



**AGENCY AGREEMENT
BETWEEN
The Board of Education of the City of St. Louis
AND**

“ _____ ”

THIS AGENCY AGREEMENT (“Agreement”) is made and entered into as of the ___day of _____, 20__ by and between the Board of Education of the City of St. Louis Public School District, (hereinafter known as “SLPS” and/or the “District”), a metropolitan school district organized and existing under the laws of the state of Missouri and _____, authorized to do business in the State of Missouri (hereinafter known as the “Agency”).

The taxpayer identification number, address, contact person, and telephone number for the Agency is as follows:

Taxpayer Identification Number: _____

Address: _____

Contact Person: _____

Telephone Number: _____

WHEREAS, SLPS desires to utilize the services provide by the Agency and the Agency represents and warrants to SLPS that the Agency has the requisite expertise and resources to perform its obligations under this Agreement.

WHEREAS, SLPS and the Agency agree to the terms and conditions set forth below and in accompanying Exhibits, if any, attached hereto and incorporated herein. The Agency’s proposal for services or like document is attached and is considered an Exhibit.

Article 1. SCOPE OF SERVICES

The Agency agrees to provide and fully execute the following services as outlined below and as further detailed in Exhibit A.

Article 2. LOCATION OF SERVICES

The Agency will provide the services described above at the following location(s) in the District.

Site: _____

Address: _____

Contact Person: _____

Telephone Number: _____

The SLPS's contact person hereunder is _____
at () ()

Article 3. TERM AND TERMINATION

3.1 **Term.** The term of this Agreement ("Term") shall commence on the ___ day of _____ 20__ and shall be completed on the ___ day of _____ 20__, unless terminated earlier in accordance with the terms and conditions set forth herein.

3.2 **Termination without Cause.** This Agreement may be terminated without cause by either party by giving thirty (30) days written notice of the intent to terminate.

3.3 **Termination with Cause.** Either party reserves the right to terminate this Agreement immediately if the other party fails to comply with any terms or conditions of this Agreement and such failure continues for five (5) days following receipt of written notice from the objecting party.

Article 4. AGREEMENT

4.1 **Executed Agreement.** This Agreement will not become effective unless and until an understanding is reached between the parties and the Agreement has been fully-executed. The Agency understands and agrees that the obligations of the SLPS are conditioned upon, and subject to, such execution.

Article 5. INDEPENDENT CONTRACTOR

- 5.1 **Agency Status.** The parties agree the terms of this Agreement do not constitute a formation of a partnership, joint venture, employer-employee, or other relationship and no form of agency exists between the parties. The Agency represents and warrants that it is now and shall remain a separate and independent entity from the SLPS. Accordingly, no employee, contractor, subcontractor, agent, or representative (“Personnel”) of the Agency shall be deemed to be the employee, contractor, subcontractor, agent, or representative of the SLPS and at no time shall any such employee, contractor, subcontractor, agent, or representative of the Agency hold himself or herself out to be an employee of the SLPS. The SLPS will not provide any retirement benefits, life insurance, vacation benefits, health benefits, or similar benefits that are afforded to permanent SLPS employees to the Personnel of the Agency. Further, the Agency will be solely responsible to train, hire, supervise, discipline, and terminate the Agency’s Personnel. The Agency shall also be solely responsible for paying all invoice taxes, FICA, FUTA, and other tax liabilities for its Personnel. Finally, the Agency will be solely responsible for any acts or omissions of its Personnel and agrees to be liable consistent with the terms of Article 10.

Article 6. AGENCY’S PERSONNEL

- 6.1 **Control of Personnel and Work.** The Agency understands and agrees that it is solely obligated to and responsible for the selection, qualification, performance, workmanship, quality of services, licensing, and compliance with the terms and conditions hereunder for all Personnel providing services relevant to this Agreement and that it shall have sole control over the means and details of performing the services, which shall be consistent with the SLPS’s intent hereunder. The Agency shall use its best efforts, care, and diligence in the administration and performance of services hereunder. The Agency ensures the SLPS that it will properly supervise all Personnel during the performance of services and/or while any Personnel is on SLPS property.
- 6.2 **Cooperation.** During the performance of its services, the Agency shall cooperate with the SLPS and its employees, shall not interfere with the conduct of the SLPS’s business, and shall observe all SLPS policies and procedures, as well as all rules, regulations, and security requirements concerning the safety of persons and property.
- 6.3 **Background Checks.** All employees and agents of the Agency providing services under this Agreement that may in any way come into contact with students must undergo background checks consistent with those used by SLPS. All such checks must be performed and passed prior to any employees or agents providing any services hereunder. At a minimum, checks hereunder shall include a Missouri State Highway Patrol criminal history background check and a child abuse and neglect background check. The cost of all such background checks shall be borne by the Agency, and SLPS shall not be liable for such cost under any circumstance. The Agency will provide written confirmation to SLPS that the background checks on all employees and agents hereunder reflected no negative findings, that said individuals passed the background checks and are, therefore, eligible to provide services under the Agreement.

