

# **CONTRACT DOCUMENTS**

**Between the**

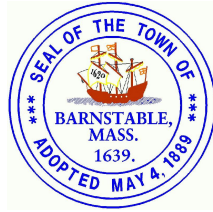
**Barnstable Public Schools**

**And**

---

**for**

**Providing Before and After School Programs to Students**



**Issued: June 9, 2017**

## TERMS OF CONTENTS

Article 1	Definition of Terms
Article 2	Responsibilities of the District
Article 3	Professional Responsibility and Services to be Performed
Article 4	Project Permitting and Approvals
Article 5	Consultants, Subcontracting, Successors and Assignments
Article 6	RESERVED
Article 7	Time Records
Article 8	Compliance with Laws
Article 9	Project Support Personnel
Article 10	Records, Reports, Enrollment Numbers, Calculations
Article 11	Service Provider Payment
Article 12	Consultant Compensation Reimbursable Expenses
Article 13	Contract Term
Article 14	Change in Law Adjustment
Article 15	Force Majeure
Article 16	Termination
Article 17	Release and Discharge
Article 18	Notices, Approvals
Article 19	Indemnification, General Insurance
Article 20	Legal Requirements
Article 21	Equal Opportunity Anti Discrimination Program
Article 22	Choice of Law
Article 23	Waivers
Article 24	Amendments
Article 25	Severability

The AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Barnstable Public School District of the Town of Barnstable, Massachusetts, hereinafter referred to as the "DISTRICT", and \_\_\_\_\_ with legal address and principal place of business at \_\_\_\_\_, hereinafter referred to as the "SERVICE PROVIDER."

**WITNESSETH:** That the DISTRICT allows the SERVICE PROVIDER to offer and run its Before and/or After School Programs for Elementary Students, as defined by these documents, in the school buildings as per the user agreements established through the School facilities Department. The fees collected by the SERVICE PROVIDER are directly from parents who choose to use the before and/or after school hours. The SERVICE PROVIDER will pay to the School District for the use of certain spaces within the school as defined by the user agreement process and as needed based on student enrollment. The Consultant shall at his/her own proper cost and expense furnish all materials, supplies, machinery, equipment, tools, supervision, labor, insurance, and other accessories and services necessary to provide said services in accordance with and as defined in the following, and which are made a part hereof and collectively evidence and constitute the Contract:

1. Barnstable Public School District Contract Documents
  - a. Request for Proposals entitled Before and After School Structured Program dated May 8, 2017; and
2. \_\_\_\_\_ submittals as follows:
  - a. Technical Proposal dated \_\_\_\_\_;
  - b. Cost Proposal dated \_\_\_\_\_;

This Agreement constitutes the entire Contract and there are no Agreements other than those incorporated herein. This Agreement may not be changed, altered, amended, modified, or terminated orally, and any such change, alteration, amendment, or modification must be in writing and executed by the parties hereto.

**NOW, THEREFORE,** the SERVICE PROVIDER, for the compensation set forth, agrees to furnish professional services to the DISTRICT, in accordance with the following requirements. The SERVICE PROVIDER shall coordinate all efforts through the \_\_\_\_\_, Barnstable Public Schools.

**ARTICLE 1: DEFINITION OF TERMS**

1. **GENERAL LAWS** – The General Laws of the Commonwealth as amended including any rules, regulations and administrative procedures implementing said laws.
2. **SCHOOL DISTRICT** – The Barnstable Public School District or its representative who is duly authorized to act in the execution of the work covered by this contract.
3. **SUPERINTENDENT** – The Superintendent of Schools or her authorized representative.

4. SERVICES – The services to be provided as specified in the Scope of Services as defined in the Request for Proposal.
5. SERVICE PROVIDER – The person or firm performing services under this agreement.
6. PRINCIPALS – Those people in authority at each School location who supervise the operations of the school in its programs and oversees staff and students during the regularly scheduled school hours.
7. APPROVAL OF THE DIRECTOR – A written communication from the Director, or his/her authorized representative, to the Service Provider expressing the Barnstable Public School's approval of services or documents prepared by the Service Provider, which communication in no way relieves the Service Provider from responsibilities under this contract.
8. DIRECTOR OF FACILITES – The Director of Facilities for the district is the person tasked with the management and maintenance of the school buildings.
9. SERVICE DATES – Those dates referred to in the user agreement whereby space is made available at determined rates to allow the SERVICE PROVIDER to run their programs.

