

## **Professional Services and Consulting Agreement XAVIER CHARTER SCHOOL**

Agreement Title: Project Manager Agreement

This Agreement ("Agreement") is between XAVIER CHARTER SCHOOL (XAVIER), whose address is 1218 N COLLEGE ROAD W, TWIN FALLS, ID 83301 and Don ANDERSON CONSTRUCTION (the "Contractor"), whose address is 2328 Eldridge Ave, Twin Falls, ID 83301 for the services described in this Agreement. The Contractor agrees to undertake performance of this Agreement under the terms and conditions set forth herein. The Agency and the Contractor, in consideration of the mutual covenants and conditions contained herein, agree as follows:

**1 AUTHORITY**

Pursuant to Idaho Code, Section 67-5720 (1)(a), the director of the department of administration may approve acquisitions in the open market. Pursuant to IDAPA 38.05.01.044.07, state agencies may acquire professional services in the open market under certain conditions. The Agency has determined that this Agreement meets those conditions.

**2 TERM OF AGREEMENT**

This Agreement shall commence on \_\_\_\_\_ and expire on \_\_\_\_\_ unless extended, in writing, by the parties or unless terminated earlier in accordance with this Agreement.

**3 CONTRACTOR RESPONSIBILITIES**

The Contractor shall perform services and provide deliverables as described in **Attachment A**, incorporated herein by reference. This Agreement shall have no force or effect until Attachment A is finalized, signed by the parties and attached to this Agreement. Services shall be performed at the Contractor's place of business and, as necessary, at the Agency's offices. Project status meetings will be held weekly or bi-monthly, upon reasonable notice and request of the Agency, at \_\_\_\_\_ to review the progress of the work.

The Contractor shall be required to assume responsibility for production and delivery of all material and services detailed in Attachment A, whether or not the Contractor is the manufacturer or producer of them. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

The Contractor warrants that its services under this Agreement shall be performed in a professional manner and shall be of a high grade, nature and quality. The Contractor warrants that for a period of \_\_\_\_\_ following final acceptance, all deliverables delivered under this Agreement shall \_\_\_\_\_. In event of nonconformity, and without limitation upon any other remedy, the Agency shall have no financial obligation in regard to the nonconforming goods or services. This right is not to the exclusion of any other right that the Agency has in law or equity. Without limiting the foregoing, the Contractor recognizes its obligation to work with the Agency to correct any errors discovered after delivery and installation and the start of the warranty period.

The Contractor represents and warrants that it has the necessary and requisite skill to perform the work required under this Agreement and that the personnel assigned by the Contractor to perform any such work will be qualified to perform the assigned duties.

It will be the responsibility of the Contractor to fully comply with the State of Idaho law regarding the minimum wage law for residents hired to help on projects and jobs in Idaho.

**4 TIME OF COMPLETION**

The approximate commencement date of the project shall be 8/5/2023. The approximate completion date of the project shall be 8/15/2023. The completion date will be adjusted if the commencement date is

delayed due to issuance of the building permit.

## 5 THE CONTRACT SUM

The contract sum shall be set at the sum of Two Hundred Four Thousand Two Hundred Seventy-Three Dollars and Zero Cents (\$204,273.00), subject to additions and deductions pursuant to authorized change orders and allowances.

Alternates

Alternates, if any, included in the Contract Sum:

Allowances

Allowances, if any, included in the Contract Sum:

## 6 TAXES

The State of Idaho and the Agency are generally exempt from payment of Idaho State Sales and Use Tax for property purchased for its use under the authority of Idaho Code, Section 63-3622 as a government instrumentality. In addition, the State of Idaho and the Agency are generally exempt from payment of Federal Excise Tax under a permanent authority from the district Director of the Internal Revenue Service. Exemption certificates will be furnished upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State of Idaho, it shall be solely responsible for the payment of those taxes. If the Contractor is performing public works construction (installation of fixtures, etc.), it shall be responsible for payment of all sales and use taxes as required.

## 7 PAYMENT

Payment by the Agency and its obligations under this Agreement are conditioned upon and subject to the continued availability of state funds. The Agency shall pay the Contractor in amounts as detailed in Attachment B, incorporated herein by reference.

Invoicing

5.1 Payment for services rendered shall be made upon acceptance of the work/required deliverables by the Agency and submission of a signed itemized invoice to the Agency. The Agreement number and/or purchase order numbers must be shown on all invoices. Invoices must specify the dates that services were performed, the nature of the work done on each date, and the number of hours worked on each date.

5.2 Billing must be done on a monthly basis or when the services are completed, whichever is sooner. If the Agency disputes any invoiced amount, it shall notify the Contractor in writing within five (5) business days. The Agency will process payments of any amounts not in dispute, in accordance with Idaho Code 67-5735.

5.3 Invoices are to be sent directly to: \_\_\_\_\_. Alternative invoicing arrangements must be mutually agreed upon in writing and specified in **Attachment B**. The Contractor understands that, while the Agency will use its best efforts to secure prompt payment of invoices, as a state agency, the Agency may not make direct payment under this Agreement, but must submit the invoices to the State Controller's Office for payment. Any late payments shall be governed by Idaho Code Section 67-2302.

## 8 OWNERSHIP

All information furnished to the Contractor for its use pursuant to this Agreement shall belong to the Agency and shall be returned to the Agency in good order upon completion of the Agreement or upon the Agency's request. All documents, reports, and any other data developed by the Contractor for the Agency in the performance of this Agreement shall become the property of the Agency. The Agency shall retain exclusive rights of ownership to all work produced by the Contractor under this Agreement.

