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GOVERNING BOARD ITEM

AGENDA ITEM: Recommendation to Approve Agreement With Learn-It Systems, LLC for Special and Alternative Education Services and Authorize the Assistant Superintendent of Education Services to Sign the Agreement and Affiliated Documents

Action/Consent Action/Discussion Information Supporting Data

EXECUTIVE SUMMARY:

Administration recommends Governing Board approval of the agreement with Learn-It Systems, LLC for the provision of a special education program and an alternative education program known as Desert Choice Schools. Learn-It Systems will provide staffing and materials necessary for the efficient operation of the education program and its curriculum for five (5) ED-P classrooms and one (1) alternative education classroom.

The agreement has been reviewed and released by District legal counsel.

BOARD ACTION REQUESTED:

It is recommended the Governing Board approve the agreement with Learn-It Systems, LLC for special and alternative education services and authorize the Assistant Superintendent of Education Services to sign the agreement and affiliated documents.

SUBMITTED BY:  SUPERINTENDENT: 

ACTION BY BOARD: Motion: _____ Second: _____ Vote: _____ AGENDA ITEM: _____

**AGREEMENT BETWEEN
DYSART UNIFIED SCHOOL DISTRICT #89 (DUSD)
AND
LEARN-IT SYSTEMS (LIS), LLC
TO PROVIDE
SPECIAL AND ALTERNATIVE EDUCATION SERVICES**

This Agreement is made by and between the Dysart Unified School District #89 hereinafter referred to as "**DUSD**", 15802 North Parkview Place, Surprise, Arizona 85374, and Learn-It Systems, LLC hereinafter referred to as "**LIS**", a Maryland Limited Liability Company, having its principal place of business at 3600 Clipper Mill Road Suite 330, Baltimore, MD 21211.

RECITALS

WHEREAS, DUSD is authorized to provide special education services and to enter into this agreement pursuant to A.R.S. §15-341(A)(27), §15-764 and the Individuals with Disabilities Education Act 2004 (IDEA),

WHEREAS, LIS is a private organization which operates an educational program for students who require special education services for the Emotionally Disabled — Private Placement, ("ED-P") through its Educational Program or provide services for other special education students by mutual agreement of the parties in the disability categories of Autism, Emotionally Disabled, Mild Mental Retardation, Moderate Mental Retardation, Specific Learning Disability and Other Health Impaired.

WHEREAS, DUSD desires to utilize LIS's Educational Program as a placement option for DUSD students who require special education in the ED-P setting.

WHEREAS, LIS also operates an alternative education program for students who need a non-traditional classroom environment in order to meet with academic and behavioral success.

WHEREAS, the Parties desire to allow LIS to operate a private placement for emotionally disturbed students and an alternative education program on a DUSD campus which shall be known as Desert Choice School ("DCS").

WHEREAS, DCS operates as a Level D private day placement for emotionally disturbed students and is recognized by the Arizona Department of Education as an approved private day placement with a CTSD number as follows: 072112005.

NOW, THEREFORE, for the consideration set forth herein and other and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, mutually agree as follows:

I. TERM

1.1 Term. The term of this Agreement shall be from July 1, 2014 through June 30, 2015, providing any expenditure under this Agreement shall be made from current revenues only.

If all conditions are met during this period of time, this contract can be extended, if funding is available, for up to 4 additional one-year contracts. This Agreement may be terminated prior to the expiration of the term by either party as provided in the Termination section (Section VIII) of this Agreement.

1.2 Renewal. By mutual agreement the parties may at any time discuss renewal, extension or modification of this Agreement.

II. DCS RESPONSIBILITIES

2.1 Accreditation. LIS agrees to maintain DCS as an approved Level D private special education day school and an approved vendor by the Arizona Department of Education for the duration of this agreement. LIS shall maintain any and all permits and credentials needed to operate DCS.

