



May 12, 2014

Ann Sexton
Director of Schools
Oneida Special School District
195 N. Bank Street
Oneida, TN 37841

RE: Contract between Oneida Special School District and GCA Education Services, Inc.

Dear Ms. Sexton:

Enclosed is a copy of the Contract between Oneida Special School District and GCA Education Services, Inc. has been executed by Buddy Helton, GCA - President Education Division. I can be reached at (865) 824-1429, if you have any questions.

We look forward to serving your facilities' needs.

Sincerely,

A handwritten signature in black ink that reads "Karen A. Cooke". The signature is written in a cursive style with a large, looping initial "K".

Karen A. Cooke
Contract Administrator

/kac

Encl.



SERVICE AGREEMENT

AGREEMENT dated April 8, 2014 by and between **Oneida Special School District** (hereinafter referred to as "Customer") and **GCA Education Services, Inc.** (hereinafter referred to as "GCA").

RECITALS

Based upon its extensive experience in the field, GCA is prepared to and desires to provide certain services to Customer as set forth herein.

Customer desires to contract with GCA for the performance of these services to be performed on Customer's premises.

NOW, THEREFORE, in consideration of the mutual promises and understandings set forth below, the parties hereto agree as follows:

AGREEMENT

1. Services to be Provided: GCA will provide services (hereinafter referred to as "Services") for Customer according to the specifications set forth in Attachment A at Customer's facility specified below ("Facility"):

Oneida Elementary School, 330 Claude Perry Drive, Oneida, TN 37841

Oneida Middle School, 376 Main St, Oneida, TN 37841

Oneida High School, 372 Main St. Oneida, TN 37841

In performing such Services, GCA will do the following:

- A. Furnish a management team to ensure the Services are accomplished in accordance with the terms and conditions set forth herein.
- B. Furnish, train, manage and direct all GCA employees in the performance of Services. Customer shall have the right, upon written notice to GCA, to require the replacement of any GCA employee employed at the Facility whose continued presence, in the opinion of Customer, is not in the best interest of Customer, its employees or its students, provided such replacement shall not contravene any local, State or Federal law. GCA will take all measures required by law to assure all GCA employees who provide services under this Agreement shall comply with all applicable laws, ordinances, rules and regulations in the performance of Services provided under this Agreement, including but not limited to, all applicable Customer policies and procedures, rules and regulations in effect at the time, all laws governing appropriate visa and work authorization, any and all applicable Customer policies regarding background information, pre-employment testing and any other applicable requirements deemed appropriate by Customer. Customer shall provide all such policies and requirements to GCA prior to the commencement of this Agreement.
- C. Provide additional services (non-repetitive in nature) similar to, but not included in, the Services from time to time as agreed by the parties ("Additional Services").

2. Costs to be Paid by GCA: The following costs will be paid by GCA:

- A. All wages and salaries, including regular pay and, to the extent applicable, vacation pay, sick pay, bereavement pay and legal holiday pay for GCA's employees working at Facility.

- B. The cost of social security taxes, State and Federal unemployment insurance premiums, general liability and umbrella insurance premiums, and workers' compensation premiums, and, to the extent applicable, medical, life, and dental insurance premiums (if any), other applicable fringe benefits, related administrative costs and payroll-based Federal, State and local taxes payable on behalf of GCA's employees working at Facility. GCA shall indemnify and hold harmless Customer from any claim for payment of such items relating to wages and/or salaries paid by GCA under this Agreement.
- C. The cost of all janitorial supplies and minor janitorial equipment.
- D. The cost of all restroom and other supplies (including paper, plastic and other miscellaneous consumables).
- E. The cost of a personal computer and printer for GCA's office at Customer's Facility.
- F. The cost of any required uniforms for GCA's employees.
- G. The cost of manuals, forms, training aids, office supplies, and long-distance telephone calls needed in performing the Services.
- H. The cost of GCA's supporting operations management, human resources, accounting, legal, training and development and general administrative functions.
- I. The cost of purchasing and/or leasing supplementary janitorial equipment.
- J. The cost of any pre-employment testing for GCA employees as required by Customer policies and procedures in effect as of the date of this Agreement and applicable law.
- K. All other costs, other than those to be paid by Customer pursuant to Section 3. A-D below, relating to the performance of GCA obligations under this Agreement.