- 6.4 **Removal of the Agency's Personnel.** If the District determines that any of the Agency's personnel is not providing satisfactory service, or if any issues of behavior or inappropriate conduct occur, the District shall notify the Agency in writing and the Agency shall remove that individual from the District's account. The District, in its sole discretion, may immediately remove Agency's personnel from the District for the health and safety of its staff and students due to the Agency personnel's violation of the District's policies, state, and/or federal law. The Agency will select, hire, and train replacement personnel within fifteen (15) days of a vacancy on the District's account.

Article 7. AGENCY'S REPRESENTATIONS AND WARRANTIES

- 7.1 **State Registration.** The Agency shall be properly registered with, and duly authorized by, the Missouri Secretary of State, as well as the proper state authority in its domicile state if other than Missouri, to perform services under this Agreement.
- 7.2 **Non-Discrimination.** During the performance of the Agency's obligations under this Agreement, the Agency agrees that it will not discriminate against any person based on religion, color, ethnic group identification, sex, sexual orientation, age, physical or mental disability, or other protected class status.
- 7.3 **Compliance with Laws.** During the performance of the Agency's obligations under this Agreement, the Agency agrees to conduct its activities hereunder in strict compliance with all applicable federal, state, and local laws, as well as the policies and procedures of SLPS.

Article 8. CONFIDENTIALITY

- 8.1 **District Information.** The Agency acknowledges that it shall now, and in the future may, have access to and contact with confidential information relating to ideas, strategies, plans, purposes, and/or agendas that the District may seek to advance. Any reports and information given to or generated by the Agency hereunder, as well as the terms and conditions of this Agreement, shall also be considered confidential information. Both during the term of this Agreement and thereafter, the Agency covenants and agrees to hold such information in trust and confidence and to exercise diligence in protecting and safeguarding such information, as well as any other information protected from public disclosure by federal or state law or by the policies or procedures of the District. The Agency covenants and agrees it will not knowingly use, directly or indirectly, for its own benefit, or for the benefit of another, any of the confidential information, but instead will use such information only for the purposes contemplated hereunder. Further, the Consultant covenants and agrees that it will not disclose any confidential information to any third party except as may be required in the course of performing services for the District hereunder or by law. In no event, shall the Agency be deemed a spokesperson for the District, nor shall the Agency utilize the District, the District's logo, and/or District information in any marketing materials without the express written consent of the District.

8.2 Student Information.

- i. In the course of providing services during the term of the contract, certain personnel of Agency may have access to student education, health and/or medical records (“Education Records”) that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, *et seq.* and the regulations promulgated there under. Such information is confidential and is therefore protected. To the extent that Agency’s personnel require access to “education records” to perform Services pursuant to this Agreement, such personnel are deemed a “school official,” as each of these terms are defined under FERPA. The Agency agrees that it shall not use education records for any purpose other than in the performance of this Agreement. Except as required by law, the Agency shall not disclose or share education records with any third party unless permitted by the terms of the contract or to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Agency under this Agreement. For the avoidance of doubt, District will be responsible for obtaining any necessary consents from students or parents pursuant to FERPA to provide the information to Agency.
- ii. In the event any person(s) seeks to access protected education records, whether in accordance with FERPA or other Federal or relevant State law or regulations, the Agency will immediately inform the District of such request in writing if allowed by law or judicial and/or administrative order. The Agency shall not provide direct access to such data or information or respond to individual requests. The Agency shall only retrieve such data or information upon receipt of, and in accordance with, written directions by the District and shall only provide such data and information to the District. It shall be District’s sole responsibility to respond to requests for data or information received by Agency regarding District information of Education Records. Should the Agency receive a court order or lawfully issued subpoena seeking the release of such data or information, the Agency shall provide immediate notification to the District of its receipt of such court order or lawfully issued subpoena and shall immediately provide the District with a copy of such court order or lawfully issued subpoena prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order.
- iii. If the Agency experiences a security breach concerning any education record covered by this contract, then the Agency will immediately notify the District and take immediate steps to limit and mitigate such security breach to the extent possible. The parties agree that any breach of the confidentiality obligation set forth in the contract may, at District’s discretion, result in cancellation of further consideration for contract award and the eligibility for the Agency to receive any information from District for a period of not less than five (5) years. In addition, the Agency agrees to indemnify and hold the District harmless for any loss, cost, damage or expense suffered by the District, including but not limited to the cost of

notification of affected persons, as a direct result of the unauthorized disclosure of education records.