## ARTICLE 2: RESPONSIBILITIES OF THE DISTRICT

1. The DISTRICT is the operator of the Municipal Facility (school buildings and grounds) related to this contract. The DISTRICT administers this contract to ensure that the Services provided by the SERVICE PROVIDER meets the Parents and students needs and conforms to the guidelines and standards expected by the DISTRICT.
2. The DISTRICT shall, without unreasonable delay, render all approvals required by this contract in writing to the SERVICE PROVIDER, or shall notify the SERVICE PROVIDER in writing why such approvals are being withheld. The DISTRICT shall not unreasonably withhold any approval, acceptance, or consent required under this contract.
3. The DISTRICT shall furnish to the SERVICE PROVIDER data as may be available as indicated in the Scope of Services as defined in the Request for Proposal. All such data and any other data provided to the SERVICE PROVIDER by the DISTRICT shall remain the property of the Town of Barnstable. The SERVICE PROVIDER may use all data provided by the DISTRICT only for the purposes of this Contract, unless the DISTRICT gives the SERVICE PROVIDER specific written permission for some other use.
5. The DISTRICT does not guarantee nor does it make any express or implied warranties concerning the accuracy of information furnished and the SERVICE PROVIDER must satisfy himself as to the correctness of data, except in instances where the DISTRICT

makes specific written exceptions. The SERVICE PROVIDER shall, at their own time and cost, analyze and evaluate the information furnished by the DISTRICT.

### ARTICLE 3: PROFESSIONAL RESPONSIBILITY AND SERVICES TO BE PERFORMED

1. The SERVICE PROVIDER shall perform the services in accordance with the scope of services set forth in the Request for Proposal. The SERVICE PROVIDER shall be responsible for the services to be provided to parents for the students in the Before and/or After School Care Program. The work and these services shall be professional and to the expected industry standards associated with this type of service. The SERVICE PROVIDER shall provide the necessary staff to complete the services required under this contract in a continuous and expeditious manner, and shall meet the overall objective(s) of this contract.
2. DISTRICT's review, approval or acceptance of, or payment for, any of the use of school buildings and grounds shall not be construed as a waiver of any rights under the contract or of any cause of action arising out of the performance of the contract.

### ARTICLE 4: PROJECT PERMITTING AND APPROVALS

1. The SERVICE PROVIDER warrants that their services will conform to all applicable federal, state, and local laws, regulations, ordinances, and by-laws.
2. The SERVICE PROVIDER shall be responsible for compliance with the permitting requirements as indicated in the Scope of Services as defined in the Request for Proposal.

### ARTICLE 5: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNMENTS

1. The SERVICE PROVIDER shall not employ subconsultants, sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval of and written consent of the DISTRICT. The DISTRICT shall not unreasonably withhold such approval. The DISTRICT may rescind this consent if a subconsultant is incompetent, irresponsible or otherwise unsatisfactory, and the SERVICE PROVIDER shall remove such subconsultant from the work. The DISTRICT 's written consent shall not in any way relieve the SERVICE PROVIDER from his responsibility for the work or materials furnished.

### ARTICLE 6: PHOTOGRAPHS, SPECIAL CONSULTANTS' SERVICES - RESERVED.

### ARTICLE 7: TIME RECORDS

1. The SERVICE PROVIDER shall cause to be maintained complete, accurate and detailed records of all time devoted to the SERVICES by the SERVICE PROVIDER and each sub consultant employed by the SERVICE PROVIDER. The DISTRICT may at all reasonable times audit such records. The SERVICE PROVIDER shall maintain accurate

and detailed accounts for a two-year period after the close of this contract, and in compliance with any laws governing records retention.

#### ARTICLE 8: COMPLIANCE WITH LAWS

1. The SERVICE PROVIDER shall exercise due care in accordance with generally accepted standards of professional practice, to perform the work required under this contract in conformity with requirements and standards of the DISTRICT and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions and the Federal Government. Unless otherwise provided by law, the SERVICE PROVIDER shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the SERVICE PROVIDER's failure to comply with the provisions of this Article and shall indemnify the DISTRICT against any liability incurred as a result of a violation of this section.

#### ARTICLE 9: PROJECT SUPPORT PERSONNEL

1. Should it become impossible for a contractually committed individual to complete their duties, any change to the SERVICE PROVIDER's staffing as accepted by the DISTRICT will be subject to the approval of the DISTRICT. The DISTRICT shall notify the SERVICE PROVIDER within fifteen (15) business days of the acceptance or rejection of any such staff substitutions. Any substituted person must be of an experience level equal to or greater than the person being replaced unless approved by the DISTRICT.