9 RELATION OF PARTIES

The service or services to be rendered under this Agreement are those of an independent contractor. The Agency is interested only in the quality of service or services provided and the final results to be achieved; the conduct and control of the work will be solely with the Contractor. The Contractor is not an officer, employee, or agent of the Agency as those terms are used in Idaho Code § 6-902, et al, and is not entitled to any benefits provided by the Agency to employees.

10 TIME OF PERFORMANCE

Time is of the essence to this Agreement; therefore, all times for performance stated herein will be strictly followed by the parties.

11 CHANGE ORDERS

A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. Additional time needed to complete change orders shall be taken into consideration in the project completion date. Change order paperwork shall be provided for approval within 5 business days of request.

12 INSURANCE

The Owner will keep in force a Builder's Risk Insurance Policy on the said property with a minimum requirement of \$1,000,000 to protect both Owner's and Contractor's interests until construction is completed.

The Owner will purchase and maintain property insurance to the full and insurable value of the project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

The Contractor shall purchase and maintain needed Workman's Compensation and Liability insurance coverage as required by law and deemed necessary for his own protection.

13 WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

14 SAVE HARMLESS

The Contractor shall exonerate, indemnify, and hold the Agency harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation, and income tax laws with respect to the Contractor or the Contractor's employees engaged in the performance of this Agreement. If requested by the Agency, the Contractor will provide either a certificate of workers' compensation insurance issued by a surety licensed to write workers' compensation insurance in the State of Idaho, as evidence that the contractor has in effect a current Idaho workers' compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Industrial Commission, or proof that the Contractor is exempt from the

workers' compensation requirement. Failure to provide a Certificate of Workman's Compensation Insurance upon request may result in termination of this Agreement. The Agency will not assume liability as an employer.

The Contractor shall maintain insurance of the types and in the amounts typically maintained by legal professionals of the same type as the Independent Contractor, including, but not limited to, comprehensive general liability insurance in the minimum amount of \$1,000,000 per occurrence, and professional malpractice insurance, all with insurance companies properly licensed to do business in Idaho and reasonably satisfactory to the Client.

The Contractor shall protect, indemnify, and save the Agency harmless from and against any damage, cost, or liability including reasonable attorney's fees for any or all injuries to persons, property or claims for damages arising from any acts or omissions of the Contractor, its employees, or subcontractors.

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the Agency be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement.

#### 15 ASSIGNMENTS

This Agreement or any interest therein shall not be transferred by the Contractor without prior written permission of the Agency.

#### 16 DEFAULT AND TERMINATION

##### 16.1 For Cause:

Contractor default occurs if the Contractor fails to perform any of the covenants or conditions of this Agreement or the Contractor fails to prosecute the work so as to endanger performance of this Agreement, and the Contractor does not cure such defects in performance within ten (10) business days after receipt of written notice from the Agency informing it of such defects in performance. If at the end of such cure period, the Contractor is still in default or noncompliance, then the Agency may terminate this Agreement. Upon such termination, the Agency may pursue any and all legal, equitable and other remedies available to the Agency. The Contractor shall be liable for any and all expenses that are incurred by the Agency as a result of the default, including, but not limited to, the costs of procuring substitute performance, legal fees, and losses incurred due to default.

##### 16.2 For Convenience:

The Agency may terminate this Agreement for its convenience at any time upon 10 business days written notice to Contractor, and, upon such termination, the Agency's sole obligation shall be to pay for services satisfactorily rendered to the date of such termination. Notwithstanding any other provision in this Agreement, the Agency may terminate this Agreement immediately if the Contractor becomes insolvent or voluntarily or involuntarily bankrupt, or if a receiver or other liquidating officer is appointed for substantially all of the business of the Contractor or if the Contractor makes an assignment for the benefit of creditors.

#### 17 ANTI-DISCRIMINATION CLAUSE

Acceptance of this Agreement binds the Contractor to Section 601, Title VI, Civil Rights Act of 1964: In that "No person in the United States shall, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

#### 18 GOVERNING LAW

This Agreement shall be governed by the laws of the State of Idaho. The venue of any action brought by

any party to this Agreement shall be the Fourth District Court in and for the County of Ada.

19 NO PENALTY

It is understood and agreed by the parties that the Agency is a governmental entity and that this Agreement shall in no way bind or obligate the State of Idaho beyond the terms of any particular appropriation of funds by the state or federal legislature, as may exist from time to time.

20 NONWAIVER OF BREACH

The failure of the Contractor or the Agency to insist upon strict performance of any of the covenants and conditions of this Agreement or to exercise any option herein conferred in any one or all instances shall not be construed to be a waiver or relinquishment of any such covenant or condition but the same shall be and remain in full force and effect unless such waiver is evidenced by prior written consent of the Contractor or the Agency.

21 DUPLICATE ORIGINALS

This Agreement may be executed in duplicate originals. Each of the two agreements with an original signature of each party shall constitute one original.

22 GENERAL PROVISIONS

22.1 Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting from Acts of God, civil or military authority, acts of war, riots, or insurrections.

22.2 This Agreement, with **Attachments A and B** attached hereto, constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, and all other communications between the parties. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

23 ATTORNEY FEES

In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

Unless otherwise stated above, this Agreement is effective on the date of last signature:

Contractor's Legal Name <i>Don Anderson Construction, Inc</i>	
Contractor's Authorized Representative's Printed Name <i>Kenny Anderson</i>	Title <i>President</i>
Signature <i>[Signature]</i>	Date <i>4-11-23</i>

Agency Administrator/Director Printed Name <i>Gary Moon</i>	
Signature <i>[Signature]</i>	Date <i>4-12-23</i>

**Attachment A**  
**Scope of Work and Delivery Schedule**

*(This will be mutually developed and agreed upon by the department and contractor)*

Note: If software development is involved, you should specify whether source code is part of deliverables. In such case, you should also put in somewhere something to the effect that the Contractor warrants that it knows of no, and that nothing in any original software contains, any protection feature designed to prevent its use, including, without limitation, any virus, worm, lock, drop dead device, Trojan horse routine, trap door, time bomb or any other code or instruction that could be used to access, modify, delete, damage or disable the software or the Agency's computer system.