- iv. Upon termination of Agreement, the Agency shall return and/or destroy all data or information received from the District upon, and in accordance with, direction from the District. The Agency shall not retain copies of any data or information received from the District once the District has directed the Agency as to how such information shall be returned to the District and/or destroyed.

Article 9. INSURANCE

- 9.1 **Commercial Liability.** The Agency shall, at its own expense, obtain and maintain commercial professional liability coverage or self-insurance program to be effective at all times during the term of this Agreement and until the expiration of the applicable statute of limitations period for the activities undertaken by the Agency's employees or agents with separate limits of One Million Dollars (\$1,000,000) per claim or occurrence and Three Million Dollars (\$3,000,000) per year in the aggregate. A certificate of insurance must be provided to SLPS upon request.
- 9.2 **Workers' Compensation.** The Agency agrees to maintain and pay for workers' compensation insurance and employer's liability throughout the term of this Agreement for its employees in amounts as required by Missouri law.
- 9.3 **No Waiver.** The foregoing provisions shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided or available to any of the parties under applicable state governmental immunities law.

Article 10. LIABILITY

- 10.1 **Liability.** Each party to this Agreement shall be solely responsible for any and all actions, suits, damages, liability, or other proceedings brought against it as a result of the alleged negligence, misconduct, error, or omission of any of its officers, agents, or employees. Neither party is obligated to indemnify the other party or to hold the other party harmless from costs or expenses incurred as a result of such claims and the SLPS shall retain all rights, claims, and defenses available to it under law, to specifically include Mo. Rev. Stat. §537.600, et seq.

Nothing in the Agreement shall be construed as an indemnification by one party of the other for liabilities of a party or third persons for property or any other loss, damage, death, or personal injury arising out of the performance of this Agreement. Any liabilities or claims for property or other loss, damage, death, or personal injury by a party or its agents, employees, contractors, or assigns or by third persons arising out of and during this Agreement shall be determined according to applicable law.

- 10.2 **No Waiver.** The foregoing provisions shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided or available to any of the parties under applicable state governmental immunities law.

Article 11. GENERAL

- 11.1 **Successors and Assignments.** The Agency and its partners, successors, executors, administrators, and representatives are bound to SLPS in respect to all terms, covenants, agreements, and obligations hereunder. This Agreement shall not be assigned by either party without the prior written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- 11.2 **Governing Law.** This Agreement is governed by and constructed in accordance with the laws of the state of Missouri without regard to any conflict of laws provision. Any action arising under this Agreement shall be brought exclusively in the Circuit Court for the City of St. Louis, and SLPS and Agency explicitly waive any objection to venue in such court.
- 11.3 **Amendments.** The Agreement may be altered, amended, changed, or modified only by agreement in writing executed by a representative from the SLPS and the Agency who is authorized to so execute.
- 11.4 **Entire Agreement.** This Agreement and any Exhibits hereto shall constitute the entire understanding of the parties as to the subject matter hereof and supersedes all prior agreements, discussions, and correspondence pertaining to the subject matter hereof. Any preprinted terms and conditions on any order, invoice, or statement hereunder by either party will be of no force and effect. This Agreement, together with any Exhibits, may not be amended, waived, or discharged except by written document signed by both parties.

Article 12. EXHIBITS

The parties agree to the terms and conditions of this Agreement and any Exhibits attached hereto and incorporated herein by reference. The parties agree that if there are any conflicting terms and conditions between this Agreement and Agency's Proposal for Services, Service Letter, or like document, then the terms and conditions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby represent and warrant that their respective signatory whose signature appears below has been and is authorized to execute this Agreement on the day and year first written above.

AGENCY NAME: _____

Signature : _____

Print Name: _____

Title: _____

Date: _____

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS

Signature: _____

Print Name: _____

Title: _____

Date: _____

FOR OFFICE USE ONLY

Vendor# _____

Requisition# _____

Purchase Order # _____

Board Resolution# _____