

**SERVICES CONTRACT
WITH INDEPENDENT CONTRACTOR**

This Services Contract ("Contract") is by and between the undersigned Independent Contractor ("Contractor") and Beecher Community School District ("BCSD"), each a party and collectively the "Parties."

PREAMBLES

WHEREAS, BCSD is organized and operated as a Local Educational Agency under Part 7 of the Michigan Revised School Code and has the powers, authority and duties specified therein, including the authority to engage independent contractors to carry out its powers, pursuant to Section 601a(1)(d) of the Revised School Code; and

WHEREAS, BCSD is engaged in providing public educational services, including general education programs, special education programs, and related services, and desires to engage Contractor to provide certain services hereafter described in connection with BCSD programming and service delivery; and

WHEREAS, Contractor represents that it has the expertise, training, capacity and qualifications to perform these services.

NOW THEREFORE, in consideration of the mutual promises and benefits contained herein, the parties agree as follows:

**ARTICLE I
DESCRIPTION OF CONTRACTOR SERVICES**

1.1 **Description of Services.** Contractor shall provide to BCSD the services set forth in Appendix A, including but not limited to the employment and supervision of all incidental business and administrative supervisory and support staff, and all personnel, equipment, supplies and other items, necessary to render such services (collectively the "Services"). Appendix A may, from time to time be amended by agreement of the Parties.

1.2 **Services Personnel.** Contractor shall furnish to BCSD the names of all primary personnel to be utilized by Contractor in connection with the performance of the Services. Personnel assigned by Contractor to perform Services for BCSD shall be experienced, fully qualified and certified or licensed as or when legally necessary to perform the Services pursuant to and in conformance with the provisions of the Michigan Revised School Code. Contractor represents that it has secured any necessary licenses, approvals and regulatory authorizations to provide the Services.

1.3 **Standard of Services.** Contractor shall be responsible that the individuals which Contractor assigns to perform Services for BCSD adhere to professional standards and

perform all Services in a manner consistent with generally accepted proficiency and competency for the type and nature of Services rendered.

1.4 **Background Checks**. Contractor shall not assign any employee or agent to perform Services without first conducting employment reference checks and any legally required criminal background checks, and reviewing the results of the same with BCSD. BCSD reserves the right to refuse the assignment of any employee of Contractor to render Services where the employment or any criminal record history or employment references for that individual (including any pending criminal charges) indicate, in BCSD's judgment, unfitness to perform Services.

1.5 **Compliance with Policies**. The individuals which Contractor assigns for Services to BCSD under this Contract shall abide by those policies of BCSD which are applicable to performance of Services under this Contract including, but not limited to, policies pertinent to:

- A. Child abuse and neglect reporting;
- B. Sexual harassment;
- C. Confidentiality of student records and student record information;
- D. Communicable diseases;
- E. Alcohol/controlled substance possession and use;
- F. Copyright; and
- G. Non-discrimination

At the inception of this Contract, a copy of the above policies will be provided to Contractor by BCSD.

ARTICLE II **RELATIONSHIP OF PARTIES**

2.1 **Independent Contractor**. In the provision of Services, Contractor shall be regarded at all times as performing Services as an independent contractor of BCSD. Consistent with that status, Contractor reserves to itself the right to designate the means and methods of accomplishing the objectives and purposes of this Contract and BCSD shall not exercise (or have the right to exercise) control or direction over the means and methods utilized by Contractor in providing Services.

2.2 **Not BCSD Employees**. The Parties intend that an independent contractor relationship exist between Contractor and BCSD, and that nothing in this Contract shall be construed as being inconsistent with that status and relationship. All individuals which Contractor assigns for Services to BCSD shall be employees of Contractor, and shall never be considered as employees or individual agents or contractors of BCSD for any purpose. No such Contractor employees or agents are entitled to any of the rights, compensation or other benefits which BCSD may provide to its own employees.

2.3 **Contractor as Employer.** Contractor shall be regarded, designated and considered to be the employer with respect to all individuals whom Contractor may select and assign to provide Services. Contractor shall be exclusively and solely responsible for compensating, hiring, retaining, evaluating, disciplining, dismissing and otherwise regulating the employment conditions, employment rights, compensation and other similar matters relative to all individuals whom Contractor utilizes in connection with providing Services.

2.4 **Employment Claims to Contractor.** Contractor shall be responsible for answering, defending and/or resolving any and all claims arising from the assignment and performance of Contractor employees designated by Contractor to perform the Services.

- (a) These claims shall include, but shall not be limited to: proceedings before the Michigan Employment Relations Commission; the National Labor Relations Board; proceedings for unemployment compensation benefits; claims for workers' compensation disability benefits; claims of unlawful discrimination brought before any state or federal agency or court; claims or grievances for breach of contract; and any other claims of whatsoever kind or character arising from or which are attributable to the performance of Services by Contractor employees in connection with this Contract.
- (b) All costs (including legal fees) incurred in connection with the defense of the foregoing matters and any judgments resulting there from shall be the sole and exclusive responsibility of Contractor.

