

Stanwood Camano School District #401

26920 Pioneer Hwy.
Stanwood, WA 98292-9548
360-629-1200
www.stanwood.wednet

INSTRUCTIONAL SERVICES

Lloy Schaaf

Assistant Superintendent of Teaching and Learning

MEMORANDUM

To: Stanwood-Camano School Board of Directors

Fr: Lloy Schaaf, Ed.D.

Re: Agile Minds contract

Date: February 20, 2018

Attached, please find the Agile Minds contract for materials and professional development in the amount of \$82,800. This grant will extend over a two-year period. We will be able to reapply at the end of two years for additional funding to support the program.

Recommendation: That the Board approve contract for Agile Minds.

/th

LICENSE AGREEMENT

This License Agreement (this "Agreement") is entered into as of February 1, 2018 between Stanwood-Camano School District 401 ("District") and Agile Mind Educational Holdings, Inc. ("Agile Mind"). This Agreement describes the terms and conditions under which District has agreed to license from Agile Mind certain computer-based on-line learning programs, tools, and services of Agile Mind that the company makes available via access to Agile Mind's Internet servers ("Services").

1. PURCHASE OF SERVICES; PRICE

- a. District agrees to license the proprietary software programs (the "Licensed Course Programs") specified below for the specified number of students, teachers, and campuses for the following fees during the term of this Agreement for the following fee: \$82,800 (total for four (4) years).

Program includes:

- Stanwood High School
 - Intensified Algebra – 3 teachers and 70 students
 - 3 days of school based advisor visits (professional development)
 - Includes 2.5 day Summer Institute for teachers and leaders
 - Educator AYD – 24 educators

- b. Subject to the terms and conditions of this Agreement, Agile Mind grants to District a limited, non-exclusive license to use the Licensed Course Programs as specified in paragraph 1.a. during the term of this Agreement. Use of the Licensed Course Programs includes access to and use of materials on portions of the Agile Mind Web site for those Licensed Course Programs ("Web site") (including use of materials available for printing on the Web site). District will be permitted to use (and may use) the Licensed Course Programs only for the number of students and teachers and only for the campuses and subjects specified in paragraph 1.a., except that (i) parents of the authorized students may use the Licensed Course Programs to assist the students and (ii) school administrators at the campuses may use the Licensed Course Programs to perform their administrator job responsibilities. As part of these conditions, District agrees that District will not, and will not authorize students or teachers (or parents or administrators) to:
 - Print or make additional photocopies or electronic copies of Web site or printed pages for anyone, including students or teachers, unless those copies are for and essential to the instructional progress of a teacher or student licensed to use the Licensed Course Programs,
 - Download, distribute or otherwise make available any part of any Agile Mind Web site, except for the downloading and printing of authorized materials for use by the authorized teachers and students (and the parents and administrators) as described in paragraph 1.a., or
 - Share or distribute passwords or access codes.

- c. District may use the Web site, and any materials available on or printed from the Web site only as expressly permitted in this Agreement.

- d. This Agreement (and District's license to the Licensed Course Programs) shall terminate on June 30, 2022 provided that on July 1, 2022 and each successive July 1 thereafter, the License Agreement shall renew for a successive additional one-year period upon approval of both parties.

- e. District will remit the fees specified above directly to Porter Capital Corporation (For Account of Agile Mind Educational Holdings, Inc., PO Box 12105, Birmingham, AL 35202) or such other designee as indicated by Agile Mind from time to time. In addition, District will pay any sales, use and similar taxes relating to the Services. Proof of exemption from those taxes must be on file with

Agile Mind for any order to be treated as exempt from those taxes. District will pay the fees and taxes within Thirty (30) days from the date of invoice.

- \$47,400 due February 28, 2018 or upon receipt of grant funding
- \$17,700 due February 28, 2020 or upon receipt of grant funding
- \$17,700 due February 28, 2021 or upon receipt of grant funding

2. RETENTION OF RIGHTS

The Licensed Course Programs, together with the Web site and the software, content, data, and other materials used or made available by Agile Mind in providing the Licenses and any information in or derived from the foregoing (collectively, "Related Materials"), are proprietary and confidential to Agile Mind. District, including its teachers and students (together with the students' parents and administrators), may use (and agrees to use) the Licensed Course Programs and Related Materials only as specified in this Agreement, and agrees not to make any other use or any disclosure of the Licensed Course Programs or Related Materials. As part of this obligation, District may not modify, redistribute, sell, decompile or reverse engineer the Related Materials, or otherwise reduce any portion of the software included in the Related Materials to a human-perceivable form or seek to derive or use any algorithms, concepts, techniques, processes or methods embodied in the software. Agile Mind retains all rights as to the Licensed Course Programs and Related Materials (including copyright, trade secret, trademark and other intellectual property rights), and any implied rights are excluded and disclaimed.

3. AUTHORIZATIONS

Agile Mind represents and warrants that it is authorized to execute and perform this Agreement and that the individual signing for Agile Mind is authorized to sign on behalf of Agile Mind. District represents and warrants that it is authorized to execute and perform this Agreement and that the individual signing for District is authorized to sign on behalf of District.