3. Costs to be Paid by Customer: The following costs will be paid by Customer:

- A. The costs of utilities and electric power used by GCA to accomplish the Services.
- B. The provision of a suitable office, office furnishings and secure equipment storage space at Customer's facility.
- C. The cost of all waste removal and disposal from Customer's facility. The cost of waste containers, compactors, bins, cans, bailers, shredders, dumpsters and related receptacles used to temporarily store or process waste at Customer's facility.
- D. The cost of copier use, internal Customer e-mail use, local telephone service and internal Customer telephone service.

4. Payments to GCA by Customer: In consideration of GCA's performance of its obligations under this

Agreement, Customer shall make payments to GCA as described below:

- A. Contract Price: The contract price for the first year and for each subsequent year of the Initial Term shall be Three Hundred Thirty Three Thousand Dollars and no cents (\$333,000.00), unless adjusted in accordance with Subsection 4 (C) below ("Contract Price"). The Contract Price shall be paid in twelve (12) equal monthly installments ("Monthly Payments") of Twenty Seven Thousand Seven Hundred Fifty Dollars and no cents (\$27,750.00), which will be billed at the beginning of the month in which the Services are to be rendered. Additional Services will be invoiced at the beginning of each month for such Services provided during the prior month. In the event that any applicable sales taxes or value-added taxes have not been included in the Contract Price and/or Monthly Payments, Customer acknowledges and agrees to pay all such taxes based on rates imposed by the applicable government authority.
- B. Payment Terms: The Monthly Payments and payments for Additional Services shall be either (i) hand delivered to GCA's Site Manager (or another nominee of GCA) from an authorized employee of Customer; (ii) made by electronic transfer to the GCA's designated bank account or (iii) delivered to an address provided by GCA. The first such Monthly Payment shall be made by the end of the month in which this Agreement commences and each subsequent Monthly Payment shall be made by the later of (i) fifteen (15) days from the date of invoice for such Monthly Payment or (ii) the last day of the month to which each such Monthly Payment applies. Each payment for Additional Services will be made no later than net 15 days from date of invoice.
- C. Contract Price Adjustments: The Contract Price shall be adjusted as follows:
- i. Annual CPI Adjustment: At the end of each twelve (12) month period during the Term, the Contract Price shall be increased by the greater of: (a) two (2) percent, or (b) a percentage equal to the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) during the twelve (12) month period immediately prior to the first day of the then current annual period; provided, however, that the percentage of increase in the Contract Price determined under this clause (b) shall never exceed five percent (5%) in any twelve (12)-month period.
 - ii. Changes in Taxes, Minimum Wage Rate or Other Employee Costs: In the event of a change in social security taxes or the Federal or State unemployment taxes, or the imposition of new Federal, State or local payroll taxes or government mandated healthcare costs applicable to any of GCA's employees, the Contract Price shall be changed by the actual change in costs to GCA. In the event of a change in the Federal, State or local minimum wage rates applicable to any of GCA's employees, the labor cost portion of the Contract Price shall be changed by the percentage increase in the minimum wage rates. Any such changes shall be effective from the date such cost changes went into effect.
 - iii. Collective Bargaining: In the event of any increases in wages for GCA's employees providing the Services as a result of any collective bargaining by such employees or contained in any collective bargaining agreement governing such employees, the Contract Price shall be changed by the projected change in costs to GCA from the date of such change in wages and/or benefits. However, in the event Customer does not agree to such change in wages and/or benefits, Customer may cancel this Agreement upon thirty (30) days notice to GCA.
 - iv. Change in Services: Should Customer request a change in Services for reason of opening

new units or buildings or permanent closings of units or buildings or a change tasks or frequencies to be performed or a significant change in the activity or use of Customer's Facility, and should such change result in a change of costs to GCA, Customer and GCA shall negotiate the new Contract Price of these changes and the Monthly Payments shall be changed accordingly, such changes taking effect from the date of the change in Services.