#### ARTICLE 10: RECORDS, REPORTS, ENROLLMENT NUMBERS, CALCULATIONS

1. All information acquired by the SERVICE PROVIDER from the municipality or from others at the expense of the municipality in performance of the Agreement, shall be and shall remain the property of the municipality. All records, data files, computer records, work sheets, deliverable products complete and incomplete, and all other types of information prepared or acquired by the SERVICE PROVIDER for delivery to the Town shall be and shall remain the property of the DISTRICT.
2. The SERVICE PROVIDER agrees that he/she will use any information collected and associated with this contract only as required in the performance of this Agreement and will not, before or after the completion of this Agreement, otherwise use said information, nor copy, nor reproduce the same in any form except pursuant to the sole written instructions of the DISTRICT, provided that the SERVICE PROVIDER shall be permitted to retain a copy of such information for purposes of documenting the Services.

#### ARTICLE 11: SERVICE PROVIDER PAYMENT

1. The SERVICE PROVIDER shall directly charge the parents who choose to accept the SERVICE PROVIDER's services for their students. The DISTRICT reserves the rights to request copies of the total financial collections made on a regular basis, as needed, and can request information concerning overhead, staff costs, expenses and any other charges from the SERVICE PROVIDER.

ARTICLE 12: CONSULTANT COMPENSATION – REIMBURSABLE EXPENSES

1. Not Applicable

ARTICLE 13: CONTRACT TERM

1. The SERVICE PROVIDER is expected to provide these services, at the agreed upon locations as per the attached proposal dated\_\_\_\_\_.

ARTICLE 14: CHANGE IN LAW ADJUSTMENT

1. Change in Law Adjustments. As used herein, “Change in Law” means (A) the adoption, promulgation, issuance, modification, or official change in interpretation, after the Effective Date, of any federal, state, or local law, by-law, ordinance, code, regulation, rule, or ruling; (B) the imposition, after the Effective Date, of any condition on the issuance, reissuance, or continued effectiveness of any permit, license, or approval relating to the Scope of Work, which establishes requirements more burdensome than those imposed as of the Effective Date; or (C) the order or judgment or other action of any federal, state or local court, administrative agency, or governmental body relating to the Scope of Work issued after the Effective Date, that relate in any manner whatsoever to the suspension, termination, interruption, or non-renewal of any permit, license, consent, authorization, or approval affecting the acquisition, design, construction, equipping, start-up, operation, maintenance, ownership, use, or possession of the DISTRICT property related to the Scope of Work. In the event that a Change in Law after the Effective Date increases the operating and capital costs incurred by the DISTRICT of Barnstable (the “CIL Costs”), the payments provided to the SERVICE PROVIDER, if the Scope of Work on this Contract is affected, shall be adjusted on a mutually acceptable basis that is consistent with generally accepted accounting principals.

ARTICLE 15: FORCE MAJEURE

1. The Agreement shall be subject to **Force Majeure** considerations, and in the event that either party hereto shall be prevented from the performance of any act required there under by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party in performing any obligations, shall be excused for the period of non-performance, and the period for the performance of such obligation shall be extended for an equivalent period for no additional cost to the Town.
2. It is agreed, however, that since performance dates of this Agreement are important to the implementation of requested services, continued failure to perform for periods aggregating thirty (30) or more days, even for causes beyond the control of the SERVICE PROVIDER, shall be deemed to render performance impossible, and the DISTRICT shall thereafter have the right to terminate this Agreement in accordance with the provisions of the section entitled “Termination.”

