client in the event of an uncured breach by Consultant or non-conforming work, Client shall pay Consultant according to the applicable Statement of Work for all undisputed amounts due for services rendered and work performed (including work-in-progress) up to the date of termination.

8.2 Return of Confidential Information. Except to the extent retention is required by applicable law, within ten (10) days after the termination or expiration of this Agreement, each party shall return to the other all Confidential Information of the other party related thereto (and any copies thereof) in the party's possession or, with the prior written approval of the other party, destroy all such Confidential Information.

8.3 Effect on Intellectual Property Rights. Except for a breach of Sections 9.0 (Intellectual Property Rights and License) or Section 12.0 (Confidentiality), the rights and licenses granted under Section 9.0 (Intellectual Property Rights and License), if any, shall continue in full force and effect in accordance with their terms notwithstanding any termination of this Agreement or a Statement of Work.

**9.0 Intellectual Property Rights and License.**

9.1 Copyright. Client acknowledges that all or part of the Work Product may be copyrighted, trademarked, or patented solely by Consultant. All Work Product shall be marked as follows: "© (year) by RSP & Associates, LLC, All rights reserved."

9.2 License of Consultant Content and Work Product. All Intellectual Property rights in and to the Consultant Content and Work Product are and shall remain the sole and exclusive property of Consultant. Notwithstanding the foregoing, Consultant agrees that during the term of this Agreement, and thereafter upon receipt of payment in full of the fees required under this Agreement, Consultant grants to Client a royalty free, non-exclusive, irrevocable, worldwide, perpetual license to use any Consultant Content and

Work Product incorporated into the Deliverables for the purposes specified in the Statement of Work. Client shall not use any reverse engineering methods, make derivative works or distribute the Consultant Content or Work Product in violation of this Agreement. Any and all copies of the Deliverables shall include Consultant's copyright notice. The Work Product is not a work for hire under the Copyright Act.

9.3 Client Content. Client shall not be required to provide any Client Content unless specifically required in the applicable Statement of Work. In such a case, Client shall deliver the Client Content to Consultant in a standard electronic file format specified in the applicable Statement(s) of Work, at such times as may be specified in the Statement(s) of Work or as may be reasonably necessary. Except as may otherwise be provided in a Statement of Work or necessary to prepare a Deliverable, Consultant shall only use the Client Content in the form provided by Client and solely to provide the Professional Services to Client. Consultant shall not use the Client Content for any other purpose. All Intellectual Property rights in the Client Content are and shall remain the sole and exclusive property of Client or its third party licensors.

#### **10.0 Fees and Payments.**

10.1 Fees. All Professional Services will be performed for the Service Fee set forth in the Statement of Work.

10.2 Payment. Terms of payment for all work performed under this Agreement shall be net 30 days from date of receipt by Client of an invoice.

**11.0 Compliance with Laws.** Consultant represents and warrants its performance under this Agreement will comply with all applicable federal and state laws, rules, regulations and standards and Client policies provided to Consultant in advance, in writing. Consultant further agrees that while on District property and/or while providing services under this Agreement where contact with District staff and/or students is expected or possible, Consultant will abide by all laws, regulations and Client policies and rules regarding smoking prohibitions, appropriate conduct provisions (including but not limited to bullying and harassment) and sex offender restrictions.

**12.0 Confidentiality.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not commercialize or disclose the other party's Confidential Information to any person or entity, except to its own and the other party's personnel, having a need to know. Each party agrees that it will not use or permit its personnel to use any Confidential Information for purposes other than in connection with performance of its duties under this Agreement. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than reasonable diligence and care. Notwithstanding the foregoing, each party may disclose Confidential Information pursuant to a requirement or request of a governmental agency or pursuant to a court or administrative subpoena, order or other such legal process or requirement of law, or in defense of any claims or causes of action asserted against it; provided, however, that it shall use commercially reasonable



efforts to: (i) first notify the other of such request or requirement, or use in defense, unless such notice is prohibited by statute, rule or court order; (ii) attempt to obtain the other party's consent to such disclosure; and (iii) in the event consent is not given, agree to allow the disclosing party to file a motion to quash, or take a similar procedural step to frustrate the production or publication of information. Nothing herein shall require either party to fail to honor a subpoena, court or administrative order or requirement on a timely basis. Each party shall cooperate with the other in an effort to limit the nature and scope of any required disclosure of Confidential Information.

### **13.0 Limitation of Liability.**

13.1 Limitation of Liability. Except to the extent such limitations are prohibited by applicable law and except in the case of gross negligence or willful misconduct, neither Client nor Consultant shall be liable under this Agreement for any indirect, incidental, special, punitive or consequential damages. Except in the case of Consultant's gross negligence or willful misconduct, or except in the case of Consultant's violation of the Intellectual Property Rights of a third party, in no event will the total aggregate liability of Consultant for any claims, losses or damages arising out of this agreement exceed an amount equal to 3 times the total amount of fees and other consideration actually received by Consultant under this Agreement. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of any other remedies.