2.5 **Non-Exclusive Services.** BCSD does not agree to use Contractor exclusively for the provision of Services or otherwise. It is understood and acknowledged that BCSD is free to contract for similar services to be performed by other persons or entities so long as such services do not interfere with the performance of the obligations of the Parties under this Contract.

2.6 **Contractor Taxation Responsibilities.** Contractor shall be responsible for any taxation consequences to it or its employees as a result of Contractor engagement under this Contract. Contractor shall be responsible, as legally required, to report as income its compensation received from BCSD. Contractor shall make, on behalf of itself and its employees, including its employees performing Services, all requisite tax filings and payments to the appropriate federal, state, and local tax authorities. No part of compensation to Contractor under this Contract shall be subject to withholding by BCSD for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation. Contractor agrees to indemnify and hold BCSD harmless from any and all such claims.

ARTICLE III

TERM OF CONTRACT AND EARLY TERMINATION

3.1 **Term.** This Contract shall commence on as of the effective date set forth in Appendix A and remain in full force and effect until the expiration date set forth in Appendix A.

3.2 **Early Termination**. This Contract may be terminated for any reason during its term by either Party upon thirty (30) days written notice to the other Party. In the event that this Contract is terminated during its term pursuant to this provision, BCSD will pay Contractor for Services provided up to and including the date set for early termination. Any funds remitted by BCSD to Contractor in excess of the pro-rata charges for Services provided by Contractor up to and including the date set for early termination will be returned to BCSD by Contractor. Any such amounts owed by either Party to the other shall be paid within thirty (30) days of the date set for early termination of this Contract.

3.3 **Survival of Certain Terms**. Sections 2.4, 2.6, 5.1 and 6.1 of this Contract survive the expiration or termination of this Contract for any reason.

ARTICLE IV INVOICE AND PAYMENT

4.1. **Compensation and Payment**. In consideration of the Services provided to BCSD by Contractor under this Contract, BCSD will pay Contractor for Services on the basis and at the rate of Compensation ("Compensation") as specified in Appendix B.

4.2 **Invoice Procedure**. Contractor shall submit to BCSD on the periodic basis, as set forth in Appendix B, an invoice setting forth all applicable charges for the billing interval, itemized generally for Services performed during such period.

- (a) BCSD will remit payment on undisputed invoices within thirty (30) days of receipt.
- (b) If BCSD disputes the accuracy of any invoice delivered by Contractor, BCSD shall, within thirty (30) days of receipt, deliver a written notice and explanation of such dispute to Contractor. Contractor shall meet with BCSD to review the invoice and account within ten (10) business days.

4.3 **Contractor Services Costs**. Contractor shall have sole and exclusive responsibility for the following costs and charges attributable to the persons (i.e., who are Contractor employees) Contractor assigns to perform Services:

- (a) All wage and salary compensation.
- (b) All required statutory or contractual pension and retirement contributions.
- (c) All applicable state and federal employment taxes and FICA.
- (d) All unemployment taxes and costs (whether by commercial or self-insurance) attributable to or arising from the performance of services by Contractor's employees or agents pursuant to this Contract.
- (e) All applicable premium costs for insurance coverages and programs applicable to Contractor's personnel.
- (f) All expenses whether out-of-pocket or overhead, in providing Services

ARTICLE V
INDEMNIFICATION AND INSURANCE

5.1 **Indemnification**. Except as hereafter provided in this Article, Contractor shall be solely and entirely responsible for its acts and omissions and for the acts and omissions of Contractor employees, agents, or sub-contractors in connection with the performance of Services. Contractor shall defend and indemnify BCSD from any and all such claims and/or judgments resulting from such acts or omissions, except for liability for damages which result from the sole negligence or willful misconduct of BCSD or its employees or agents.

5.2 **Workers' Compensation**. Contractor shall procure and maintain in full force and effect workers' compensation insurance covering its employees while those persons are engaged in performing Services. In the event that a claim is filed under the provisions of the Michigan Workers' Compensation Disability Act against BCSD by an employee or agent of Contractor performing Services, Contractor shall defend and hold harmless BCSD from such claim(s).

5.3 **Minimum Insurance**. Contractor shall carry comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury and property damage in a form mutually acceptable to both Parties to protect Contractor and BCSD against liability or claims of liability which may arise out of Contractor provision of Services under this Contract. In addition, Contractor agrees that such policy shall provide an endorsement stating that such insurance shall be primary and that insurance carried by BCSD shall be excess and non-contributory. Contractor shall cause BCSD, and its officers, agents and employees, to be named of as additional insured under said policy.

5.4 **Insurance Certificates**. Contractor shall provide BCSD, upon request by BCSD, with certificates evidencing all coverages and endorsements required hereunder. Failure of BCSD to make such request shall not affect BCSD rights under this Article.