**Attachment B**  
**Cost and Billing Procedure**

(Note: Provide Line Items or a Table to list cost by project, hourly rate, etc. Explain that cost must be fully burdened, e.g. "all costs, including hourly rates, must be fully burdened to include, but not be limited to, wages, transportation, lodging, overhead, and per diem; specifically identify any exceptions to the fully burdened requirement – if there are expenses which may be reimbursed at the State's rates – and include the BOE link)

Xavier Charter School District #462 1218 N  
College Road West  
Twin Falls, ID 83301  
Phone 208-734-3947

**REQUEST FOR INSTALLATION BID**

Notice is hereby given that sealed bids will be received by Xavier Charter School District #462, for the installation of two (2) new construction double wide modular classroom structures to include (1) classroom per structure. Sealed bids will be received until 2:00 p.m. prevailing time, March, 15, 2023. Bid should be delivered or mailed to:

Gary Moon  
Xavier Charter School  
1218 N College Road West  
Twin Falls, ID 83301

Bid envelope must be identified on the outside as "Modular Site Prep Bid".

Bids shall include all costs for setting up and installing two modular classroom buildings and construction management of the project. This includes, but is not limited to such things as applying for building permits, completion of excavation, the connection of utilities, sprinkler and lawn repair, etc. to the Xavier Charter School site for the site preparation for these two complete units. Site work must meet or exceed state and local Idaho Code requirements.

Instructions for Bid, Bid Form and Specifications can be obtained from Gary Moon at the above address; phone 208-734-3947 Ext. 110; e-mail: [gmoon@xaviercharter.org](mailto:gmoon@xaviercharter.org). They will include a layout of the purchased structures as well as a current site plan for those structures. Please note that minor changes to the interior layout of the structures are possible.

All bidders are expected to familiarize themselves with the requirements of Chapter 40, Title 31 of the Idaho Code, as amended, concerning bidding, and bidder's security. Bidders are required to provide bid security in the form of cash, a cashier's check, or bidders bond executed by a qualified surety company made payable to Xavier Charter School, in the amount of not less than 5% of the total bid including alternates according to the requirements in AIA Document A 70 I - Instructions to Bidders ( 1997



edition), and no interest will be allowed on bidder's security. This surety shall be forfeited by the Bidder in event of failure to fulfill provisions of bid as awarded. Bidders are required to have a current public work license for the State of Idaho at the time of bid. ,,-

Bidders are required to provide a 100% Performance Bond and a 100% Payment Bond. Any bid is required to be submitted under the condition of irrevocability for a period of 30 days after submission. Refer to other Bidding requirements described in AJA Document A 701 - Instructions to Bidders, 1997 edition.

The Board of Directors for Xavier Charter School District #462 reserves the right to waive any irregularities or informalities within any bid or submittal.

Gary Moon, Head of Schools

Published: February 28, 2023

Open Until: March 15, 2023

Date:

To:

From:

Subject:

Xavier Charter School #462  
1218 N College Road West  
Twin Falls, ID 83301  
Phone 208-734-3947

February 27, 2023

Site Work/Installation Contractors Gary Moon, Head of Schools

Instructions and Specifications for Bid

**CONDITIONS:**

1. You are hereby invited to submit a bid for the installation of two (2) new construction modular, classroom structures to include: two (2) approximately 28' x 64' units with one (1) classroom to equal a total area of approximately 1792 square feet each to be set up, at a Xavier Charter School site.
2. Sealed bids will be received until 2:00 p.m., Wednesday March, 15th 2023 at the Xavier Charter School Office, 1218 N College Road W, Twin Falls, ID 83301. Any bids received after this time will be returned unopened to the sender. Electronic bids are not acceptable.
3. All envelopes, containing bids are to be clearly marked "Modular Installation Bid" on the face of the envelope. The envelope itself should be addressed as follows:

Xavier Charter School #462

Attn: Gary Moon, Head of Schools

1218 N College Rd W

Twin Falls, ID 83301

4. All bids to be made on the form supplied and must be signed by the bidder in pen and ink.
5. No bid may be withdrawn after the time of the opening.

6. Bids are to be based on an FOB delivered price and setup.
7. Bid proposals must be held for thirty (30) days after the bid opening.
8. Completion Date no later than August 11, 2023.
9. Each bid shall be accompanied by a cashier's check, or certified check, made payable to Xavier Charter School No. 462 or a satisfactory bid bond executed by the bidder and acceptable sureties in an amount equal to five (5) percent of the total bid of the unit base with the highest value.