v. Slow Payment: In the event that Customer does not make payments on or before the dates due under this Agreement, Customer shall pay interest at the rate of one and one-half percent (1.5%) per month (provided that if such rate exceeds the maximum permitted by law, then at the highest lawful rate) on overdue, undisputed amounts and unless all undisputed overdue amounts are paid, GCA may, at its option, terminate this Agreement at any time after giving thirty (30) days' prior written notice to Customer unless all overdue amounts are paid on or before the end of the notice period.

5. Term and Termination of Agreement:

- A. Initial Term: The term of this Agreement shall commence on the 1st day of June, 2014 and shall continue until June 30, 2015 ("Initial Term"). Thereafter, this Agreement will automatically renew on an annual basis ("Renewal Term") unless either party provides written notice at least ninety (90) days prior to the expiration date of the Initial Term or any Renewal Term, as the case may be, to the other party of its election not to renew the Agreement.
- B. Termination for Unsatisfactory Service: If, in the sole reasonable opinion of Customer, GCA is not performing the Services in accordance with the requirements of this Agreement, and Customer desires to terminate this Agreement, Customer must give GCA thirty (30) days written notice of its intention to terminate this Agreement if such service deficiencies are not corrected within that time (the "Cure Period"), which notice shall specify the service areas in question. On or before the end of the thirty (30) day Cure Period, Customer shall reasonably determine that either (i) the service deficiencies have been corrected, in which case the Agreement will continue in full force and effect subsequent to the Cure Period, or (ii) the service deficiencies have not been corrected, in which event Customer may, by further written notice, terminate this Agreement sixty (60) days from the end of the Cure Period. In the event that Customer does not act pursuant to either (i) or (ii) above, the service deficiencies shall be deemed corrected and the Agreement shall continue in full force and effect thereafter.
- C. Termination for Material Change in Financial Condition: In the event a petition in bankruptcy is filed by or against either party which is not dismissed within 30 days thereafter, or if either party shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statutes, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, then the other party may immediately terminate this Agreement in whole or in part.
- D. Termination for Convenience: Either party may, without cause and for any reason, terminate this Agreement at any time upon giving sixty (60) days written notice to the other party.

E. Equipment: In the event of termination of this Agreement by either party for any reason, Customer shall purchase all janitorial equipment and computer hardware owned by GCA and located at Customer's Facility and used to provide the Services at Customer's Facility under this Agreement, at Book Value, defined as the purchase price plus sales tax and freight charges, depreciated on a straight-line basis over three (3) years for vacuum cleaners and over five (5) years for all other janitorial and computer equipment.

6. Insurance:

A. Insurance to be carried by GCA: GCA shall procure and maintain during the term of this Agreement, at GCA's sole expense, the following insurance:

- i. Worker's Compensation and Employer's Liability Insurance covering obligations imposed by federal and state statutes with jurisdiction over GCA's employees, and otherwise having limits of \$1,000,000.
- ii. Property Insurance covering GCA's equipment and other personal property now or hereafter located on Customer's Facility against "All Risk" of Loss within an amount at least equal to replacement value. "All Risk" shall mean at a minimum coverage for Special Causes of Loss perils.
- iii. Commercial General Liability Insurance providing coverage for GCA's operations with minimum limits of liability shown below:

Limits:

Each Occurrence	\$1,000,000
General Aggregate:	\$10,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Automobile Liability	\$1,000,000

- iv. Umbrella Liability Insurance providing excess coverage over the underlying Commercial General Liability, Automobile Liability and Employers Liability policies with a limit of at least \$10,000,000 per occurrence/aggregate.
- v. Employee Theft Coverage for the acts of GCA's employees with limits of at least \$2,000,000.