2.2 Staffing. LIS shall provide the following personnel ("Staff Members"):

- A. Per campus: (1) campus administrator and (1) counselor or psychologist.
- B. Per classroom: (1) highly qualified special education teacher and (2) behavior technicians.

2.3 Materials and Supplies. LIS shall provide all the materials and supplies it deems necessary to the efficient operation of the educational program and its curriculum. In the event LIS utilizes the curriculum of DUSD, DUSD will provide the curriculum at its expense.

2.4 Attendance. Attendance reporting shall be handled in accordance with the Arizona Department of Education guidelines and both the DUSD and LIS shall work together to streamline attendance reporting within the program.

2.5 Enrollment.

A. ED-P Program. LIS shall allow DUSD to place up to fifty (50) students in the ED-P Program at DCS. LIS may allow DUSD to place more than fifty (50) students in the ED-P Program, with a maximum of sixty (60) students.

B. Alternative Education Program. LIS shall allow DUSD to place up to twelve (12) students in the alternative education program at DCS. LIS may allow DUSD to place a maximum of fourteen (14) students.

C. The maximum number of students shall not exceed the Arizona Department of Education's ("ADE") capacity limits for self-contained special education classrooms.

2.6 Administrative Services. LIS shall provide all administrative and counseling services related to the ED-P Educational Program at no additional cost to DUSD. Administrative services shall include but not be limited to all case management, IEP development, intake and reintegration meetings and coordination with all mental health and community agencies for the

provisions of services to those students in the educational program that require this type of intervention.

2.7 Reintegration. In consultation with DUSD special education staff, LIS shall develop a reintegration plan for each student at the time of their initial placement in the educational program.

2.8 Enrollment. LIS shall allow other public school districts to enroll and participate in the DCS educational program as long as the enrollment level remains within the contracted capacity. This program will be the identical program that is administered for DUSD students. LIS is entitled to all revenues generated as a result of the delivery of the program to the non-DUSD students. LIS shall invoice the referring school districts directly. For each student who is not a DUSD student enrolled at DCS, LIS shall pay DUSD a pro-rated amount of \$135 daily tuition rate, which equates to an annual amount of \$24,300. This amount will be calculated by the number days non-DUSD student is enrolled in the program.

2.9 Compliance with District Policy. LIS shall ensure that its staff complies with all DUSD policies and procedures pertaining to the use of the facilities and the use of equipment, including but not limited to all restrictions regarding use of the DUSD computers and other EIS systems.

III. DUSD RESPONSIBILITIES

3.1 ADM Count. The parties agree that DUSD shall be solely responsible for submitting an accurate student count to the Arizona Department of Education or purposes of calculated average daily membership as that term is currently defined under Arizona law for DUSD placed students.

3.2 Transportation. DUSD shall provide for the transportation of DUSD students and may do so pursuant to an agreement with an outside contractor.

3.3 Related Services. DUSD shall be responsible for the provision of related services to DUSD students, unless the Parties agree to have LIS provide related services to DUSD students who are placed in DCS. The parties shall execute a separate agreement in the event DUSD desires LIS to provide related services to DUSD students.

3.4 FAPE. DUSD shall be ultimately responsible for the provision of FAPE to DUSD students. Notwithstanding the foregoing, DUSD acknowledges that LIS shall be responsible for ensuring that its staff meets applicable performance standards as required by federal, state, and local requirements and follow the requirements contained in the Individualized Education Plans.

3.5 Reimbursement. DUSD shall compensate LIS within 30 days for the services provided under this agreement pursuant to the requirements in the Compensation section (Section V) of this Agreement.

3.6 Facility and Equipment. For the most efficient utilization of the ED-P Program and the Alternative Education Program, DUSD agrees to provide the following:

A. ED-P classroom(s) each with a capacity of 12 students. The parties shall jointly determine the number of classrooms necessary based upon enrollment and capacity. Each classroom shall be designed collaboratively by both parties and meet the specifications required by LIS to implement the educational program. In addition, each classroom shall be equipped by DUSD with the necessary desks, chairs, locking file cabinet, and four (4) computers for the students and two (2) computers for Staff Members.