BID FORM FOR TWO (2) INSTALLATION OF TWO NEW CONSTRUCTION MODULAR  
STRUCTURES, TWO (2) CLASSROOM UNIT - TOTAL AREA APPROXIMATELY 1,792 SQUARE  
FEET EACH

To: Gary Moon, Head of Schools

Xavier Charter School #462

1218 N College Rd W

Twin Falls ID, 83301

- A. The undersigned having familiarized themselves with all the conditions affecting the cost of work, and with the contract documents, including advertisement for bids, information to bidders, etc., specifications and options attached to the proposal request, hereby propose to furnish all labor, materials, tools, expendable equipment and all utility and transportation services necessary to perform and complete, in a workmanlike manner, all work for furnishing and arranging delivery of the requested modular structure with two (2) classrooms. Successful bidders can guarantee installation by August 11, 2023. YES \_\_\_ NO \_\_\_ Bid bond totaling 5% enclosed? YES \_\_\_ NO \_\_\_

BID: Base structure with two (2) approximately 28' x 64' units totaling approximately 1,792 square feet each.

The undersigned hereby notifies that he is of this date, a duly licensed Public Works Contractor and further that he possesses Idaho State Contractor's License Number

Company: Don Anderson Construction, Inc

Address: P.O. Box 2293

City State Zip: Twin Falls Id 83303

Authorized Signature: [Signature] Public Works License # PWC-C-10242-AA-3

Phone Number: 208-734-2164 Fax Number: 208-733-5200

Email Address: kenay@donandersonconstruction.com

**EdWise LLC**  
**Educational Direct Services & Consultation**

910 Green Tree Way  
Twin Falls, ID 83301  
208.308.2410  
edwisellc@aol.com

**Contractual Agreement**

*Wise Approaches to Effective Education*

**THIS AGREEMENT** is entered into on the 1<sup>st</sup> day of July 2023, by and between EdWise LLC and Xavier Charter School #462 and stipulates services provided from July 1, 2023 through June 30, 2024. The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

**Article I: Scope of Services**

- EdWise LLC will provide directorship of the special education program, including oversight of all due process procedures related to the Individuals with Disabilities Education Act (IDEA).
- On-site direct services will be provided two eight-hour days per month.
- EdWise LLC will be the exclusive and sole provider of school special education directorship services to Xavier Charter School during the contract period, unless each party mutually agrees otherwise. The scope of special education directorship is described as follows and will be provided with authorization by the Head of Schools and Xavier Board of Trustees:
  - *Special Education Directorship (provided by Dr. Pamela Houston-Powell):*
    - Facilitate IDEA compliance procedures of all Idaho State Department of Education requirements, and
    - Participate with faculty and parents in discussing concerns about academic, communication, health, motor, emotional, social, and/or behavioral problems, and
    - Provide oversight of evaluation procedures per recommendations through the evaluation team process, and
    - Assist the evaluation team in determining eligibility for special education services and accommodations, and
    - Assist in facilitating the development and implementation of IEPs for students in grades K-12.
  - *Discretionary Services* will be provided as requested and may be negotiated as an additional stipend. These services may include, but are not limited to:
    - Paraeducator training necessary for paraeducators to meet the Idaho Paraprofessional Standards
    - Faculty professional development
    - Completing IDEA eligibility reports, developing IEPs, conducting achievement testing; completing Functional Behavior Assessments (FBAs), and the developing Behavior Intervention Plans (BIPs)
    - Attending eligibility and/or IEP meetings outside of the contracted two days per month.

**Credentials: Pamela D. Zeyer, Ed.D. (aka Pamela Houston-Powell)**

- Idaho certified Special Education Director, Principal, Superintendent, Teacher Leader, K-12 Special Education Teacher, K-8 Elementary Education Teacher
- Facilitator and Mediator, Idaho State Department of Education
- Special education due process compliance specialist

- Secondary transition services specialist
- Clinical supervisor of interning teachers
- Mentor for new teachers
- Owner, EdWise LLC

**Article II: Schedule and Fee for Services**

All services shall be regularly provided to Xavier Charter School as requested by the Head of Schools and/or the Board of Trustees at compensation rates described as follows:

- Bi-weekly services (Fridays; 2 x month) = \$600 monthly rate / \$7200 annual rate to be paid over a 12-month period (July 1, 2023 to June 30, 2024)

**Article III: Payment for Services**

EdWise LLC shall provide a monthly invoice to Xavier Charter School #462 by the last day of each month from July 2023 to June 2024. Xavier Charter School shall execute payment within ten business days from the receipt of the invoice unless other arrangements are made that are agreeable to both parties.

**Article IV: Documentations**

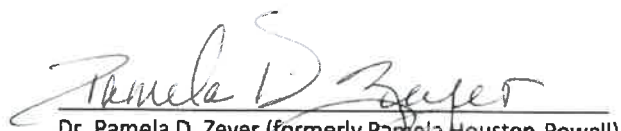
EdWise LLC agrees to maintain all appropriate documentation for independent contracted services and will provide copies of such documentation as requested by Xavier Charter School. Documentation includes licensure and/or certification of professional liability insurance as well as workman's compensation information.

**Article V: Conditions/Limitations of Contract**

This contract shall be subjected to review or modification by either party and may be terminated at any time by either party, subject to a 30-day written notice. Both parties have the right to discuss this option prior to submission of written notice.

