

## INDEPENDENT CONTRACTOR AGREEMENT

This Agreement made by and between Lincoln-Way High School District No. 210 (“School District 210”), a municipal corporation with offices at 1801 E. Lincoln Highway, New Lenox, Illinois, 60451 and the Aunt Nancy’s Daycare with offices at 10408 Sutton Dale Lane, Frankfort, Illinois 60423 (“Contractor”).

WHEREAS, School District 210 has determined that providing a school daycare for its employees, students, and district residents is beneficial to its staff, students and community residents; and

WHEREAS, School District 210 has determined that the presence of a school daycare will enhance its child development classes by providing opportunities for its students to participate in a daycare environment; and

WHEREAS, Contractor is established, licensed daycare provider and desires to provide its services to School District 210;

NOW THEREFORE, BE IT AGREED THAT:

The above recitals are incorporated within this Agreement.

School District 210 agrees to utilize the services of Contractor as an independent contractor and Contractor agrees to provide daycare services based on the following terms and conditions.

- 1) Term. The term of the agreement shall be for one-hundred twenty (120) consecutive months beginning on July 1, 2013 and ending on June 30, 2023, without any charges for rent. Location. Contractor shall offer its daycare services at all School District 210 High Schools located at 1801 E Lincoln Highway, New Lenox, Illinois 60451, 201 Colorado Avenue, Frankfort, Illinois 60423, 19900 S. Harlem, Frankfort, Illinois 60423, and 21701 S. Gougar Road, New Lenox, Illinois 60451 (the “High Schools”) in space designated by the administrator of each building, including but not limited to the cafeteria, outdoor playground, pool, fitness center and gymnasium at times established by the administrator of the building. Contractor acknowledges both the space provided and times of availability may be from time to time as School District 210 programs and schedules change.
- 2) Contractor Operation. Contractor agrees to provide services for infant to six years old from 6:30 a.m. to 5:30 p.m. on regularly scheduled teacher attendance days and opening and closing weeks of the school year. Other days of service will be offered as mutually agreed by the District and Contractor.

- 3) Daycare Student Eligibility. Contractor agrees that it will enroll students in the following order of priority:
  - a) Children of School District 210 employees, faculty, and staff.
  - b) Children of School District 210 students.
  - c) Children or grandchildren of retired school district employees, faculty, and staff.
  - d) Children of employees, faculty and staff from the following districts;
    - 1) Manhattan School District No. 114
    - 2) New Lenox School District No. 122
    - 3) Mokena Elementary School District no. 159
    - 4) Frankfort Elementary School District No. 157-C
    - 5) Summit Hill School District No. 161.
    - 6) Lincoln-Way Area Special Education District 843
  
- 4) Daycare Fees. Contractor agrees that students in groups 3(a), 3(b), 3(c), and 3(d), shall receive a twenty percent (20%) reduction in the daycare tuition costs, fees and expenses charged by the Contractor.
  
- 5) Daycare Interns. Contractor agrees to allow student enrollment in School District 210 Child Development classes to participate in providing care to Contractor's students on a mutually agreed basis.
  
- 6) Drop off and Pick-up of Contractor's Students. School District 210 will designate a specific drop off and pick-up locations and times for Contractor's students. Contractor agrees to instruct the families of its students to comply with the designated drop off and pick-up location. Contractor agrees to provide sufficient personnel to oversee safe transportation of its students during arrival and departure times.
  
- 7) Food Service. School District 210 will make its own food service available to Contractor and Contractor agrees to buy its food for its programs from School District 210 at School District food service costs.
  
- 8) Contractor Personnel. Contractor warrants that during the term of this Agreement and any renewals thereto, it is approved by all State of Illinois authorities and agencies and will comply with and follow all applicable State of Illinois and Federal statutes, rules and regulations for owning, maintaining, and operating a daycare center, including but not limited to the department of Child and Family Services ("DCFS"). Contractor represents and warrants that criminal background check

reports of each and every one of its employees and staff will be provided to School District 210 prior to said employee or staff's employment at all School District 210 High School locations.