ARTICLE 16: TERMINATION

1. By written notice to the SERVICE PROVIDER, the DISTRICT may terminate this contract in whole or in part at any time either for the DISTRICT's convenience or because of the failure of the SERVICE PROVIDER to fulfill his contract obligations. If any such termination shall occur without the fault of the SERVICE PROVIDER, all compensation and reimbursement due to the SERVICE PROVIDER up to the date of termination, in accordance with all contract terms, including proportionate payment for partially completed work, shall be retained by the SERVICE PROVIDER. The DISTRICT, shall request from the SERVICE RPOVIDER an accounting for all services provided and funds collected up to the termination date, and the SERVICE PROVIDER either refund the funds directly to the parents, or shall transfer to the DISTRICT the funds collected for services not yet provided. No amount shall be allowed for anticipated profit on unperformed services.
2. If the contract is terminated due to the failure of the SERVICE PROVIDER to fulfill his contract obligations, the DISTRICT may take over the work and prosecute the same to completion by contract or otherwise. In such case, the SERVICE PROVIDER shall be liable to the DISTRICT for any reasonable additional cost occasioned to the DISTRICT thereby. These rights and remedies of the DISTRICT are in addition to any rights and remedies provided by law or under this contract.
3. Upon any termination of the contract, the SERVICE PROVIDER shall deliver to the DISTRICT all records, data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the SERVICE PROVIDER in performing this contract.
4. Subject to the provisions explaining **Force Majeure**, if the SERVICE PROVIDER shall fail to fulfill in a timely and satisfactory manner its obligations under this agreement, or if the SERVICE PROVIDER shall violate any of the covenants, conditions, or stipulations of this agreement, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the SERVICE PROVIDER, then the DISTRICT shall thereupon have the right to terminate this agreement by giving written notice to the SERVICE PROVIDER of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination.

#### ARTICLE 17: RELEASE AND DISCHARGE

1. The SERVICE PROVIDER under the provisions of the contract and/or in the event of termination of the contract, shall in each instance, operate as and be a release to the DISTRICT and every member and agent thereof, from all claims and liability to the SERVICE PROVIDER for everything done or furnished for or relating to the work, or for any act or neglect of the DISTRICT or of any person relating to or affecting the work and except that such acceptance shall not release the DISTRICT from any liability it would otherwise have for injuries to third parties resulting from the negligent acts or omissions of the DISTRICT or its employees.

#### ARTICLE 18: NOTICES, APPROVALS.



1. Any notice required under this contract to be given by the DISTRICT to the SERVICE PROVIDER, or by the SERVICE PROVIDER to the DISTRICT shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the DISTRICT to the SERVICE PROVIDER at the address specified for the SERVICE PROVIDER on Page 1 above, or the SERVICE PROVIDER to the Barnstable Public School, \_\_\_\_\_, 230 South Street, Hyannis, MA 02601.

#### ARTICLE 19: INDEMNIFICATION, GENERAL INSURANCE

1. **Indemnification** - SERVICE PROVIDER will defend, indemnify and hold harmless the Town of Barnstable, including the school department, and its employees against any and all claims for damages on account of bodily injury, including death, property damage, personal injury, and advertising injury by any act or omission due to negligence of the SERVICE PROVIDER, subcontracts, its agents, or employees to any property of or under the control of the Town of Barnstable, including the school department, during the term or any extension of the resultant agreement, and in case of any action or actions or other legal proceedings shall be brought or instituted against the Town of Barnstable on account of any such claims, SERVICE PROVIDER shall defend, indemnify and hold harmless the Town of Barnstable. However, should the claim be due to the negligence of the Town of Barnstable and/or its employees, SERVICE PROVIDER shall be held harmless, provided that nothing contained herein or elsewhere in this agreement constitutes an express or implied waiver of the Town of Barnstable's limited liability.
2. **General Insurance** - The SERVICE PROVIDER shall, before commencing performance of the contract, be responsible for providing and maintaining insurance coverage in force for the life of the contract of the kind and in adequate amounts to secure all of the obligations under the contract and with insurance companies acceptable to the Town of Barnstable. All such insurance carried should not be less than the kinds and amounts designated herein, and the SERVICE PROVIDER agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the SERVICE PROVIDER to any such kinds and amounts of insurance coverage. Under all insurance coverage, required or not required by the Town, the SERVICE PROVIDER shall indemnify, and hold harmless the Town of Barnstable, its elected or duly appointed offices, directors and employees against any claim based upon negligent, accidental or intentional acts or omissions of the SERVICE PROVIDER, its employees or its agents in providing its services to employees of the municipality or their dependants pursuant to the agreement.

With the exception of Professional Services Liability for architects, designers and engineers, and Worker's Compensation, the Town of Barnstable and its employees must be named as an additional insured and a certificate of insurance will be provided indicating such for each of the insurance policies or surety bonds obtained pursuant to the requirements established by the issuance of the contract. Upon execution of the contract

the SERVICE PROVIDER will provide copies of certificates of insurance to the Town of Barnstable Procurement & Risk Management Office.

Failure to provide and continue in force such insurance as aforesaid may be deemed a material breach of this contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole expense of the SERVICE PROVIDER. Annually, at time of vendor's policy renewal, updated insurance certificates shall be sent to the Town of Barnstable.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Barnstable at least thirty (30) days prior to the intended effective date thereof, which date shall be expressed in said notice, and which shall be sent out by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustees in bankruptcy, receiver, assignee, and/or the successor in interest of the SERVICE PROVIDER.

