

**Dawson County School District #1**  
**Board of Education Special Meeting**

**Monday, February 22, 2021, 12:00 PM**

**District Administration Building Board Room**  
**705 W. 13th Street**  
**Lexington, NE 68850-0890**

**AGENDA**

1. **CALL TO ORDER**
2. **OPEN MEETINGS ACT**
3. **ROLL CALL**
4. **CITIZENS' COMMENTS**
5. **Ratify termination of contract with OT Services, LLC.**
6. **Consider approval of contract with Lexington Regional Health Center for occupational therapy services for the remainder of the 2020-2021 academic year.**
7. **ADJOURNMENT**

## **SERVICE AGREEMENT WITH Lexington Regional Health Care**

THIS AGREEMENT is entered into by and between **Lexington Public Schools**, legally known as Dawson County School District 24-0001 ("District"), and Lexington Regional Health Center. ("Contractor").

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** Contractor shall provide to District the goods and/or services identified in **Exhibit A** which is attached and incorporated herein by this reference. Contractor affirms that throughout the term of this contract the service provider will hold a valid and appropriate certification, licensure, or authorization from any required entity to provide the services in the State of Nebraska, which certification, licensure, or other documentation shall be provided to the District prior to the provision of any services under this Agreement.
- 2. Payment Terms/Payment Schedule.** District shall pay for services rendered on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference.
- 3. Term.** The Term of this agreement is defined in Exhibit A. This Agreement may be terminated at any time with or without cause and with 30 days prior written notice by either party.
- 4. Duty to Report.** Contractor shall report any of the following regarding the service provider to District's Superintendent within 24 hours of its occurrence or at the beginning of the next school day, whichever is earlier:
  - A. Any criminal citation if the alleged offense is a misdemeanor or felony under federal or Nebraska law or in the state in which the alleged offense occurred;
  - B. Any arrest for any reason;
  - C. Any criminal conviction;
  - D. Any sentence of incarceration;
  - E. Any criminal or civil filing or Department of Health and Human Services or law enforcement investigation against the employee for child abuse and/or neglect;
  - F. Any complaint or other administrative filing against the employee that could impact any certificate or professional license held by the employee;
  - G. Any action or threat of action by any entity against the employee's driver's license or ability or authority to operate a motor vehicle if the employee's job duties may require the operation of a motor

vehicle.

District may terminate this Agreement immediately if the Contractor fails to make a report required by this paragraph.

- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Dawson County, Nebraska.
  
- 6. Indemnification.** The work performed under this Agreement will be performed at Contractor's risk as described in 6.A, B, C, D, and E below, and Contractor assumes responsibility for legal liability associated with the performance of this Agreement as described in 6.A, B, C, D, and E below.
  - A. Contractor hereby waives and agrees to indemnify and save harmless the District and its officials, agents, employees, and volunteers (hereinafter collectively referred to as "Indemnities"), against claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against Indemnities in consequence of any intentional misconduct or negligent acts or omissions on the part of Contractor.
  - B. Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection with any liability described in 6.A. above.
  - C. If any judgment shall be rendered against District in any such action as described in 6.A. above, Contractor shall, at his or her own expense, satisfy and discharge the same.
  - D. Any performance bond or insurance protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.
  - E. Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

- 7. Insurance.** Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska: **commercial general liability, employer's liability, and workers compensation (if applicable)**, with minimum liability limits in amounts and form that is satisfactory to District. Contractor shall furnish a certificate of insurance to the undersigned District representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling District to terminate this Agreement immediately.
- 8. Public Records.** Contractor acknowledges that the District must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined by law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.
- 9. Publicity.** District does not endorse the services of Contractor. Except for listing District as a client during the term of this Agreement, news releases or other publicity concerning this Agreement must not be made by Contractor without the prior written approval of District.
- 10. Drug/Alcohol/Tobacco/Weapons Free Workplace.** Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on District premises or at District related functions. Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal "Drug-Free Schools Act," on District property or at District related functions. Contractor and all subcontractors, if any, also shall adhere to all District's policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on District premises or at District related functions. Failure to comply with this provision may be considered a material breach. District may suspend or terminate Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
- 11. Nondiscrimination.** Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