- 9) Cleaning and Janitorial Services. Contractor will be responsible for all cleaning and janitorial services for each and every area that it has been utilized during its operation on a daily basis in accordance with the standards established by the Administration of the Building.
- 10) School District 210 Responsibilities. School District 210 agrees to provide at its expense the following:
  - a) All heat, air conditioning, light, water and snow removal for the buildings, parking lots and sidewalks; all building and landscaping maintenance, and repairs.
  - b) Off street parking for Contractor's employees and supervisory personnel and off street drives for the pick-up and drop off of Contractor's students.
  - c) Full compliance with the facility requirements of Illinois laws, rules and regulations.
- 11) Insurance. School District 210 shall, at its expense, insure the buildings, improvements to the buildings made by School District 210 and any property owned by School District 210 located in the building and its contents. School District 210 is not responsible for loss or damage to any of Contractor's property, which is used in the program or located on the premises. School District 210 is not responsible for loss of income in the event of fire, weather, or casualty, which prevents the program from opening.

Contractor agrees to carry at its expense for the term of this Agreement, comprehensive public liability insurance, including but not limited to, coverage for bodily injury, death, and property damage, in the amount of three million (\$3,000,000.00) per occurrence and five million (\$5,000,000.00) aggregate. Contractor shall furnish evidence of such insurance prior to the effective date of this Agreement, and then on an annual basis thereafter, a Certificate of Insurance that names School District 210 and its officers, trustees, agents, and employees as additional insured. Contractor will provide initial and annual proof of insurance payment for one year in advance.

- 12) Indemnification. Contractor agrees to defend, indemnify and hold harmless School District 210, its representatives, officers, school board members, agents and employees from and against any and all claims, actions, suits, damages, costs, expenses and liabilities, including the reasonable fees and expenses of their attorneys,

expert witnesses and consultants, imposed upon them, individually, jointly or severally, and which arise directly or indirectly; out of or in connection in any way the Contractor's operation of the program or performance of the terms of this Agreement, except to the extent that those claims, actions, suits, damages, costs, expenses and liabilities arise from the sole negligence of School District 210, its representatives, officers, trustees, agents, and employees.

In event of any such injury including death or loss or damage or claim or claims therefore, the Contractor shall give immediate written notice thereof to School District 210.

- 13) Default. In the event that either party fails to perform under this Agreement, the other party shall notify the non-performing party of the default, in writing, setting forth the nature of the default. The party that has failed to perform shall have fifteen (15) days after receipt of the notice to correct such failure. If after fifteen (15) days, the default has not been corrected, the party serving the notice may then declare the Agreement terminated, at which time the Contractor shall remove its supplies and equipment from the building immediately.
- 14) Independent Contractor. The Contractor is retained by School District 210 only for purposes and to the extent set forth in term of this Agreement, is that of an independent contractor. The Contractor shall be free to dispose of such portion if its time, energy and skill during regular business hours as it is not obligated to devote hereunder to School District 210, in such a manner as it sees fit and to such persons, firms or corporations; as it deems advisable. The Contractor shall not be considered as having employee status, nor shall School District 210 withhold any sums for the payment of income taxes, or FICA taxes. Contractor shall not be entitled to participate in any plans, arrangements, or distributions by School District 210 pertaining to or in connection with any pension or retirement plans, or any other benefits for the regular employees of School District 210.
- 15) Assignment of Lease. Aunt Nancy's Daycare may assign this lease subject to the following conditions:
  - a) Aunt Nancy's Daycare must notify the BOARD no later than 180 days before Aunt Nancy's Daycare begins the solicitation of offers for the CENTER.
  - b) Aunt Nancy's Day Care shall perform due diligence to ensure that the prospective buyer shall have the ability to conform to the terms of the lease. Aunt Nancy's Daycare shall provide the results of the due diligence to THE BOARD at the time of completion but no less than sixty (60) days prior to the proposed assignment to the lease.

