



MINNEAPOLIS  
PUBLIC SCHOOLS

Urban Education. Global Citizens.

### **CONTRACT FOR SERVICES – \$25,000 above**

This Contract is entered into between Special School District No. 1, “District”, a special school district created and existing under the laws of Minnesota, and BWP & Associates “Contractor” (collectively “parties”) to provide Superintendent Search services to the Board of Education

#### **TERM OF CONTRACT**

- 1.1 This Contract is effective the date of the last signature of the parties and shall remain in effect until June 30, 2024, or until all obligations set forth in this Contract have been satisfactorily fulfilled, or the Contract has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Contract intended for District’s protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Contract.

#### **2 SCOPE OF WORK**

- 2.1 Contractor shall perform all of the services set forth herein and any exhibits attached hereto as **Exhibit A** (“Scope of Work”). Contractor understands that time is of the essence in this Contract and agrees to meet all milestones indicated in this section, in the Contract herein and any exhibits attached hereto.

#### **3 CONSIDERATION AND TERMS OF PAYMENT**

The consideration for all services (and goods if any) performed or supplied by Contractor under this Contract shall be paid by District as described below.

##### **3.1 *Total Obligation***

District’s total obligation to Contractor under this Contract, including compensation for goods, services, and reimbursable expenses shall not exceed \$40,000.00. Contractor shall not receive any additional reimbursement for materials or subsistence expenses incurred in the performance of this Contract.

##### **3.2 *Frequency of Invoicing and Terms of Payment***



1250 West Broadway Ave. Minneapolis, MN 55411-2533

Phone: 612.668.0000

[www.mpls.k12.mn.us](http://www.mpls.k12.mn.us)

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Subject to the conditions herein, payment shall be made by District within thirty (30) days upon receipt of Contractor's invoice for goods delivered or services rendered pursuant to this Contract. The Contractor's standard invoice shall be submitted after satisfactory completion of services on a monthly basis. District has no obligation to pay for services that are not satisfactorily performed or performed in violation of federal, state or local law, ordinance, rule or regulation. In the case of a dispute about satisfactory performance of services, the parties agree to work in good faith to resolve any disputes. If either party does not dispute an invoice in writing within 180 days of receipt of the invoice, no action challenging the invoice may be taken.

As applicable, for all agreed upon work performed by Contractor or Contractor's personnel in the provision of goods and/or services stipulated herein, District shall pay Contractor as set forth in the applicable **Exhibit B**. Payment shall be made to Contractor based on the services performed that are in accordance with the terms of this Contract. Notwithstanding anything to the contrary, and without limitation, District has not promised or guaranteed any minimum amount of work, and Contractor understands and acknowledges same. District has no obligation to pay for overtime or holiday work, nor will it pay premiums for overtime and holidays.

### 3.3 *Taxes.*

District is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70. Contractor shall not charge District for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Contract; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70]. Contractor shall promptly reimburse District for any and all such sales and use taxes paid by District to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse District for any and all such sales and use taxes provided above.

District may be obligated by state and federal law to withhold state and federal taxes from the consideration stated herein. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

### 3.4 *Fund Availability; Federal Funds Contingency.*

Financial obligations of District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Contract is funded in whole or in part with federal funds, District's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.



## **4 GENERAL TERMS AND CONDITIONS**

- 4.1 The terms and conditions contained in this Contract shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Contract. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by all parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Contract and its Exhibits, (2) District's RFP or RFI, and (3) Contractor's Response to District's RFP or RFI.

## **5 AFFIRMATIVE ACTION, EQUAL EMPLOYMENT OPPORTUNITY**

- 5.1 The District is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. As applicable, Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Contract, Contractor certifies that it complies with all applicable federal and state laws as well as District policies related to non-discrimination, equal employment opportunity, and affirmative action.

## **6 BACKGROUND CHECKS**

- 6.1 Contractor shall screen Contractor and all paid and volunteer employees and agents, including interviews, reference checks, credit history (if handling district funds), driving history and insurance coverage (if transporting district staff, students or families). And, Contractor shall conduct criminal background checks in accordance with state and federal law and District policy for Contractor and all paid and volunteer employees and agents who will have direct contact with children under this Contract. Background checks will be done prior to any contact with children, and shall be done in accordance with applicable state and federal laws, including but not limited to Minn. Stat. Sections 299C.61-.64; Minn. Stat. Section 123B.03; 42 U.S.C. Section 5119a and 42 U.S.C. Section 14501-05.
- 6.2 Contractor is responsible for ensuring that all paid and volunteer employees and agents who will be in contact with District staff and students are appropriate persons to conduct such work.