4. INDEMNIFICATION

District acknowledges that it is responsible for the use of the Licensed Course Programs and Related Materials by District and its teachers and students (together with the students' parents and administrators), including compliance with District's own policies and procedures relating to the Internet. To the extent permitted by applicable law, District agrees to indemnify, hold harmless and (at Agile Mind's request) defend Agile Mind from any cause of action or other claim that arises from such use of the Licensed Course Programs and Related Materials.

5. CONFIDENTIALITY

Neither party shall disclose this Agreement or any of its terms and conditions to any third party without prior written notice to the other party, except to the extent a party is obligated by law or by a court of competent jurisdiction to make a disclosure, provided that the party subject to the obligation to disclose promptly notifies the other party and reasonably cooperates with the other party to limit the disclosure and use of the Agreement or its terms and conditions. In addition, a party may disclose this Agreement or its terms and conditions to actual or potential acquirers of, investors in, or sources of financing for all or any part of the party.

6. WARRANTY DISCLAIMER

Agile Mind will use commercially reasonable efforts to have the Licensed Course Programs licensed by District conform in all material respects to the functional description of the Licensed Course Programs on the Web site from which the Licensed Course Programs are provided. The Licensed Course Programs and Related Materials are otherwise provided "as is." AGILE MIND DISCLAIMS ANY WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

7. LIMITATION OF LIABILITY

Neither Agile Mind nor any licensor, content provider, supplier, service provider, trainer, consultant or other third party associated with Agile Mind will be liable (under any legal theory), for damages or otherwise, in an amount that exceeds the payments actually made by District to Agile Mind under this Agreement. In any event, neither Agile Mind nor any such associated third party will be liable for incidental, consequential, indirect, special or other non-direct damages, or any lost profits or revenue, in connection with the Services or this Agreement.

8. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement relating to the subject matter hereof, superseding any earlier or contemporaneous understandings, covenants, conditions, representations, warranties, or other agreements (oral, written or otherwise). Each party acknowledges that it is not relying on any understandings, covenants, conditions, representations, warranties, or agreements other than as expressly set forth in this Agreement. Any modifications or amendments to this Agreement must be in writing signed by a duly authorized agent or representative of Agile Mind and District. As part of the foregoing, any contrary, inconsistent, or additional terms incorporated in any purchase order or other documents will not supersede the terms and conditions of this Agreement.

9. TERMINATION OF AGREEMENT

Either party may terminate this Agreement, with or without cause, in accordance with Section 1.d above. Sections 2 and 4-12 will survive expiration or termination of this Agreement. Termination or expiration will not affect Agile Mind's right to payment for (and District will pay) fees and other amounts, including fees for the Services.

10. NON-ASSIGNMENT OF AGREEMENT

District may not (and shall not) assign or otherwise transfer this Agreement or any right under this Agreement or grant any sublicense of any right under this Agreement. Any attempted assignment, transfer, or sublicense shall be void. Agile Mind may assign or otherwise transfer this Agreement but only as part of a merger, asset sale or other transfer involving the portion of Agile Mind's business to which this Agreement relates.

11. GOVERNING LAW

This Agreement shall be construed and enforced in accordance with the State of Washington. Any action or proceeding brought by either party against the other arising out of or relating to this Agreement shall be brought only in a state or federal court of competent jurisdiction in the State of Washington.

12. NOTICES

All notices and other communications required or permitted under this Agreement shall be served in person, by US Mail, or Federal Express or equivalent carrier at the following address:

If to Agile Mind:

Agile Mind Educational Holdings, Inc.
1705 W. Northwest Hwy
Suite 160
Grapevine, TX 76051
ATTN: Laurie Mayhan
866-284-4655
Fax: 817-442-8351

lmayhan@agilemind.com

If to District:

School or District Name: _____
ATTN: _____
Street: _____
City/State/Zip: _____

ACKNOWLEDGED AND AGREED:

Agile Mind Educational Holdings, Inc.

District:



Signature

Signature

Neil Read

Print Name

Print Name

Controller

Title

Title

Phone

E-Mail

Additional Information Requested:

| District or Campus Project Director | |
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| Designated person(s) who will serve as the principal or sole contact and coordinator for Agile Mind at the district and/or campus level. Agile Mind team members will work directly with the project director during the implementation and enactment of Agile Mind. | |
| Name | Dr. LLOY SCHAAF |
| Title | Assistant Superintendent |
| Phone | 360-629-1237 |
| Email | lschaaf@stanwood.wednet.edu |

| District or Campus Technology Contact | |
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| Designated person(s) who will serve as the technology contact(s) at the district and/or campus level. Agile Mind team members will work directly with the technologist to ensure that district office and participating campus sites have the required technology infrastructure in place in order to successfully use Agile Mind. | |
| Name | Mr. Dan Johnston |
| Title | Director of Assessment & Technology |
| Phone | 360-629-1200 |
| Email | djohnston@stanwood.wednet.edu |

| District or Campus Billing Contact | |
|---|------------------------------|
| Designated person(s) who will serve as the billing contact(s) at the district and/or campus level. Agile Mind will send all invoice and billing information to this contact(s). | |
| Name | Lisa Beckett |
| Title | Fiscal Supervisor |
| Phone | 360-629-1200 |
| Email | lbeckett@stanwood.wednet.edu |