GCA shall, at Customer's request, furnish a Certificate of Insurance to Customer clearly evidencing the above coverage.

B. Waiver of Rights of Recovery and Waiver of Rights of Subrogation. Customer and GCA waive all rights of recovery against the other for loss or damage to the extent paid by any insurance maintained by Customer or GCA.

7. Indemnification: GCA agrees to indemnify, hold harmless and defend Customer, its officers, employees, and directors from and against any and all liability for loss, damage or expense for which Customer may be held liable by reason of any claims, costs, expenses, suits, losses or liabilities, including but not limited to injury (including death) to any person or damage to any property which arises or results from GCA's negligent

or intentional acts or omissions arising out of or connected with the Services, except to the extent due to any act or omission of Customer or any of its employees, subcontractors or agents. Pursuant to applicable state law, Customer agrees to indemnify, hold harmless and defend GCA and its officers, employees and directors from and against any and all liability for loss, damage or expense for which GCA may be held liable by reason of injury (including death) to any person or damage to any property which arises or results from Customer's negligent or intentional acts or omissions, except to the extent due to any act or omission of GCA or any of its employees, subcontractors or agents. A party seeking indemnity for any third party claim must promptly notify the other party after becoming aware of any such claim in order to be indemnified for such claim.

8. Force Majeure: Neither party shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or unavoidable accident, civil disorder or disturbance, strikes, vandalism, war, riot, sabotage, weather or energy related closings, or like causes beyond the reasonable control and without the fault or negligence of such party, or for real or personal property destroyed or damaged due to such causes.

9. Ancillary Commitments and Responsibilities:

- A. **Joint Review Committee.** A Joint Review Committee shall be formed and comprised of at least three (3) persons from Customer and three (3) persons from GCA. The purpose of the Committee will be to review the performance by GCA of the Services and facilitate regular communication between Customer and GCA regarding the Services. This Committee shall hold its first meeting not later than thirty (30) days from the commencement of this Agreement and thereafter shall have regular quarterly meetings.
- B. **Confidential and Proprietary Information:** Customer may provide GCA and its employees/agents with access to proprietary and confidential business, financial and technical information (hereinafter "Confidential Information") as deemed reasonably necessary by Customer for GCA to carry out its obligations under this Agreement. GCA agrees, on behalf of its officers, agents, directors and employees, to hold in strictest confidence all such Confidential Information that is provided by Customer or that GCA becomes aware of as a result of the Services provided under this Agreement. GCA further agrees that any and all Confidential Information provided to GCA by Customer under this Agreement, as well as any documents or data prepared by GCA which reflect such Confidential Information, shall remain the sole property of Customer and cannot be used by GCA for any activity outside of this Agreement, except with the express written consent of Customer. GCA further agrees that it shall not disclose, transfer, self-publish or otherwise make to any other person or entity any such Confidential Information without the prior written consent of Customer, except as required by law.
- C. **Independent Contractor:** The parties agree that in all aspects their relationship will be that of an independent contractor, and that neither party will act or represent that it is acting as an agent or incur any obligation on the part of the other party.
- D. **Employment Commitment:** GCA and Customer agree that at no time during the term of this Agreement, and for a period of one (1) year immediately following the termination or expiration of this Agreement, will either in any way directly or indirectly, for themselves or on behalf of, or in conjunction with any other person, firm, partnership, corporation or association, approach, solicit, hire, employ or take away any of the other's management personnel, or otherwise interfere with the contractual relationship or employment of the other's management personnel. For purposes of this Section, "management personnel" shall include the following position titles of Customer:

Oneida Special School District; and the following position titles of GCA: Site Manager, Assistant Site Manager, Administrative Assistant, Area Manager, Regional Manager, Regional Vice President and Sales Director.