## **7 DATA PRIVACY**

7.1 Contractor agrees that any information it creates, collects, receives, stores, uses, or disseminates during the course of its performance, which concerns the personal, financial, or other affairs of the District, its Board, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13. Contractor must comply with any applicable requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Contractor. The Contractor will report immediately to the District any requests from third parties for information related to this Contract. The District will respond to such data requests. All subcontracts, if allowed, shall contain the same or similar data practices compliance requirements.

## **8 USE OF DISTRICT NAME OR LOGO**

8.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the District or the name of any representative of the District in any sales promotion work or advertising, or any form of publicity, without the written permission of the District.

## **9 INDEPENDENT CONTRACTOR**

9.1 Contractor shall perform its duties hereunder as an independent contractor and not as an employee of the District. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the District. Contractor shall pay when due all required employment taxes and income tax withholding, including all federal and state income tax on any monies paid pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to tax withholding, worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor shall have no authorization, express or implied, to bind District to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall be solely responsible for the acts of Contractor, its employees and agents.

9.2 Contractor shall hold District completely harmless from and against any such contributions, premiums and taxes described above and from all claims and liability pertaining to those or any other item for which Contractor is responsible under this Contract, and from all attorney's fees and other costs incurred by District in contesting or defending against any responsibility therefore which is asserted against District.

## **10 WORKER HEALTH, SAFETY AND TRAINING**

10.1 Contractor shall be solely responsible for the health and safety of its employees and/or self in connection with the work performed under this Contract. Contractor shall



make arrangements to ensure the health and safety of all subagents and other persons who may perform work in connection to this Contract. Contractor shall ensure all personnel, subagents and/or self are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks performed under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act that are applicable to the work performed by Contractor. Contractor shall develop and implement an emergency plan and procedures to follow in emergencies.

## **11 BUREAU OF CITIZENSHIP & IMMIGRATION SERVICES REQUIREMENTS**

- 11.1 Contractor shall comply with all applicable requirements of the BCIS relating to employment including but not limited to confirming nationality for all employees and complying with requirements for employing aliens if appropriate.

## **12 INSURANCE**

- 12.1 At all times during its performance under this Contract, Contractor shall obtain and keep in force comprehensive general liability insurance, including coverage for death, bodily or personal injury, property damage, liability and automobile coverages, with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District or at limits established for a municipal corporation by Minnesota Statute Section 466.04. All such certificates evidencing such insurance shall name District as additional insured. Contractor may meet the limits above \$1,000,000 per occurrence through umbrella or excess coverage.
- 12.2 Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor also represents that it has professional liability insurance with limits of not less than \$1,500,000 each claim and \$1,500,000 each occurrence covering claims that arise out of its acts and operations in providing services to the District, but shall not name the District as an additional insured to the coverage.
- 12.3 Contractor or its members shall also maintain property insurance coverage for the facility in which the program is located if it is not in a district building. Contractor and its members shall obtain and maintain insurance covering claims for the loss of or damage to its personal property that may be caused by students attending its programs.
- 12.4 Contractor shall provide all such certificates to District. Contractor shall not cancel or revise any insurance coverage required by this section during the term of this Contract and shall require its insurer to mail the District a notice if the coverage is cancelled or revised.

## **13 INDEMNIFICATION**

13.1 The parties agree to release, defend, indemnify, and hold harmless the other party, its board, officers, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of the other party's negligent acts or omissions or in connection with the other party's breach of warranties. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of the other party. Parties shall not settle or compromise any claim in which the other party has been named a party and for which the party must indemnify the other party without a signed agreement approved by the District.

#### **14 LIMITATION ON LIABILITY**

14.1 In no event shall the District be liable for any indirect, consequential, incidental, lost profits or like expectancy damages arising out of the Contract. District's maximum obligation under this Contract shall not exceed the amount set forth herein.