B. Alternative Education classroom with a capacity for 14 students. Each classroom shall be designed collaboratively by both parties and meet the specifications required by LIS to implement the educational program. In addition, each classroom shall be equipped by DUSD with the necessary desks, chairs, locking file cabinet, and (4) computers for the students and one (1) computer for Staff Members.

C. LIS will provide DUSD with a list of facility specifications required to implement the program. All facility and classroom requirements need to be completed no less than 45 days prior to the start of the school year.

D. DUSD shall provide LIS administrative personnel with (2) office spaces, equipped with phones and one fax machine.

E. DUSD administrative staff shall be responsible for any facility related issues on each campus.

IV. THE EDUCATIONAL PROGRAM

4.1 Program. The educational program provided by LIS shall include a curriculum approved by the Arizona Department of Education and a structured behavioral/academic/therapeutic program. The program shall include behavior management services, the development and implementation of Individual Education Programs ("IEP"), and all reporting required by law. Special education services shall be provided to students in accordance with the students' IEP and/or 504 Plan.

4.2 Calendar. The educational program shall follow the school calendar of DUSD; the hours of the Educational Program operation shall be determined in relation to school hours at DUSD, and by the minimum requirements set forth by the State.

4.3 Implementation of IEP. Student IEP goals will be determined by the student's IEP team, and may include, but are not limited, to areas such as social skills development, problem solving and decision making, conflict resolution and behavioral contracting, academic goals, and other domains of learning deemed appropriate by the IEP team. The IEP team will consist of at least one staff member from DCS and one staff member from DUSD. In all cases, the IEP team shall include those individuals required by law to be present, unless the participation of that member is appropriately waived in accordance with applicable IDEA procedures relating to participation of meeting participants.

V. COMPENSATION

5.1 Compensation. In order to compensate LIS for the costs associated with the provision of the Special Education and Alternative Education Programs, DUSD shall provide payment to LIS as follows:

A. For the 5 ED-P Classrooms, DUSD shall be invoiced an amount equal to \$196,000 per classroom per year. This amount shall be payable in ten (10) monthly payments of \$19,600 per classroom.

B. For the 1 Alternative Education Classroom, DUSD shall be invoiced an amount equal to \$125,000 per classroom per year. This amount shall be payable in ten (10) monthly payments of \$12,500 per classroom.

C. LIS shall submit monthly invoices to DUSD based upon the number of classrooms contracted and agreed upon. LIS may credit amounts owed by DUSD based upon enrollment of non-DUSD students into DCS.

D. In the event that the Parties enter into an agreement for LIS to provide related services and/or Extended School Year services to DUSD students who are placed in the Educational Program, the Parties shall execute a separate agreement for these services.

5.2 Facility Use. DUSD will not otherwise charge LIS for the use of its facilities in exchange for the providing of the services as described in this Agreement to DUSD students. The parties recognize and agree that DUSD is receiving a substantially discounted rate from LIS for the provision of services to DUSD students in exchange for the use of DUSD facilities as specified herein.

VI. COMPLIANCE WITH APPLICABLE LAWS

6.1 FERPA. The parties, their employees and agents shall comply with applicable federal and state laws pertaining to the maintenance and disclosure of student records, including 20 U.S.C. §1232(g) of the Family Educational Rights and Privacy Act ("FERPA") and A.R.S. §15-141 and §15-142. The parties hereby designate their respective employees as "school officials" for the purposes of 34 C.F.R. § 99.31.

6.2 Non-Discrimination and Equal Opportunity. Both parties agree to comply with all applicable provisions of state and federal laws and regulations, including the Americans with Disabilities Act and Executive Order 99-4, which is incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunity.

6.3 Applicable Law. Both parties agree to comply with all applicable federal, state, and local laws governing the parties' obligations under this agreement.