  
Head of Schools, Board Member/Designee  
Xavier Charter School 462

7-31-23  
Date

  
Dr. Pamela D. Zeyer (formerly Pamela Houston-Powell)  
Owner, EdWise LLC

7/31/23  
Date

## SERVICE TERMS & CONDITIONS

TimeClock Plus, LLC ("TCP"), a Delaware limited liability company, will provide Client and its authorized Employees and Users access to the Services during the Initial Service Term in accordance with the complete terms and conditions (collectively the "Licensing Agreement") found at:

TimeClock Plus Services will be provided as set forth in the Terms and Conditions here: <https://www.tcpsoftware.com/legal>

Humanity Services will be provided as set forth in the Terms and Conditions here: <https://www.humanity.com/terms>

Aladtec Services will be provided as set forth in the Terms and Conditions here: [https://www.aladtec.com/aladtec\\_scheduling\\_license\\_agreement.php](https://www.aladtec.com/aladtec_scheduling_license_agreement.php)

ScheduleAnywhere Services will be provided as set forth in the Terms and Conditions here: <https://www.scheduleanywhere.com/employee-scheduling-software/scheduleanywhere-scheduling-license-agreement.aspx>

Non-EU Data Processing Terms: <https://www.tcpsoftware.com/agreements/dpa>

EU Data Processing Terms: <https://www.humanity.com/data-processing-addendum> (As Applicable)

Supplemental Support & Maintenance Terms: <https://www.tcpsoftware.com/legal> (As Applicable)

This Order Form is entered into as of the Contract Start Date contained herein (the "Effective Date") by and between TimeClock Plus, LLC and the entity named in the Bill To section herein (the "Client"), and is subject to the Licensing Agreement. In the event of any conflict between the Order Form, the Data Processing Addendum ("DPA") and/or the Terms and Conditions (as applicable), the following order of precedence will apply (in descending order): (1) the DPA (as applicable), (2) the Order Form, and (3) the Terms and Conditions.

Client shall pay all fees or charges in accordance with those outlined on the Order Form. Payments will be made in advance of the Services being provided and may be made annually, quarterly or monthly, or as otherwise mutually agreed on this Order Form. All fees are committed and non-cancelable during the term of the agreement.

The individuals executing this Agreement on behalf of each Party represent and warrant to the other Party that they are fully authorized and legally capable of executing this Agreement on behalf of such Party and that such execution is binding upon such Party.

Accepted and agreed to as of the

Accepted by:

Client

TimeClock Plus, LLC

By:

Gary Moon

By:

\_\_\_\_\_

Name:

Gary Moon

Name:

\_\_\_\_\_

Title:

Head of School

Title:

\_\_\_\_\_



## FOOD SERVICE AGREEMENT

THIS AGREEMENT is made and entered into by and between Twin Falls School District (hereafter "District") and Xavier Charter School (hereafter "Xavier").

WHEREAS, Xavier has requested the District to operate the Child Nutrition Program; and,

WHEREAS, District agrees to operate the Child Nutrition Program at Xavier, under the terms and conditions set forth below.

NOW, THEREFORE, The parties hereto agree as follows:

1. District agrees to operate the Child Nutrition Program at Xavier, supplying meals inclusive of milk to Xavier Charter School for the rates set forth below:

- Lunch.....\$2.90 each full price elementary student \$.40 each reduced priced student
- \$3.15 each full price middle school student, \$.40 each reduced price student
- \$3.40 each full price high school student, \$.40 each reduced price student
- \$4.75 each adult price meal (including Tax)
- \$3.30 each adult price breakfast (including Tax)
- Breakfast....\$1.55 each full price elementary student, \$.30 each reduced price student
- \$1.80 each full price middle student, \$.30 each reduced price student
- \$1.80 each full price high school student, \$.30 each reduced student
- Ala Carte milk..... \$.50

2. District agrees to operate the program pursuant to the provisions of the National School Lunch Program (7 CFR 210) and will assure that said meals meet the minimum meal pattern requirements as to copies of standardized recipes, copies of CN labels and production records which contain the amount of food prepared, portion sizes planned and daily number of meals provided. All meals will be prepared on sight at Xavier Charter School Kitchen.

3. District agrees to process all free and reduced applications, FS-4's, RACS, Verifications, Ethnic summary, National school Lunch Participation Data report, collections and meal accountability processes, including filing for reimbursement with the state. All state reimbursement for the Xavier Charter School Lunch Program will be given to the Twin Falls School District Nutrition Program.

4. Xavier agrees to relinquish all funds pertaining to the National School Lunch Program to the District Nutrition Program, including meal reimbursements from the state and daily collections. Xavier also agrees to turn over all commodity allotments to the District Nutrition Program. District also agrees to retain any other records required for the current school year plus the previous 3 years (or longer, if an audit is in progress) for the meals provided under this agreement and upon request, to make all accounts and records pertaining to the program available to representatives of the U.S. Department of



Agriculture (USDA) and the General Accounting Office (GOA) for audit or administrative review at a reasonable time and place.

5. Xavier agrees to pay any necessary district matching funds to District to compensate for payroll (FICA) for the employees of the Xavier National School Lunch Program if applicable.

6. District agrees to assume responsibility for any repairs to kitchen equipment at Xavier Charter School Kitchen. If District determines that additional kitchen equipment is required for the program, Xavier agrees to pay the purchase and any installation costs. Upon acceptance of the equipment, District be responsible for maintenance and repairs of said equipment. Xavier Agrees to provide Janitorial services in the cafeteria, including set up and take down of tables.

7. Xavier agrees to provide or purchase a computer (to be approved by the Twin Falls School District), Mealtime software licensing, and a Touch and Go Finger Scanner, for the meal accountability system for operation of the program at Xavier.

8. District agrees to provide snacks in compliance with The National School Lunch program if an educational afterschool program is provided by Xavier Charter School. District Nutrition will do all paper work and reimbursements for this program. Snacks will be charged at the rate of \$1.50 full priced snack and \$.15 reduced price snack per student, and Adult Snack of \$1.70.

9. Xavier shall reimburse District for unpaid meals or snacks from funds authorized by the National School Lunch Program regulations.

