

COOPERATIVE 28E AGREEMENT
FOR
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM
FOR FOUR-YEAR-OLD CHILDREN
(In collaboration with the Cedar Falls Community School District)

THIS COOPERATIVE 28E AGREEMENT ("Agreement"), dated as of the 22nd day of March, 2022, is by and between the Cedar Falls Community School District, an Iowa public school district with administrative offices located in Cedar Falls, Black Hawk County, Iowa (hereinafter the "School District") and the Orchard Hill Church Preschool an Iowa non-profit corporation with administrative offices located in Cedar Falls, Black Hawk County, Iowa (hereinafter the "Preschool").

RECITALS:

The parties desire to collaborate and provide high quality preschool programming at a reasonable cost at the Preschool's site in Cedar Falls in accordance with all requirements of the Statewide Voluntary Preschool Program for Four-Year-Old Children as set forth in chapter 256C of the *Code of Iowa* (the "Act") and in accordance with the rules of the Iowa Department of Education and the approved application of the School District (the "Program").

Chapter 28E of the *Code of Iowa* authorizes public school corporations and private agencies to enter into agreements for cooperative actions. Such an agreement is required for the cooperative provision of preschool programs under the Act.

The School District and Preschool agree to carry out certain duties and responsibilities as outlined herein regarding the funding, operation, and management of the Statewide Voluntary Preschool Program for Four-Year-Old Children for the 2022-2023 school year.

Therefore, in consideration of the mutual promises contained in this Agreement, the School District and the Preschool agree as follows:

1. Scope of Services and Duties.

1.1 The Preschool. In accordance with the Act and the rules of the Iowa Department of Education, the Preschool agrees to provide and maintain (a) the necessary sites, buildings, playgrounds, utilities, capital improvements, and furniture and equipment for the operation of the Program which meet all federal, state and local requirements at its location in Cedar Falls, Iowa or at such other location as agreed to by the School District; (b) custodial, maintenance and repair services for the sites and equipment, including trash and snow removal; (c) healthy snacks and beverages for the children in the Program consistent with Program standards; (d) researched-based or evidence-based curriculum and assessment; (e) instruction and instructional materials consistent with Program standards and Iowa

Early Learning Standards and that which are secular, non-religious and non-ideological in nature except as otherwise provided in this Agreement; (f) at least one (1) qualified teacher meeting licensure requirements of the Act during instructional time and qualified teacher associates, as necessary, to keep the ratio at no more than ten (10) children per adult at all times; (g) professional development to all instructional employees as required by the Act; and (h) personnel to answer the telephone, attend to health and other emergencies, and to keep accurate records.

The Preschool shall also employ and appoint a director who is acceptable to the School District who is to be assigned to the Program and who shall collaborate with the School District and other Program providers. The director shall be on site during Program sessions. Program sessions shall consist of a minimum of ten (10) hours per week of intentional, direct instruction (excluding recess). A session must meet a minimum of two (2) times per week.

The Preschool shall be responsible for insuring that it has obtained and maintains all necessary licenses and permits and is operated in compliance with all state and local laws and regulations. The Preschool Program standards shall comply with the characteristics and/or quality of early childhood settings, centers and schools approved by the Iowa Department of Education. The Preschool shall provide instruction on the skills and knowledge included in the Iowa Early Learning Standards.

The Preschool shall provide ongoing and systemic assessments including formal and informal approaches to gain insight and information on student learning and development. Assessments shall occur within the context of ongoing communication with families and shall demonstrate cultural sensitivity. Individual programming and assessment shall occur for children with special needs through adaptations to the curriculum to address IEP goals.

1.2 School District. The School District agrees to provide (a) instructional materials at its discretion, which materials shall remain the property of the School District and shall be properly cared for at the Program site and (b) assistance with professional training and staff development for the teacher and teacher associates in early childhood education as mutually agreed to by the Preschool and the School District.

Unless required by a student's individual education plan (IEP), no student transportation will be provided by the District.

The School District shall hold periodic meetings with the Preschool and other preschool partners throughout the school year in order to plan, expand the program, and meet the needs of the community. Any problems that arise throughout the year shall be directly communicated between the School District and Preschool or other agency partners in order to best solve the matter.