- 12. Confidential Information.** Contractor may have access to certain confidential information while providing services under this Agreement including, but not necessarily limited to, student or employee information. Contractor understands that state and federal law prohibit the disclosure of certain records or information to any unauthorized person without a written release from an individual authorized by law to provide it. Contractor understands that unauthorized access, use, disclosure, or modification of student or employee records or other confidential information will result in the immediate termination of this Agreement and may result in other consequences imposed by law.
- 13. Independent Contractor.** Contractor is an independent contractor under this contract and is not a District employee for any purpose. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement. District does not agree to use Contractor exclusively, and the Contractor is free to contract to perform similar services for others while this Agreement is in effect. Contractor shall provide, at its sole expense, continuing education as required for licensure and employees to provide any services under this Agreement. Contractor and its employees are not eligible for any District employee benefits including, but not limited to, insurance, pension plans, paid vacation, sick days, and disability insurance.
- 14. Compliance with Laws and Regulations.** Contractor agrees that it shall perform the work called for herein in full compliance with any and all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, including the laws of any state or administrative body which may have jurisdiction over Contractor and Contractor's employees and agents. Contractor assumes full responsibility for the payment of all contributions, taxes or assessments, which may be required by any state or nation as to all employees engaged in the performance of work hereunder. Contractor covenants to save the District harmless from any and all liability for state or federal taxes, workers' compensation contributions, and/or any other tax liability or assessment now or subsequently imposed on the District by reason of this Agreement and the services hereunder.
- 15. Employment Eligibility Verification.** Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If Contractor employs

or contracts with any Subcontractor in connection with this Agreement, Contractor shall include a provision in the contract requiring Subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

- 16. Taxpayer Identification.** Contractor's federal employer identification number is: 45-6029692.
- 17. Sales Tax.** District is exempt from sales tax and shall not pay any sales tax under this Agreement. District will provide Contractor with applicable sales tax exemption certificates upon written request.
- 18. Student Records.** The parties agree to share data in a manner that safeguards the confidentiality of personally identifiable information in students' education records as defined by the federal Family Education Rights and Privacy Act (FERPA) and any other applicable federal or state laws and regulations. FERPA establishes restrictions on the disclosure and re-disclosure of personally identifiable information in students' education records without the written consent of the parent or eligible student. FERPA permits student information to be used by state educational authorities for the purposes of the evaluation of state or federally supported education programs, and/or conducting research for or on behalf of the state supported schools to improve education.
- 19. Notice.** Each party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

District:      Lexington Public Schools  
                  Attn: Superintendent  
                  300 South Washington Street  
                  P.O. Box 890  
                  Lexington, NE 68850

With copy to:  
                  Steve Williams, Legal Counsel  
                  KSB School Law, PC, LLO  
                  Cornhusker Plaza  
                  301 South 13th Street, Suite 210  
                  Lincoln, NE 68508

Contractor: Lexington Regional Health Center  
Rehabilitation Services Department  
Kirsten Faessler, COO  
1201 N Erie St.  
Lexington, NE 68950

With copy to:

Notice is effective only if the party giving the Notice has complied with this section.

- 20. Entire Agreement.** The Agreement is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
- 21. Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
- 22. Waivers.**
- A. The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced.
  - B. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Agreement, shall constitute a waiver or estoppel of any right, remedy or condition.
  - C. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
- 23. Severability.** If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full

force, if the essential terms and conditions of this Agreement for each party remain enforceable.