VII. INSURANCE AND INDEMNIFICATION

7.1 Insurance. Each party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence, insuring against all liability of said party and its authorized representatives arising out of and in connection with said party's use or occupancy of the facilities. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under this Indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$2,000,000. Comprehensive general liability shall name the other party to this Agreement as an additional insured. All insurance policies shall provide that the policies cannot be cancelled, not renewed, nor limited in scope of coverage or limits until and unless thirty (30) calendar days prior notice is given to the other party. LIS shall provide proof of insurance to DUSD upon request.

7.2 Indemnification. To the extent permitted by law, each Party to this Agreement shall indemnify the other, its officers, directors, employees and representatives, against any and all liability, costs, damages, claims or demands including reasonable legal fees and expenses arising out of the negligent or willful act of the indemnifying Party, its agents or employees regarding duties and responsibilities pursuant to this agreement.

VIII. TERMINATION

8.1 Failure of Legislature to appropriate Funds. If DUSD's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then DUSD may provide written notice of this failure to the other Party and cancel this Agreement without further obligation. Appropriation is a legislative act and is beyond the control of DUSD.

8.2 With Cause. If either party refuses or fails to perform any of its obligations hereunder, the other party shall give written notice of such default. If the defaulting party fails or refuses to cure such default within forty five (45) days after notice is given, the other party may terminate this Agreement.

8.3 Mutual Agreement. The Agreement may be terminated prior to expiration of any term by mutual written agreement of the parties hereto, which agreement shall state the effective termination date and any other conditions of said termination.

8.4 Effect of Termination. Upon notice of termination from the DUSD to LIS, LIS shall:

- A. Stop work under the Agreement on the date and to the extent specified in the notice of termination;
- B. Place no further orders to subcontractors except as may be necessary for completion of the work not terminated;
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; and
- D. Be entitled to payment for all services rendered prior to the effective date of termination within thirty (30) days of the date of termination.

8.5 No Services After Termination. The parties further acknowledge and agree that in the event this agreement shall terminate prior to the completion of any students' assignment in the DCS Program, LIS shall be under no obligation to provide services with respect to such students beyond the termination date, or any extension thereof.

8.6 Disposition of Property upon Termination of Agreement. The parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement; however, to the extent such disposition is necessary, property shall be returned to its original owner.

IX. MISCELLANEOUS

9.1 Confidentiality. DUSD recognizes that LIS deems its policies, procedures, documents and other information provided to DUSD by LIS as "confidential" and DUSD agrees that, to the extent allowed by law, it shall not release or disclose the contents of any such policy, procedure, document or other information to third parties without the express written consent of LIS. DUSD acknowledges that LIS's policies, manuals, Software and Educational Software, expressly including its Academic and Behavior Management Model, are proprietary. Further, DUSD agrees that it shall not reveal any of LIS's trade secrets or misappropriate such for its own use.

9.2 Assignment. LIS reserves the right to subcontract any and all services that are the responsibilities of LIS other than classroom education and school management specified in this Agreement to DUSD and/or to public or private subcontractors, as permitted by law. This Agreement shall not be assigned in its entirety by either party without the prior written consent of the other party, provided that LIS may, without consent of DUSD, assign the contract to a wholly-owned subsidiary of LIS formed solely for the purpose of performing LIS's responsibilities under this Agreement.

9.3 Severability. If any provision, section, subsection, paragraph, sentence, clause or phrase of this Agreement, or the application of same to any person or set of circumstances, is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions continue in full force and effect.

9.4 No Joint Venture. This Agreement is not intended to and will not constitute, create, give

rise to, or otherwise recognize a joint venture, partnership or form a business association or organization of any kind between the parties, and the rights and the obligations of the parties will be only those expressly set forth in this Agreement. Except as otherwise provided by law, in the performance of duties and activities under this Agreement or related contracts, all Parties hereto will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party.