- E. Non-Discrimination: GCA agrees that it is an equal opportunity employer and it shall not discriminate against any of its employees or applicants for employment on the basis of race, color, creed, sex, national origin, age or any other protected factor.
- F. Affordable Care Act Compliance: Customer and GCA acknowledge, represent and warrant that they are aware of and understand the Patient Protection and Affordable Care Act (“PPACA”) enacted on March 23, 2010 and if applicable, will comply.
- G. GCA shall screen its employees to insure that all personnel on Customer’s premises shall be appropriate personnel for work on school premises and that none of the employees are barred by law or order of any court from being in the presence of school age children.

10. Miscellaneous Provisions:

- A. Severability: If any provision of this Agreement is held invalid for any reason, the other provisions of this Agreement will remain in effect, insofar as consistent with law.
- B. Interpretation and Applicable Law: This Agreement has been negotiated at arm’s length between the parties hereto, both of which are sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require ambiguities in this Agreement to be interpreted against the party that drafted it are not applicable and are hereby waived. This Agreement shall be subject to, and enforceable under, the laws of the State of Tennessee and any dispute arising out of this Agreement shall be submitted to a court of competent jurisdiction in such State and the governing law shall be the law of the State of Tennessee. GCA and Customer agree that attorney’s fees and costs shall be awarded to the prevailing party in any dispute arising out of this Agreement.
- C. Limitation of Liability: Notwithstanding anything to the contrary contained in this Agreement, in no event shall either party be liable to the other for any of the following: (i) indirect damages, punitive damages, incidental damages, or consequential damages including without limitation lost profits, opportunity, use, or savings, or injury to business goodwill or reputation
- D. Binding: This Agreement shall inure to and bind all parties, their successors, assigns, agents or representatives.
- E. Waiver:
 - a. No Waiver in Failure to Exercise Right: No failure to exercise and no delay in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any further exercise of the same or any other right, power or privilege hereunder.
 - b. No Oral Waiver: No oral waiver of any provision of this Agreement shall be effective unless made in writing and signed by the party to be bound.

- F. Survival: The indemnification provision in Section 7 and each representation, covenant and warranty of the parties shall survive the termination or expiration of this Agreement for a period of one year.
- G. Authorization: GCA and Customer represent and warrant that each has full corporate power to make, execute and deliver this Agreement; and neither the execution nor delivery of this Agreement nor the consummation of any transaction contemplated hereby has constituted or resulted in, or will constitute or result in, a default or violation of any term or provision of any document or instrument to which GCA or Customer is a party or by which their respective assets are bound.
- H. Entire Agreement: This Agreement contains the entire agreement between the parties. All prior negotiations between the parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated or referred to herein. This Agreement may not be modified except by an instrument in writing signed by both parties. This Agreement may not be assigned by either party without the written consent of the other party. Consent to an assignment to a wholly owned subsidiary or affiliate of the assignor shall not be unreasonably withheld.
- I. Headings: The headings of the sections or Sections herein are for convenience only and shall not restrict or affect the meaning or application of any provision.
- J. Notices: All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by courier, registered or certified mail, return receipt requested, properly addressed and postage prepaid, or by overnight mail by a reputable carrier, and addressed as follows:

TO GCA: Mr. Charlie Spencer
Senior Vice President, Operations
GCA Education Services, Inc.
4702 Western Ave., Ste 101
Knoxville, TN 37921

And copy to: **GCA Education Services**
1350 Euclid Avenue, Suite 1500
Cleveland, Ohio 44115
Attention: Legal Dept.

TO Customer: Ms. Ann Sexton, Director
Oneida Special School District
P.O. Box 4819
Oneida, TN 37841

or at any other address as may be given by either party to the other by notice in writing pursuant to the provisions of this Section.

11. Execution of Contract: The parties to this Agreement have executed this Agreement as of the day and year first written above.

GCA Education Services, Inc.

By Buddy Helton

Name Buddy Helton

Title President - Education Division

Date 5-12-14

Oneida Special School District

By Ann Sexton

Name Ann Sexton

Title Director of Schools

Date 5/8/2014