13.2 Limitation of Warranties. Consultant warrants that the services performed hereunder shall be performed in a competent and workmanlike manner with qualified personnel. Consultant further warrants, and subject to the accuracy of any data provided by Client, that any calculations made by Consultant shall be true and accurate in all material respects at the time the calculations were made. In the event of a breach of this Section 13.2, Consultant shall, at no additional cost or expense to Client, but as Client's sole remedy, reperform the related services. **CONSULTANT MAKES NO IMPLIED WARRANTIES, WHICH ARE HEREBY DISCLAIMED BY CLIENT.**

**14.0 Entire Agreement.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement, except as referenced herein.

**15.0 Assignment.** This Agreement shall be binding upon the parties and their respective successors, representatives and permitted assigns. Except as set forth herein, neither party may assign this Agreement or the obligations contained herein, nor may either party delegate its duties except upon receipt of the other party's written approval. Client may, however, without such prior written consent, assign and delegate this Agreement to an affiliate and in conjunction with the sale of all or substantially all of its assets, or a reorganization (including in bankruptcy) or merger with another entity.

**16.0 Severability.** If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they shall be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

**17.0 Waiver.** Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

**18.0 Survival Past Termination or Expiration.** The following provisions shall survive termination or expiration of this Agreement: Sections 8.0 (Effect of Termination), 9.0 Intellectual Property Rights and License), 10.0 (Fees and Payment), 11.0 (Compliance With Laws), 12.0 (Confidentiality), 13.0 (Limitation of Liability), and 18.0 (Survival).

**19.0 Amendment.** This Agreement and the Statement(s) of Work which it governs may be amended only by a subsequent written agreement signed by both parties which specifically identifies itself as a written amendment to this Professional Services Agreement.

**20.0 Counterparts.** This Agreement may be executed in two (2) or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties.

**21.0 Indemnification.** Consultant shall indemnify, defend, and hold Client and its officers, directors, employees, attorneys, and agents harmless from and against any and all liability or expenses of any kind or nature whatsoever (including reasonable attorney fees and costs) finally awarded arising out of or in connection with any third party claims for (i) negligence on the part of Consultant or its officers, employees, or agents; (ii) material uncured breach of the Agreement and/or Statement of Work by Consultant or its officers, employees, or agents; and (iii) violation of any applicable law or intellectual property right of a third party by Consultant or its officers, employees, or agents; provided, however, that Client shall not be indemnified from any such liability or expenses which results from negligence on the part of Client or its officers, employees or agents, or from claims by patrons.

**22.0 Notice.** Any notice required or permitted under this Agreement will be deemed to be delivered, and thus effective, when personally received, or three days after being placed in the U.S. mail, postage prepaid, and addressed to the party as follows: (a) notice to Consultant must be sent to Robert Schwarz, 7111 West 151<sup>st</sup> Street, Suite 12, Overland Park Kansas 66223; (b) notice to Client must be sent to Mr. Bill Gronseth, Superintendent, 215 North 1st Avenue East, Duluth, Minnesota 55802.

**23.0 Law; Forum.** This Agreement shall be governed exclusively by Minnesota law. The parties agree that any litigation or other disputes, actions, or claims related to this Agreement and/or the Statement of Work shall be initiated and maintained only in the U.S. District Court for the Southern District of Minnesota or the District Court for Saint Louis County, Minnesota.

**24.0 Independent Contract.** The relationship between the parties is that of independent contract. No joint venture, partnership, agency, or employment relationship exists between the parties as a result of this Agreement and/or Statement of Work. Neither party has the authority to create any obligations for the other, or to bind the other to any representation, statement, or document. Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person or entity other than the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

**25.0 Force Majeure.** Notwithstanding anything contained in this Agreement or the Statement of Work to the contrary, neither party shall be liable to the other for failure to comply with any obligation under this Agreement and/or Statement of Work (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of contingencies beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specific period shall be automatically extended to accommodate the period of pendency of any such contingency which shall interfere with such performance.

**26.0 Insurance.** Consultant shall maintain such types and amounts of insurance as are standard in Consultant's industry.

All such insurance shall be effective throughout the duration of this Agreement and for claims made within one year thereafter. All such insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Minnesota.

Consultant shall use its best efforts to name Duluth Public Schools, ISD 709 as an additional insured on the insurance policies, so long as doing so does not require substantial additional expense. Certificates evidencing such insurance must be provided to Client by Consultant. No policy shall be modified or cancelled except upon at least thirty (30) calendar days' prior written notice to Client.

**[Remainder of page left blank intentionally. Signature pages follow.]**

The parties represent, by the signatures below, that this Agreement has been executed by their duly authorized representatives as of the Effective Date.

**CONSULTANT**

RSP & ASSOCIATES, LLC

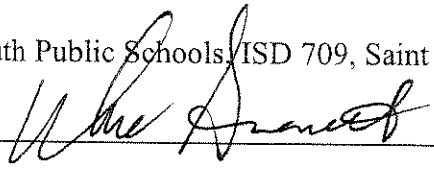
By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CLIENT**

Duluth Public Schools, ISD 709, Saint Louis County, State of Minnesota

By: 

Title: President, Board of Directors

Date: 9/14/16

**ATTEST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Secretary, Board of Directors