- 24. Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
- 25. Assignment.** This Agreement binds the parties and their respective successors and assignees. Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of District.
- 26. Subcontractors.** Contractor shall not subcontract services or any part of this Agreement without the prior written consent of District.
- 27. Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
- 28. Rights and Remedies Cumulative.** Any enumeration of rights and remedies of either party set forth in this Agreement is not exhaustive. Exercise of any right or remedy of either party under this Agreement does not preclude the exercise of any other right or remedy. All rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
- 29. Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer-employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party

except as may from time to time be provided by written instrument signed by both parties.

**30. Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

**31. Attachments.** Attachments to this Agreement include the following:

Exhibit A – Scope of Services to be provided to District  
Exhibit B – Payment Terms & Schedule

IN WITNESS WHEREOF the parties have executed this Agreement on the last date written below.

**District**

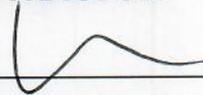
By: \_\_\_\_\_

Name: Dr. John Hakonson

Title: Superintendent of Schools

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

**CONTRACTOR**

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

Name: Leslie Marsh

Title: CEO

Date: 2-18-21 \_\_\_\_\_

## **EXHIBIT "A"**

### **SCOPE OF SERVICES TO BE PROVIDED TO District**

District hereby agrees to purchase occupational therapy services from Lexington Regional Health Center from February 22, 2021 to August 12, 2021. Contractor hereby agrees to provide occupational therapy services to District from February 22, 2021 to August 12, 2021.

1. Evaluation and provision of occupational therapy services to students identified by designated District representatives who may require occupational therapy services.
2. Participation in the development of an IEP/IFSP with the school staff, other therapists, contracted services and parents.
3. Documentation of occupational therapy services provided and to be submitted to the Director of Student Services by the end of each month.
4. Consultation with school staff regarding federal programming and classroom interventions within the scope of practice of occupational therapy.
5. Construction of and/or purchase recommendations for assistive devices and/or classroom interventions which benefit specific special education students as requested by designated school personnel.
6. Provision of inservices, workshops and other staff trainings as requested by designated school representatives.

## **EXHIBIT "B"**

### **1. Payment Terms/Payment Schedule**

- A. District will pay for the services identified in Exhibit A and provided by Contractor under this Agreement as follows:  
District shall pay the Contractor at a rate of \$59.00 per hour for travel and the rate of \$67.00 per hour for therapy and related time. Hours and days of service shall be based upon student need or professional development requested by the District. A schedule of service shall be determined and mutually agreed upon between the District and the Contractor. Mileage shall be reimbursed at \$0.56 per mile, adjustable during the year and not to exceed the state's reimbursable rate per mile. Contractor will invoice District monthly. Invoices must include:
- 1) Invoice Date
  - 2) Dates of Service
  - 3) Detailed Description of service including initials or student ID of students served, dates and times served of student. For state reporting purposes, it is requested that billing be separated into Birth through Age 2 services, Age 3 through 5 services(PK), and K through age 21 services(School Age).
  - 4) Payment Rate
  - 5) Total Payment Due
  - 6) Remit to Address
  - 7) Contractor Name
  - 8) Contact Information
- B. District agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that services have been accepted by the District as hereinafter provided.
- C. The procedure for billing and payment for services shall be as specified in this exhibit.

### **2. Acceptance of Services:**

- A. Contractor shall perform any services in accordance with the schedule set forth in this Agreement.
- B. Unless otherwise agreed to by the parties, Contractor shall provide written notification of performances of services to District via invoice.

- C. District shall have thirty (30) days from the date of receipt of the invoice to provide Contractor with payment or written notification of rejection due to unsatisfactory performance. Unsatisfactory performance shall mean the failure to perform services consistent with the professional skill and care ordinarily provided by physical therapists practicing in the same or similar locality under the same or similar conditions.
- D. If District issues a rejection notice, Contractor shall as quickly as is practicable, correct all deficiencies at its expense. District shall not unreasonably withhold or delay its payment or rejection.