9.5 Third-Party Evaluation. If requested by either Party, both Parties agree to cooperate on any reasonable requests related to a third-party study of the effectiveness of the Programs. LIS shall bear the entire financial cost of the study. Upon request, LIS shall identify the vendor and submit to DUSD for their approval. Upon completion, both Parties agree to review the results collaboratively.

9.6 Force Majeure. Neither party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

9.7 No Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of any such breach.

9.8 Authorization of Agreement. Each party represents and warrants to the other that execution of this Agreement has been duly authorized and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms and in accordance with the laws of the State of Arizona.

9.9 Section Headings. The headings of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend or construe the terms or provisions of the sections of this Agreement.

9.10 Incorporation by Reference. This instrument, together with the instruments heretofore incorporated by reference, contains the entire Agreement between the parties relating to the rights herein granted and the obligation herein assumed, and supersedes all previous communications, representations or agreements, either written or oral, between them, and not incorporated herein. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration or modification is sought.

9.11 Governing Law. This Agreement shall be construed according to the laws of the State of Arizona. Jurisdiction and venue for any action brought under this Agreement lie exclusively in the State of Arizona. The parties irrevocably consent to the sole and exclusive jurisdiction and venue of the courts of Maricopa County, Arizona, for any action under this Contract.

9.12 Communication. In any case where any notice or other communication is required or permitted to be given hereunder, such notice or communication shall be in writing and (a) personally delivered, (b) sent by certified United States mail, postage prepaid, return receipt requested, (c) transmitted by telecopy (with confirmation of receipt received) or (d) sent by way of a recognized overnight courier service, postage prepaid, return receipt requested, with instructions to deliver on the next business day or (e) sent by electronic mail with return receipt request, in each case as follows:

(i) If to LIS, to:

Learn-It Systems, LLC
Attention: Don Scheeler, Executive Vice-President of LIS
3600 Clipper Mill Road, Suite 330
Baltimore, MD 21211

With a copy to:
Stephanie Suerth
Legal & Government Affairs Manager
3600 Clipper Mill Road, Suite 330
Baltimore, MD 21211

(ii) If to DUSD, to:

Dysart Unified School District #89
Attn: Dr. Gail Pletnick, Superintendent
15802 North Parkview Place
Surprise, Arizona 85374

All such notices or other communications shall be deemed to have been given or received (a) upon receipt if personally delivered, (b) on the fifth day following posting if by certified United States mail, (c) when sent if by confirmed telecopy or (d) on the next business day following deposit with an overnight courier if sent by an overnight courier or (e) electronic mail with return receipt request.

9.13 Immigration and Nationality. LIS hereby warrants, and represents, that it is in compliance with A.R.S. §§ 41- 4401 and 23-214, the Federal Immigration and Nationality Act (MIA), and all other federal immigration laws and regulations.

9.14 Fingerprinting. The parties shall comply with the fingerprinting requirements of A.R.S. § 15- 512 unless otherwise exempted.

9.15 Additional Classrooms. In the event the District expresses a need for additional classrooms, each specific classroom will be billed at the rate as outlined in the Compensation section (Section V). Each additional classroom will be subject to the terms and conditions of this Agreement.

9.16 Cancellation. The District reserves all rights that it may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511, as amended.

9.17 Non-Discrimination. The parties agree to comply with all provisions of applicable federal, state and local laws relating to non-discrimination, equal employment opportunity, the Americans with Disabilities Act, and Arizona Governor's Executive Order 2009-09 (superseding Executive Order 99-4) (dated January 29, 1999), as may be amended from time to time.

This Agreement shall become effective as of the date the Parties have signed the agreement in the spaces provided below.

Learn-It Systems, LLC

By: _____

Name: _____

Title: _____

Date: _____, 2014

Dysart Unified School District, #89

By: _____

Name: Stephen Poling _____

Title: Assistant Superintendent – Academic Services

Date: _____, 2014