1.3 Enrollment. The Preschool agrees to enroll up to twenty (20) eligible children per session in the Program. The Preschool agrees not to charge tuition or fees for the portion of the day deemed to be provided under the Program for any eligible four-year-old students enrolled in the Program. To insure equity for children among various preschool providers, the School District may assign children to enroll at the Preschool. If a student is dropped from the Program, the Preschool agrees to accept the next child on the waiting list.

The Preschool shall provide the School District with actual enrollment data on the date qualifying as the official head count date by the Iowa Department of Education. In the event that a student that was included in the official “head count” date enrollment at the Preschool is re-assigned or transfers to another preschool or the School District, the per pupil funding will follow the student. The two (2) effected providers will be required to adjust their budgets to reallocate the remaining school year funding for this student to the other preschool or the School District. The original preschool of enrollment shall reduce their budget and eligible Maximum Annual Reimbursement by the remaining funding for the student. The new preschool or School District shall increase their budget and eligible Maximum Annual Reimbursement by the remaining funding for the student. Budget adjustments will be completed and submitted to the School District within thirty (30) days of transfer.

The Preschool agrees not to discriminate against any enrollee on the basis of race, color, religion, creed, national origin, disability, sex, sexual orientation, gender identity, or familial status. The Preschool also agrees to comply with the School District’s policy and rules on preventing and eradicating bullying or harassment of students.

1.4 Personnel. The staff and personnel necessary for the operation of the Program (including substitute teachers/associates as needed to cover staff absences) shall be recruited, retained or employed, compensated, trained, evaluated, supervised, disciplined, and discharged by the Preschool. To the extent that staff and personnel of the Preschool are providing services under the Program and this Agreement, such staff and personnel shall perform the services outside their regular hours of duty with the Preschool and shall perform the services under public supervision and control. All employees shall have criminal background checks, and child and dependent adult abuse and sexual registry background checks in accordance with School District procedures prior to performing services in the Program. The Preschool agrees to make such records for its employees available to the School District for inspection upon request. The Preschool and the School District agree to cooperate with each other in the investigation of any allegation of physical or sexual abuse by an employee of a child attending the Program.

The Preschool agrees not to discriminate on the basis of race, color, religion, creed, national origin, age, disability, sex, sexual orientation, gender identity, political party affiliation, or marital or parental status in the hiring or employment of personnel.

Any School District employees providing services under this Agreement shall be required to abide by reasonable rules and regulations of the preschool relating to use of Preschool's premises, including the wearing of identification badges as provided by the Preschool.

The Preschool agrees to provide a preschool teacher that meets the licensing requirements of the Act. The Preschool must obtain prior approval from the School District of all certified personnel before the Preschool is eligible for employee reimbursement funding under this Agreement. The Preschool shall submit to the School District a copy of the teacher's Iowa teaching certificate as issued by the Iowa Board of Educational Examiners by August 1st of each year. The School District reserves the right to observe the teacher and other instructional preschool personnel during the hours of operation and assist in the evaluation of the employee's performance.

All services shall be performed by employees or independent contractors who are experienced and skilled in their professions and in accordance with the standards of their professions.

2. Recordkeeping Requirements and Payments.

2.1 Recordkeeping. The Preschool shall prepare and/or keep records of all enrolled children and their dates of attendance and such other data and reports as required by the Act and the regulations of the Department of Education and as required by the School District, including but not limited to assessment data. The Preschool shall submit the list of enrollees and dates of enrollment by the first (1st) working day of each month for the prior month, starting in September of 2022 for the month of August, 2022. The Preschool shall submit assessment data as reasonably requested. The Preschool and School District will furnish each other with any educational records as required by law or to comply with any federal or state standards, regulations or reporting requirements.

2.2 Reporting of Employee Wages and Benefits. The Preschool shall furnish the School District with copies of employee contracts, wage agreements and/or time sheets pertaining to the instructional delivery of the Statewide Voluntary Preschool Program for Four-Year-Old Children when the September 1st budget estimate is submitted to the School District. The Preschool shall submit an invoice by the 1st of each month listing the actual costs incurred for employee wages and benefits during the previous month.