#### **15 CONFLICT OF INTEREST/CODE OF ETHICS**

15.1 Contractor agrees that it will not represent any other party or client which may create a conflict of interest in its representation with the District. Contractor agrees to be bound by the District's Code of Ethics. In particular, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any District employee for the purpose of obtaining this or any other District Contract; (ii) agrees to cooperate fully with any investigation involving a possible violation; and (iii) agrees to report any suspected violations to the District. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation any applicable laws or District policies.

#### **16 COMPLIANCE WITH LAWS AND DEBARMENT**

16.1 Contractor certifies that all goods or services furnished under this Contract shall comply with all applicable federal, state, and local laws and regulations, as well as District policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Contract. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal or state government. Contractor shall notify District if it becomes debarred or suspended during the term of this Contract. District may immediately terminate this Contract in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by District in connection therewith.

#### **17 TERMINATION**



17.1 The District and/or Contractor may terminate this Contract at any time without cause, upon thirty (30) days written notice to the other Party. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by District in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

17.2 District may terminate this Contract in whole or in part for cause upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Contract, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Contract. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Contract shall, without limitation, be causes allowing District to terminate for cause. If a determination is made that District improperly terminated this Contract for Cause, then such termination shall be deemed to have been for without cause.

17.3 Notwithstanding the above, Contractor shall not be relieved of liability to the District for damages sustained by the District as a result of any breach of this Contract by the contractor. The District, may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the District is determined. The rights or remedies provided here shall not limit the District, in case of any default, error or omissions, by the Contractor, from asserting any other right or remedy allowed by law. Nothing in this Contract shall be construed as a waiver of any right, remedy, liability limit or immunity of the District under law.

## **18 RETURN OF DATA**

18.1 Within fifteen (15) days of the completion or earlier termination of this Contract, or upon earlier request of the District, Contractor shall return all documents, data and other information provided by the District to Contractor, or Contractor's employees or agents in connection with this Contract. Additionally, Contractor, upon the request of the District, shall destroy all copies of such District provided data, documents, or information in Contractor's possession or control, and provide District with proof of such destruction.

## **19 RECORDS MANAGEMENT AND MAINTENANCE**

19.1 District shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Contract. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. Such records may be subject to copy, review and/or audit by District, State Auditor and/or the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. All such items shall be retained by

Contractor during the term of this Contract and for a period of six (6) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Contract shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

## **20 NOTICES/ADMINISTRATION**

Except as otherwise provided in this Contract, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other parties at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

### **Special School District No. 1**

Division: Board of Education  
Attn: Ryan Strack  
1250 W Broadway  
Minneapolis, MN 55411  
Email: Ryan.Strack@mpls.k12.mn.us

## **CONTRACTOR**

Dr. Kevin Castner  
Phone: 434-531-8171  
Address: 872 S Milwaukee Ave #221, Libertyville, IL 60048  
Email: kccastner@protonmail.com

## **ACKNOWLEDGMENT**

- 20.1 In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to District is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Contract and perform its obligation under this Contract. Contractor must cross out and initial item (2) and notify District in writing, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.



20.2 Notwithstanding this certification, Contractor hereby acknowledges that District has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this Contract is executed.

## **21 NON-WAIVER**

21.1 No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

## **22 ASSIGNMENT**

22.1 Contractor may not assign any obligations of this Contract without the prior written consent of District. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Contract. This Contract shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Contract shall be void. Notwithstanding any notice of assignment, District's tender of payment to Contractor named herein, or to any person reasonably believed by District to be entitled to payment, shall satisfy District's obligation to pay, and in no event shall District be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

## **23 CHOICE OF LAW, FORUM SELECTION, ENTIRE CONTRACT AND AMENDMENT**

23.1 This Contract shall be construed under Minnesota law (without regard for choice of law considerations). Any action arising out of this Contract shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Contract constitutes the entire Contract and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Any amendments to this Contract shall be in writing and executed by same parties who executed the original Contract, or their successors in office.

## **24 WARRANTY**

24.1 Contractor expressly warrants and guarantees that the services performed under this Contract will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any and as applicable) provided under this Contract: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of District as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written document provided to or in the possession of District; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are

not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties are breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered District and any other persons, and to defend, indemnify, and hold harmless District and its Board, officers, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by District.

## **25 SEVERABILITY**

- 25.1 If any provision of this Contract shall be invalid or unenforceable with respect to any party, the remainder of the Contract, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Contract shall be valid and be enforceable to the fullest extent permitted by law.

