

**Special School Board Meeting**

Duluth Public Schools, ISD 709

## Agenda

Wednesday, April 26, 2017

District Services Center

709 Portia Johnson Dr.

Duluth, MN 55811

4:00 PM

**1. Call to Order****2. Roll Call****3. Audience - Related to Agenda Item Listed Below****4. Professional Services Agreement with RSP & Associates, LLC****2**

**Attached is a professional services agreement with RSP. RSP has completed the Enrollment Analysis phase of the contract and board action would be required to move forward with the Boundary Analysis and Public Facilitation phases of the contract.**

Recommendation: It is recommended that the Duluth School Board approve moving forward with the Boundary Analysis and Public Facilitation phases of the contract with RSP & Associates, LLC.

**5. Adjournment**

## 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:

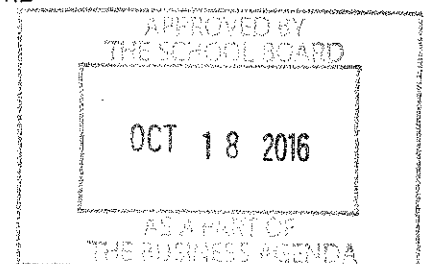
- 2.1 Enrollment Analysis
- 2.2 Boundary Analysis
- 2.3 Public Facilitation

**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: W. Bruce Aronoff

Title: President, Board of Directors

Date: 9/14/16

ATTEST:

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

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