2.3 Reporting of Non-Personnel & Employee Substitute Costs. The Preschool shall submit an invoice by the 1st of each month, listing actual non-personnel costs incurred for the purchase of curriculum, materials, supplies, substitute employees, and other consumable costs during the previous month. All purchases for single items or curriculum over \$250.00 must be approved by the School District's Executive Director of Enrichment/Special Programs, or designee, to be eligible for reimbursement.

2.4 Reimbursement of Administrative Fees incurred by the Preschool. No Administrative fees will be reimbursed.

2.5 Confidentiality. The Preschool agrees to comply with federal and state laws and the School District's policy and regulations on confidentiality of student information and shall instruct and demand such confidentiality by its employees.

3. Insurance and Indemnification.

3.1 Property Insurance. The Preschool shall insure the site and its contents. In the event of destruction or damage such that the Preschool is not able to perform its services under this Agreement, the School District may elect to terminate this Agreement in accordance with subsection 4.2 of this Agreement.

3.2 Liability Insurance. The Preschool and the School District shall carry Commercial General Liability insurance for protection of each, respectively, from any liability arising out of any accidents or other occurrence causing any injury and/or damage to any person or property in or about the Program site or arising from the performance of their obligations under this Agreement due directly or indirectly to the actions of the insured. Liability policies shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, which limit can be met with a combination of primary and umbrella policies. The policies shall include Professional Liability insurance and shall also cover the parties in the supervision of children in the Program, including coverage for claims of sexual abuse and corporal punishment. Each party shall be solely responsible for its own retentions, co-insurance, and/or insurance deductibles.

3.3 Workers' Compensation/Employer's Liability Insurance. The Preschool and the School District shall each be responsible for maintaining Workers' Compensation insurance for its employees as statutorily required by the State of Iowa and Employer's Liability insurance.

3.4 Other Insurance Provisions. All required insurance shall be obtained from issuers of recognized responsibility licensed to do business in the State of Iowa. Each party shall be furnished with a certificate of insurance required under this Agreement. Such policies shall not be modified or cancelled except upon at least

thirty (30) calendar days' prior written notice to the other parties to this Agreement.

It is specifically agreed that the types and amounts of insurance specified above shall not limit or otherwise affect any party's obligation to indemnify and hold the other parties harmless as provided by the indemnification provisions of this Agreement. The failure of any party to maintain the insurance coverage and limits required by this Agreement shall be considered a material breach of this Agreement. However, the failure of any party to declare another party to be in material breach shall not be deemed a waiver by the other party of the right to claim a material breach for a subsequent failure to maintain the required coverage or limits.

3.5 School District's Indemnification of the Preschool. To the extent permitted by law, the School District will defend, indemnify and hold harmless the Preschool from and against any and all losses, costs, damages and expenses, including reasonable attorneys' fees and expenses, occasioned by, or arising out of, the School District's breach of this Agreement or its negligence or willful misconduct in the performance of its duties under this Agreement. The provisions of this subsection 3.5 shall survive termination of this Agreement with respect to any damage or injury occurring prior to such termination.

3.6 Preschool's Indemnification of the School District. The Preschool will defend, indemnify and hold harmless the School District from and against any and all losses, costs, damages and expenses, including reasonable attorneys' fees and expenses, occasioned by, or arising out of the Preschool's breach of this Agreement or its negligence or willful misconduct in the performance of its duties under this Agreement. The provisions of this subsection 3.6 shall survive termination of this Agreement with respect to any damage or injury occurring prior to such termination.

3.7 Waiver of Subrogation Rights. The Preschool and the School District each release the other from any claim for recovery for any loss or damages to any of its property which is insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance. This waiver applies only when permitted by the applicable policy of insurance.

3.8 Claims. Each party shall notify the other parties of any claim or any potential claim for bodily injury or property damage to another arising under this Agreement as soon as practical following knowledge of the claim or potential claim.

4. Term and Termination.

4.1 Term. The term of this Agreement shall commence on the 23rd day of August, 2022 and terminate on the last day of the School District's 2022-23 school year calendar, tentatively the 1st day of June, 2023.