## **26 SURVIVABILITY**

- 26.1 The terms, provisions, representations, and warranties contained in this Contract that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Contract, including the making of any and all payments hereunder.

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SPECIAL SCHOOL DISTRICT NO. 1

Signature: Sharon El-Amin  
Sharon El-Amin (May 18, 2023 09:49 CDT)

Name: Sharon El-Amin (Printed)

Title: Chair Date: May 18, 2023

\_ CONTRACTOR NAME Signature: Kevin Castner

Name: Dr. Kevin Castner (Printed)

Title: Executive Director Date: May 17, 2023

## Exhibit A: Scope of Work

1. Representing *BWP & Associates* as the Contractor, Kevin Castner and Steve Griesbach will manage the search with assistance from Jane Berenz and Johnnie Thomas.
2. The Contractor will meet with EPU staff upon completion of their Community Engagement to review the entirety of their work and recommended Leadership Profile. In addition, the Contractor will work with the Board Chair and Board administrators on technical process matters and will secure information about the District by gathering data from interviews with each member of the Board and any other person or groups the Board so directs.
3. When the Board determines the search will commence, Contractor will draft an advertising fact sheet describing the vacancy; the draft shall be approved by representative(s) of the Board prior to its publication.
4. The Contractor is directed to advertise the vacancy in regional and national publications. The fact sheet will be published on *BWP & Associates'* website with a complimentary Internet link to the District web site.
5. The Contractor will be available for a meeting with the Board in March 2023. Contractor and District agree that the search process will not begin until the fall of 2023 or at the Direction of the Board.
6. The Contractor will actively recruit qualified candidates to apply for the position and solicit nominations from knowledgeable people in the education profession.
7. The Contractor will gather data on candidates applying for the position. Those candidates best matching the desired profile will be interviewed by the Contractor to ensure they meet the required criteria. Within ten days of the closing of applications, the Contractor will present a list of candidates for Board consideration. Thorough checks of recommended candidates will be conducted by Contractor which may include but not be limited to reference checks and media review.
8. All documents produced and received by the Contractor will remain the property of *BWP & Associates*. The Contractor shall turn over to the Board copies of all documents relating to candidates recommended by *BWP & Associates* at the time



the recommendation is made. With respect to this search, the Board will receive a copy of all documents sent out on behalf of the Board.

9. The Contractor will inform the Board and other groups, if appropriate, on items related to search protocols, establishing an interview format, developing interview questions, interviewing candidates, and other matters related to the search process. The Contractor will be available during the search process to advise the Board on search related issues.
10. The Contractor will make salary and compensation package recommendations to the Board, if requested.
11. The District acknowledges that the Board's decision to appoint and employ or not to employ is solely its decision.

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## EXHIBIT B: PAYMENT TERMS

1. The fee for these services will be \$34,000 plus expenses not to exceed \$6,000 unless there is prior approval by the Board. These Contractor expenses, in addition to Contractor travel, include development of a fact sheet, creation and maintenance of candidate files, clerical expenses, communications to those in the network and to prospective candidates, postage, telephone/fax/copying/shipping charges and travel.
2. Other anticipated expenses such as travel costs for candidates and costs associated with travel will be the responsibility of the District. The Contractor agrees to work with the District's designee to ensure candidates are aware of the District's process for payment.
3. Additional expenses for the search relate to advertising and recruitment. Advertisements in appropriate regional and national publications and websites are estimated at \$1,000 to \$3,000 depending on size, number of advertisements, and where placed. These costs will be the responsibility of the District and such vendors will be directed to submit any billing directly to the District.
4. The Contractor fee will be billed in three installments, the first after the signing of the Contract, the second after the presentation of the slate of finalist candidates, and the third upon appointment of the new superintendent. Expenses will be forwarded to the Board as they are incurred.
5. If the Board chooses not to go forward with the Superintendent search in Fall, 2023, Contractor agrees to return the first installment minus any expenses incurred which would include \$500 for each day of each Contractor services.
6. Candidate and Contractor final expenses will be billed within 90 days of completion of the search.
7. If the Board is dissatisfied with the Superintendent selected within two years from the date of employment of the Superintendent, and if either party dissolves that relationship by resignation or termination within a two year period of initial employment, and the Superintendent selected was one of the slate of candidates recommended by *BWP & Associates*, *BWP* agrees to conduct a new Superintendent Search at no cost to the District except for expenses.