SECTION VI
CONFIDENTIALITY/COPYRIGHT

6.1 **Copyright Compliance**. Contractor shall advise BCSD of any and all programs or materials used or recommended for use by Contractor to achieve Services goals that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise BCSD and as a result of Contractor use of any such programs or materials under this Contract, BCSD is found to be in violation of any copyright restrictions or requirements, or if BCSD shall be alleged to be in violation of any such copyright right restrictions or requirements, Contractor shall indemnify, defend and hold harmless BCSD against any such actions or claims brought by the copyright claimant.

6.2 **Confidentiality**. Contractor shall observe the policies and directives of BCSD to preserve the confidentiality of BCSD records and information, including student records and student record information, to the extent that Contractor (its employees and agents) are permitted to access such records or information.

ARTICLE VII NON-DISCRIMINATION

7.1 **No Employment Discrimination**. The Parties shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment, due to race, color, religion, sex, national origin, age, height, weight, disability, marital status or veteran status.

7.2 **No Service Discrimination**. The Parties shall not discriminate against any student or other recipient of service under this Contract due to race, color, religion, sex, national origin, or disability in the delivery of Services.

7.3 **Discrimination as Material Breach**. Breach of obligations recited in this Article shall be regarded as a material breach of this Contract.

ARTICLE VIII MISCELLANEOUS

8.1 **Non-Assignment**. Neither Party may assign this Contract, nor its rights and duties hereunder, nor any interest herein without prior written consent from the other.

8.2 **Entire Agreement**. This Contract, and any Appendices or exhibits attached hereto or incorporated by reference, constitute the entire Contract between the Parties regarding its subject matter and supersedes any prior or contemporaneous understandings or agreements with respect to the Services.

8.3 **Amendments**. None of the terms and provisions of this Contract or its Appendices A and B, may be modified or amended in any way except by an instrument in writing executed by authorized representatives of Contractor and BCSD.

8.4 **Non-Waiver**. Failure by either Party at any time to require performance by the other Party or to claim breach of any provision of this Contract shall not be construed as a waiver of any subsequent breach nor affect the validity and operation of this Contract, nor prejudice either Party with regard to any subsequent action to enforce the terms of this Contract.

8.5 **Notices**. Any notice or other communications required or permitted under this Contract shall be sufficiently given if in writing and delivered personally or sent by confirmed facsimile transmission, telex, telecopy or other wire transmission (with request

for assurance in a manner typical with respect to communications of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested) addressed to the Party's principal place of business, marked to the attention of the office held by its signatory of this Contract, or such other address or officer of which the Parties may have given notice. Unless otherwise specified herein, notices shall be received (a) on the date delivered, if delivered personally, by wire transmission or confirmed facsimile transmission; (b) on the next business day after deposit with an overnight air courier; or (c) three (3) business days after being signed for, if sent by registered or certified mail.

8.6 **Severability**. If any provisions of this Contract should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Contract shall not in any way be affected, impaired or prejudiced thereby.

8.7 **Force Majeuer**. Neither Party hereto shall be liable to the other for any loss of business or any other damages caused by an interruption of this Contract where such interruption is due to war, rebellion or insurrection; an act of God; fire; government statute, order or regulation prohibiting the performance of this Contract; riots; strikes, labor stoppages, lockouts or labor disputes to the extent such occurrences are not caused by the actions of the Party seeking relief under this Section; or other causes beyond the reasonable and respective control of Contractor or BCSD.

8.8 **Headings and Titles**. Any Article or Section headings in this Contract are for convenience of the Parties only and in no way alter, modify, amend, limit or restrict contractual obligations of the Parties.

8.9 **Counterparts**. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which constitute one and the same agreement.

8.10 **No Third Party Beneficiary**. Nothing in this Contract shall be intended to confer third party beneficiary status or rights, pursuant to MCL 600.1405 or under the common law, to any person or entity that is not a party to this Contract.

**ARTICLE IX
AUTHORIZATION**

9.1 **Signer's Representation**. This Contract has been duly authorized, executed and delivered by the Parties and constitutes a legal, valid and binding obligation upon each of them, enforceable in accordance with its terms. Each person placing his/her signature below represents and warrants that s/he is the signatory duly authorized to execute this Contract on behalf of BCSD or Contractor, as is respectively applicable.

BEECHER COMMUNITY SCHOOL DISTRICT,

Dated: _____

By: _____

Its: _____

[INSERT NAME OF CONTRACTOR],

Dated: _____

By: _____

Social Security or Federal E.I.N.

Its: _____

Beecher Schools: _____ Date: _____

Department Originator/Contract Person: _____

APPENDIX A SERVICES

Services are to be provided pursuant to the appending Contract, which shall commence on _____, and shall expire on _____.

[Add description of Services]

APPENDIX B COMPENSATION

For example, \$_____ per _____ payable _____ within _____ days of invoice.