- c) The prospective assignee of Aunt Nancy's Daycare shall have operated a comparable facility for at least five (5) years.
- d) THE BOARD shall have the absolute right to reject the proposed assignment.
- e) Aunt Nancy's Daycare shall defend and indemnify THE BOARD in any action that may be brought by any proposed Aunt Nancy's Daycare.

16) Termination. The parties mutually agree that either party may terminate this Agreement without penalty or liability for any further performance by providing ninety (90) days written notice to the other party in accordance with paragraph 16 of this agreement.

17) Notice. All notices, demands elections, and other instruments required or permitted to be given or made by any party upon one or more of the others under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by messenger delivery, overnight delivery courier, certified or registered mail with proper postage prepaid, or sent by facsimile transmission, with proof of successful transmission sent by regular mail by the sending party at the respective address shown below or to such other party or address as either may from time to time furnish to the other in writing. Service on the legal counsel for either party is sufficient notice to the party.

(a) Notice to School District 210 shall be sent to :

Dr. R. Scott Tingley  
Lincoln-Way School District No. 210  
1801 E. Lincoln Highway  
New Lenox, IL 60451

With copy to:

G. Robb Cooper  
Ottosen, Britz, Kelly, Cooper & Gilbert Ltd.  
1804 North Naper Blvd.  
Naperville, IL 60563

(b) Notices to:

Patrick and Nancy Powers  
10408 Sutton Dale Lane  
Frankfort, IL 60423

18. Execution. This agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed on original, and such counterparts together shall constitute one and the same Agreement.
19. Entirety of Agreement. This Agreement, together with Exhibits attached thereto (all of which are attached hereto or incorporated herein by this reference); contains that entire understanding between parties and supersedes any prior understanding or written or oral agreements between the with respect to the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral, written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein. No oral modification, amendment, or change hereto shall be in writing and approved by the corporate authorities of the Contractor and School District 210.
20. Authority. This Agreement shall be in full force and effect, and legally binding, after it is signed by the duly authorized officer of each party. Each of the signatories to this Agreement are the duly authorized representatives of their respective corporate entity and each such person has signed this Agreement pursuant to the authority duly granted to him or her by corporate authorities of said corporate entity, who have directed the representatives to sign this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties agreeing hereto and to their successor corporations, officers, officials, trustees, successors in office, heirs, representatives, and assigns.
21. Enforceability. If any provision of this agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligation so of the parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.
22. Time. Where ever under the terms and provisions of this Contract the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.
23. Jurisdiction and Venue. This Agreement provides for services to be performed with the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be

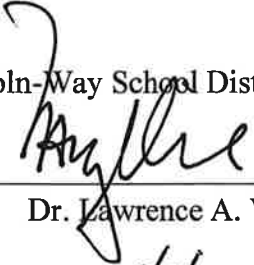
governed by the applicable statutory and common law of the State of Illinois. The parties agree that for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Will County, Illinois, and the parties consent to the in personam jurisdiction of said Court for any such action or proceeding.

24. Captions. The captions at the beginning of the several paragraphs, respectively are for convenience in locating the context, but are not part of the context.

25. Effective Date. After this Agreement has been signed by the Contractor, this Agreement shall be deemed dated and become effective on the date that School District 210 signs this Agreement which shall be the date stated on the first page of this Agreement.

**IN WITNESS WHERE OF**, School District 210 pursuant to the authority given by the Board of Trustees of School District 210, and the Contractor have signed this Agreement this 3<sup>rd</sup> day of April, 2013.

Lincoln-Way School District No. 210

By:   
Dr. Lawrence A. Wyllie

Date: 4/3/2013

Attest: 

Date: 4/3/2013

Aunt Nancy's Daycare

By:   
Authorized Corporate Officer/Partner

Date: 4/3/2013

Attest: \_\_\_\_\_

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