All insurance coverage shall be placed with such company as may be acceptable to the Town of Barnstable and shall constitute a material part of the contract documents.

**3. Comprehensive General Liability Insurance**

The SERVICE PROVIDER shall carry Commercial General Liability Insurance with an each occurrence limit of liability no less than One Million Dollars (\$1,000,000.00) and a general aggregate limit of liability no less than Two Million Dollars (\$2,000,000.00); and a Products/Completed Operations (*as may be required*) Aggregate limit no less than Two Million Dollars (\$2,000,000.00) for all injury and damages to or destruction of property during the policy period.

**4. Automobile Liability and Property Damage Insurance (if applicable)**

The SERVICE PROVIDER shall carry business Automobile Liability Insurance covering all owned vehicles with a combined single limit no less than One Million Dollars (\$1,000,000.00) to cover all damage caused by contracted employees of the awarded SERVICE PROVIDER. Level of insurance must adequately cover the liability exposure of project site and is subject to Town of Barnstable Risk Manager approval.

**5. Workers' Compensation Insurance**

The SERVICE PROVIDER shall carry Workers' Compensation Insurance as required by Massachusetts General Law, c. 152, and Section 25, with a minimum limit of Employer's Liability as per Massachusetts General Law requirements.

**6. Excess Liability Insurance**

The Service Provider shall carry excess liability insurance of not less than Two Million Dollars (\$2,000,000.00) covering over general liability, automobile, and worker's compensation insurance.

At the inception of the contract and by July 1 of each year or at any time at the request of the School Committee of jurisdiction, the Service Provider shall provide proof that such insurance is in force under the policies providing for no amendment or cancellation without thirty (30) business days' notice to the School Committee, and proof that required licenses and certificates have been filed with the appropriate State authorities governing the activities. The Service Provider shall hold the Town of Barnstable, the School Committee and its agents harmless from all liens, claims, damages and lawsuits for bodily injury or property damage incurred while engaged in the fulfillment of this contract.

#### ARTICLE 20: LEGAL REQUIREMENTS

1. Non-resident Processing; Signatures

Every SERVICE PROVIDER who is a nonresident of the Commonwealth of Massachusetts, or a non-resident co-partner of a SERVICE PROVIDER, hereby appoints the Secretary of the Commonwealth of Massachusetts and his successor in office to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the Town or its lawful Attorney to said SERVICE PROVIDER or non-resident co-partner at the address set forth in the contract. Said SERVICE PROVIDER or said non-resident co-partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said SERVICE PROVIDER or said co-partner. Such authority shall continue in force so long as any liability remains outstanding against said SERVICE PROVIDER or said co-partner.

2. Access to Consultant's Records

The Town shall have the right, at reasonable times and upon reasonable notice, to examine the books, records, and other compilations of data of the SERVICE PROVIDER which pertain to the performance and requirements of this contract.

#### ARTICLE 21: EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION PROGRAM

1. During the performance of this agreement, the SERVICE PROVIDER, for him/herself, his/her assignees, and successors in interest, agree as follows:
  - a. The SERVICE PROVIDER, in the performance of all work after award and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subconsultants, or in the procurement of materials and

rental of equipment. Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).

- b. The SERVICE PROVIDER by signing the Agreement offered by the Town agrees to abide by the above paragraph to the best of his/her ability.

ARTICLE 22: CHOICE OF LAW

- 1. This SERVICE PROVIDER shall be construed under and governed by the laws and regulations of the Commonwealth of Massachusetts, and the Town of Barnstable. The SERVICE PROVIDER, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the Town is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

ARTICLE 23: WAIVERS

- 1. The provisions of this contract can be waived only by written agreement, except where otherwise stated herein. Forbearance or indulgence by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 24: AMENDMENTS

- 1. No amendment to this Contract shall be effective unless it is executed in writing by authorized representatives of both parties.

ARTICLE 25: SEVERABILITY

- 1. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the parties executed this contract under their several seals the day and year first written above.

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

\_\_\_\_\_

Approved as to form

\_\_\_\_\_

Attorney

By: BARNSTABLE PUBLIC SCHOOLS

---

School Committee Chair

# Attachments

## **Request for Proposals**

Proposal from \_\_\_\_\_

Copies of Space User agreements