10. This agreement shall be effective during the 2023-2024 school year, from August, 2023 to June, 2024. The agreement may be terminated by notice in writing given by either party hereto to the other, at least 30 days prior to the date of termination.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the dates indicated below:

Lyle M. Shankin  
Twin Falls School District

Child Nutrition Director  
Title

5-24-23  
Date

Gary Maen  
Xavier Charter School

Head of School  
Title

5-24-23  
Date

**CONTRACT FOR TRANSPORTATION SERVICES  
BETWEEN XAVIER CHARTER SCHOOL AND MID COLUMBIA BUS COMPANY**

This Contract for Transportation Services (the "Contract") is entered into on 7/27/2023 (the "Effective Date") between the XAVIER CHARTER SCHOOL DISTRICT, TWIN FALLS COUNTY, Idaho, (the "District"), and MID COLUMBIA BUS COMPANY of 410 SE DORION AVE, UMATILLA COUNTY, Pendleton, Oregon (the "Contractor").

***RECITALS***

- A. Under Idaho Code section 33-1510(2), the District advertised and bid the transportation services provided under this Contract, and the Contractor was the lowest responsible bidder meeting the specifications.
- B. The District and Contractor desire to provide for the transportation of students in the District to and from school as set forth in this Contract.

**AGREEMENT**

NOW THEREFORE, in consideration of the recitals set forth above, which are incorporated into this Contract by this reference, and the mutual promises set forth in this Contract, the parties agree as follows:

- 1. Incorporation by Reference and Priority of Documents.
  - a. The following documents are attached to and incorporated by reference into this Contract as if set forth in full: 1. the advertisement for bids; 2. the bid by the Contractor; 3. the performance bond, if any; and 4. the notice of award.
  - b. Unless a different priority of documents is set forth in the advertisement for bids, a lower numbered document in this section shall supersede a higher numbered document to the extent necessary to resolve any conflict or inconsistency.
- 2. Definitions. Terms, whether capitalized or not, in this Contract shall have the meanings set forth below when used in the Contract unless the context requires otherwise:
  - a. "Base Compensation" shall mean:
    - i. The sum of all payments made to the Contractor pursuant to section 11 of this Contract for all elapsed Instructional Days in the current annual academic calendar; or
    - ii. If no payments have been made to the Contractor in the current annual academic calendar, the sum of all payments that were made to the contractor providing transportation services for Instructional Days in the prior annual academic calendar; or

- iii. If no payments have been made to the Contractor in the current annual academic calendar and no payments for transportation services were made to any contractor in the prior annual academic calendar, the sum of all payments the parties estimate will be made to the Contractor pursuant to section 11 of this Contract for all Instructional Days in the current annual academic calendar.
- b. "Closure" shall mean when more than fifty percent (50%) of all students enrolled at an educational facility served by Contractor are not physically attending class at the educational facility due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God or the public enemy, acts of the federal, state or local government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or mechanical failure of heating, cooling or other environmental systems. Closure includes a "soft closure," which shall mean when students are not physically attending school or class, but instead are attending school remotely, using internet access, video links, or printed materials.
- c. "Daily Rate" shall mean the Base Compensation divided by:
  - i. The number of elapsed Instructional Days in the current annual academic calendar for which the District has paid the Contractor; or
  - ii. If no payments have been made to the Contractor in the current annual academic calendar, the number of Instructional Days in the prior annual academic calendar; or
  - iii. If no payments have been made to the Contractor in the current annual academic calendar and no payments for transportation services were made to any contractor in the prior annual academic calendar, the number of Instructional Days in the current annual academic calendar.
- d. "Instructional Day" shall mean a day identified on the District's established annual academic calendar as a day when students are present at a facility or a day designated by the District as a replacement or "make up" day for a day missed due to a Closure. An Instructional Day shall not include any Saturday, Sunday, or day identified on the District's academic calendar as a day when students are not present at a facility such as a holiday or teacher training day.
- e. "Consecutive Instructional Days" shall mean adjoining calendar days identified on the District's academic calendar as a day when students are present at a facility. Consecutive Instructional Days include calendar days interrupted by one or more of the following: a Saturday; a Sunday; and calendar days identified as a holiday, break or teacher training day on the District's academic calendar.

3. Term and Renewal. This Contract shall commence on the Effective Date and expire on June 30<sup>th</sup>, 2024 a one year period, unless sooner terminated in accordance with the provisions of this Contract. The parties may renew this Contract for a period not to exceed five (5) years on or before April 30, 2024 upon a determination by the Board of Trustees of the District, after renegotiation with the Contractor, that the terms of the renewal are satisfactory to the District.
4. Scope of Work. The Contractor shall perform the services and furnish the equipment and personnel as provided in the specifications (the "Transportation Services"), and shall do all things necessary or proper for the performance and completion of the work required by this Contract, in the manner and at the times provided in the bid and specifications.
5. Delegation of Authority. The District hereby delegates to the Contractor the necessary authority to supervise and control students on the buses operated by the Contractor while the students are aboard the buses or the buses are enroute under such rules as are adopted by the District. However, this authorization shall not include the right to administer corporal punishment, nor the right to eject any offender under circumstances that may or are likely to result in injury or danger to the offender. The Contractor shall transport only those students designated by the District.
6. School Closure. The District shall inform the Contractor as soon as reasonably possible of a Closure. Upon notice of a Closure, the Contractor shall be paid under the Alternative Payment Schedule set forth under section 12 of this Contract.
7. Schedule Details. Prior to the start of each school year, the Contractor shall furnish to the District a description of each route, a time schedule, and a list of designated stops to be observed on each route. The District may, at its discretion, make changes in the routes, time schedules, or designated stops and eliminate or consolidate any route to meet changed conditions. However, the District shall make no change to any route, time schedule, or designated stop or elimination or consolidation of any route, except to meet unexpected or emergency conditions, until after the Contractor has been given an opportunity to confer with the District or its authorized representatives with respect to the change, elimination, or consolidation at least ten (10) days in advance of the change, elimination, or consolidation. The District shall make adjustments in the sums to be paid to the Contractor for any increase or decrease in mileage, hours, and or days resulting from a change, elimination, or consolidation of routes or additional services for school-sponsored activities, as provided in the specifications. Any major reduction of routes of 10% or more from current route count of five (5) AM/PM home-to-school routes will result in a renegotiation of pricing between Contractor and The District. The District may, from time to time, establish policies to be observed by the Contractor in connection with provision of the Transportation Services, including starting times, bus stops, discipline on the buses, and any situations that may from time to time arise in the performance of the Contract.
8. Responsibility for Students. The Contractor shall be fully responsible for the care and supervision of students while they are being transported. The transportation of a student shall be deemed to have begun when the student prepares to board the school bus, and shall be