4.2 Cause Termination. Either party to this Agreement may terminate this Agreement upon written notice to the other party if the other party fails to comply with any of the provisions of this Agreement, provided written notice of the breach shall be given to the breaching party and the breaching party shall have at least ten (10) days to cure the breach. Either party may terminate this Agreement immediately upon written notice to the other parties if one of the parties becomes the subject of a proceeding under state or federal law for relief of debtors, or if an assignment is made for the benefit of creditors. The School District may terminate this Agreement immediately if the Preschool loses its license or if the School District does not receive sufficient funding for this Agreement from the State of Iowa.

4.3 No Cause Termination. Either of the parties to this Agreement may terminate this Agreement prior to the expiration of the term, with or without cause, and without penalty, upon sixty (60) days' written notice to the other party.

4.4 Final Payments. Upon expiration or termination of this Agreement, the School District will pay the Preschool for all earned fees to include a pro-rata portion of monthly fees for services completed up to the effective date of termination. The Preschool shall return all School District property and shall submit all required reports.

4.5 Property. All equipment, furniture, capital improvements, supplies or other property purchased by the Preschool, shall be and remain the property of Preschool. All equipment, supplies or other property purchased by the School District shall be and remain the property of the School District. Upon expiration or termination of this Agreement, the Preschool and the School District shall have sole custody and use of their respective property. It is not contemplated that any real property will be acquired or held for the purpose of carrying out the terms of this Agreement.

5. Assignment and Subcontracting. Neither party may assign this Agreement or subcontract any of the duties in whole or in part, without the written agreement of the other party. The parties agree that janitorial services, food services, or transportation services may be provided by independent contractors.

6. Status of the Parties. It is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a partnership, association, or other affiliation or like relationship between the parties, it being specifically agreed that their relation is and shall remain that of independent parties to a cooperative contractual relationship. In no event shall either party be liable for the debts or obligations of the other party.

7. No Separate Entity or Joint Board. No separate legal or administrative entity or joint board shall be established to carry out the purposes of this Agreement. The Preschool Coordinator for the School District shall be designated as the administrator of the Agreement for purposes of Iowa Code Chapter 28E. No joint budget will be established or maintained for purposes of carrying out the terms of this Agreement.

8. Miscellaneous.

8.1 Headings. The headings of this Agreement are inserted for convenience of reference only and in no way describe or limit the scope or intent of this Agreement or any of the provisions hereof.

8.2 Severability. In case any one or more of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8.3 Notices. All notices or other communications to be given under this Agreement shall be deemed given when either personally delivered or mailed by first class mail, postage prepaid, with proper address to the following addresses until otherwise notified:

TO PRESCHOOL: Orchard Hill Church Preschool
Attn: Executive Director
3900 Orchard Hill Dr.
Cedar Falls, Iowa 50613

TO SCHOOL DISTRICT: Cedar Falls Community School District
Attn: Superintendent
1002 W. First St.
Cedar Falls, Iowa 50613

8.4 Law. The parties consent to the jurisdiction of the Black Hawk County, Iowa District Court for all matters relating to this Agreement and agree that this Agreement shall be governed by Iowa law.

8.5 Entire Agreement; Amendments. This Agreement supersedes all previous agreements, contracts, addenda, amendments, arrangements and understandings, and constitutes the entire agreement between the parties. No oral statements or prior written material not specifically incorporated herein shall be of any force and

effect and no change in, additions to, or deletions from this Agreement shall be valid unless agreed to in writing by the parties.

8.6 Waiver. The failure of either of the parties to enforce any right or provision under this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement.

8.7 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to comply with any obligation under this Agreement (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of contingencies beyond the reasonable control of the parties; and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of any such contingency which shall interfere with such performance.

8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

8.9 Binding. This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns (subject to Section 5).

CEDAR FALLS COMMUNITY
SCHOOL DISTRICT

ORCHARD HILL CHURCH PRESCHOOL

By _____

By _____

Title: Board President

Title: _____

Attest:

By _____

Title: Board Secretary