deemed to have ended when a student has completed alighting from the bus at a reasonably safe place in which to alight in view of the circumstances then prevailing.

9. Compliance with Laws and Regulations. The Contractor and Contractor's drivers shall comply with the laws of the state of Idaho and all applicable rules, policies, or requirements of the Idaho Transportation Department, Idaho Public Utilities Commission, Idaho Department of Education, Idaho Board of Education, the District, and any other state or local unit of government. Furthermore, the Contractor's drivers must submit to a criminal history background check under Idaho Code section 33-130. The Contractor shall not assign a driver to provide transportation under this Contract whose criminal history background check shows the driver has been convicted of a felony crime enumerated in Idaho Code section 33-1208 or a misdemeanor or felony driving offense enumerated in Idaho Code sections 49-1301, -1302, -1401, or -1404 or title 18, chapter 80, Idaho Code.
10. Termination for Fiscal Necessity. The District is a government entity and it is understood and agreed that the District's payments under this Contract shall be paid from local tax revenue, state of Idaho legislative appropriations, funds granted by the federal government, or any combination of these sources. The District's Board of Trustees retains full discretion to allocate tax revenue in the public budget setting process during each budget period covered by this Contract. The Idaho Legislature is under no legal obligation to make appropriations to fulfill this Contract. Additionally, the federal government is not legally obligated to provide funds to fulfill this Contract. This Contract shall in no way or manner be construed so as to bind or obligate the District or the state of Idaho beyond the term of any particular approved District budget, appropriation of funds by the Idaho Legislature, or beyond any federal funds granted to the District, as may exist from time to time. The District reserves the right to terminate this Contract in whole or in part (or any order placed under it) if, in its sole judgment, the District's Board of Trustees neglects, fails, or refuses to approve a budget sufficient for the District to continue payments, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the District to continue such payments, or requires any return or "give-back" of funds required for the District to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the District discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The District shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to Contractor. Further, in the event that funds are no longer available to support this Contract, as described herein, the District shall not be liable for any penalty, expense, loss of profits, or liability, or for general, special, incidental, consequential, or other damages resulting therefrom. At Contractor's request, the District shall promptly provide supplemental documentation as to such termination for fiscal necessity. Nothing in this section shall be construed as ability by the District to terminate for its convenience.
11. Payment Schedule. On or before the 10<sup>th</sup> day of each month of the District's annual academic calendar covered by this Contract, the Contractor shall submit to the District an invoice that shall include a detailed account showing the mileage covered in each category of transportation

furnished during the preceding month. On or before the 25<sup>th</sup> day of the month in which the invoice is submitted, the District shall pay the Contractor the contract price for those services that it shall find to have been rendered, computed on the schedule provided in Addendum A. The current school year is based on 168 paid days of school in which transportation is required.

#### 12. Alternative Payment Schedule.

- a. In accordance with the regular payment schedule, in the event of a school closure, the following Alternative Payment Schedule will be used.
  - i. If Closures are one (1) Instructional Day and up to ten (10) Instructional Days occurs, the District shall pay the Contractor ninety percent (90%) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
  - ii. If Closures are eleven (11) Instructional Days and up to twenty (20) Instructional Days occurs, the District shall pay the Contractor eighty percent (80%) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.
  - iii. If Closures are twenty-one (21) Instructional Days and more, then the District shall pay the Contractor sixty percent (60%) of the Daily Rate per route per Instructional Day the Contractor does not provide transportation due to a Closure.

#### 13. Escalation.

- a. Terms and rates of this agreement will be renegotiated at the time of renewal on or before April 30, 2024.
- b. In the event of unusual circumstances, such as changes in state or federal taxes, laws or specifications (to include but not be limited to any requirements that seat belts be installed in vehicles), increased insurance or surety premiums or any other condition which causes any of Contractor's operating costs hereunder to increase at a rate in excess of any negotiated escalation, then the parties shall determine a reasonable and just amount to cover such increase, and, if the parties reach agreement on such an increase, they shall enter into an amendment adjusting rates of Contractor compensation set forth in Addendum A to reflect such increase.

#### 14. Fuel.

- a. Contractor agrees to provide all fuel products used in the operation of Buses for the District and will obtain competitive pricing for the purchase of such products. The

Contractor is also responsible for paying all fuel product invoices when due and to pay all applicable State, Federal, and local taxes, and highway user fees associated with the purchase and use of motor fuel products.

- b. To protect the District and the Contractor against future, unanticipated cost of fuel prices, of which neither the District nor Contractor has any control, the District will enter into an agreement with the Contractor to mitigate the effects of such future, unanticipated changes in fuel prices.

15. Equipment. All route buses will be supplied by the Contractor. All school buses supplied by Contractor and District in performance of this Agreement shall meet or exceed the standards established by the applicable laws and regulations. Contractor's predetermined fleet set forth by the district will include five (5) Reg Ed Buses. Contractor shall maintain the school buses used to provide transportation services under this agreement in accordance with law and accepted industry maintenance standards.

- a. Technology. All Route buses supplied by the contractor will include a comprehensive technology package from Tyler Technologies. Date of Installation of technology will depend on Manufacturer's schedule of available installation dates. Technology on buses will include:

- i. Tyler Student Transportation
  - 1. My Ride K-12
  - 2. Advance Trips
- ii. Tyler Drive
  - 1. GPS
  - 2. Driver turn-by-turn directions.
- iii. 2-way radios
- iv. Video camera system

16. Record Keeping. The District may audit, in such a manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this Contract. The Contractor shall maintain books, records, documents, and other evidence of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract as required by the District. The District shall have access to any of the Contractor's books, documents, or records that are directly related to this Contract. Access to records includes the right to review, audit, inspect, and make excerpts and transcriptions. The Contractor shall maintain all books, records, and other documents relevant to this Contract for three (3) years after final payment and any person duly authorized by the District shall have full access to and right to examine any of said materials during this period. If an audit, litigation, or other action involving records is initiated before the three (3) year period has expired, the records must be retained until all issues arising out of such actions are resolved, or until a three (3) year period has passed, whichever is later.

17. Inspection. The District may inspect any and all buses and their operation by riding as passengers or by other reasonable means.

18. Time of the Essence. Since the Contract concerns a necessary public service, the provisions of the Contract relating to the daily schedule and policies that may be established by the District regarding timing are of the essence to the Contract. Accordingly, the Contractor shall prosecute the work diligently to assure adherence to the schedules.

19. Assignment of Contract. The Contractor agrees not to assign this Contract, or any interest in the Contract, without the prior written approval of the District.

20. Termination for Cause.

a. The District shall have the right to declare the Contractor in default if:

- i. The Contractor becomes insolvent;
- ii. The Contractor makes an assignment for the benefit of creditors;
- iii. A voluntary or involuntary petition in bankruptcy is filed by or against the Contractor;
- iv. The Contractor abandons the work;
- v. The Contractor, without just cause, reduces the Contractor's working force to a number that, if maintained, would be insufficient, in the opinion of the District, to carry out the work in accordance with this Contract;
- vi. The Contractor shall sublet, assign, transfer, convey, or otherwise dispose of this Contract other than as specified in this Contract;
- vii. A receiver or receivers are appointed to take charge of the property or affairs of the Contractor;
- viii. The District is of the opinion that the Contractor has willfully or in bad faith violated any of the provisions of this Contract;
- ix. The Contractor or Contractor's agents or employees violate any applicable laws;
- x. Any vehicles provided by the Contractor are operated in a manner that imperils the safety of the passengers;
- xi. Any vehicles provided by the Contractor are not kept clean or in first-class mechanical condition.

b. The District may exercise its right to terminate the contract for cause by first providing the contractor written notice of the specific events(s) of default, and providing Contractor a period of 30 days from the date of the letter within which it



may cure the default, and during which time the District may invite the contractor to its regular monthly board meeting to gather information concerning the acts of default. If the contractor fails to cure the default in a manner deemed satisfactory to the District within the 30 day time period then the District may provide written notice that the contract is terminated effective immediately.

21. Report of Accident. Any accident involving student transportation shall be reported to the District as soon as possible and not later than twenty-four (24) hours from the time of the accident. A detailed written report must be submitted to the District as soon thereafter as possible, but not later than three (3) days after the date of the accident.
22. Indemnification. Contractor shall indemnify the District from any loss that it may sustain from any cause arising out of the performance or lack of performance of this Contract by the Contractor.
23. Severability. If any part of this Contract is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.
24. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the state of Idaho.
25. Notices. Any notice given in connection with this Contract shall be given in writing and shall be delivered either by hand or certified mail, return receipt requested, to the other party at the address stated below. Either party may change its address by giving notice of the change in accordance with this section.

To the District:

Xavier Charter School District  
1218 N College Road W  
Twin Falls, ID 83301

To the Contractor:

Mid Columbia Bus Company  
PO Box 1108  
Pendleton, OR 97801

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their respective representatives duly authorized so to do on the date and year written below.

Xavier Charter School District:

By

Gary Moon

Its

Head of Schools

Date:

7-27-23

Mid Columbia Bus Company:

By

Michelle Lake

Its

Regional Vice President

Date:

7/27/2023

# XAVIER SCHOOL DISTRICT 2023-24 PRICE SHEET

## 1 YEAR CONTRACT

	Cost per Mile	Min. Daily Rate
<b><i>Regular Home-to-School Routes:</i></b>		
5 routes X 168 school days	= \$ <u>9.06</u>	= \$ <u>181.20</u>
<b><i>Kindergarten Routes:</i></b>		
X 168 school days	= \$ <u>9.06</u>	= \$ <u>181.20</u>
<b><i>Special Needs Busing:</i></b>		
X 168 school days	= \$ <u>9.06</u>	= \$ <u>181.20</u>
<b>Field/Athletic Trips:</b>	= \$ <u>3.29</u>	= \$ <u>65.80</u>
<b>Standby Cost per hour</b>	= \$ <u>32.96</u>	

**\*Overnight Trips**

District is responsible for all additional expenses with Overnight trips including, but not limited to hotels, per diem for meals, and extra drivers to keep operators with DOT regulations.