

MEMORANDUM OF UNDERSTANDING  
BY AND BETWEEN  
WORCESTER PUBLIC SCHOOLS AND WORCESTER STATE UNIVERSITY

This Memorandum of Understanding ("MOU" or "Agreement") is entered into as of October 1, 2013, by and between Worcester State University, an agency of the Commonwealth of Massachusetts with an address of 486 Chandler Street, Worcester, MA 01602 ("University" or "WSU") and the Worcester Public Schools, located at the Chandler Magnet School, 525 Chandler Street, Worcester, MA 01609 ("WPS") for the purposes of Improvements to and Use of Chandler Magnet School Gymnasium ("the Project").

WHEREAS, the University and WPS desire to work together to complete the Project;

WHEREAS, University and WPS are desirous to enter into a Memorandum of Understanding between them, setting out the working arrangements that each of the parties agree are necessary to complete the Project;

**PURPOSE**

The purpose of this Agreement is to provide the framework for any future binding contract regarding the Project between the University and WPS.

**MUTUAL OBLIGATIONS**

It is mutually agreed upon and understood by and among the Parties of this Agreement that:

- A. Each Party will work together in a coordinated fashion for the fulfillment of the Project.
- B. In no way does this Agreement restrict involved Parties from participating in similar agreements with other public or private agencies, organizations, and individuals.
- C. To the extent possible, each Party will participate in the development of the Project.

**OBLIGATIONS OF THE RESPECTIVE PARTIES**

The activities and services for the Project shall include, but not limited to:

A. Services to be rendered by the University include:

- 1. Replace two existing basketball backboards with two glass backboards (from WSU existing gymnasium);
- 2. Replace the electronic scoreboard in the Chandler Magnet School gymnasium (from an existing WSU scoreboard); and

3. Work with the Chandler Magnet School's Principal to develop intramural, afterschool, and/or other activities between WSU student-athletes and students from Chandler Magnet School.
- B. Services to be rendered by WPS include:
1. Complete a full refinishing of the gymnasium floor, including new markings (basketball, volleyball, and others needed by the school); and
  2. Allow WSU's Athletic Department to use of the Chandler Magnet School gymnasium and nearest restrooms based upon an agreed upon schedule beginning with the spring 2014 semester (January 21, 2014) through August 31, 2016.

## RESOURCES

The Parties will endeavor to have final approval and secure any financing necessary to fulfill their individual financial contributions at the start of the planning for the development of the Project.

- A. The University agrees to provide the following financial, material and labor resources in respect of the Project:
1. WSU shall fund, through a contribution to WPS, the full refinishing of the gymnasium floor at Chandler Magnet School, including new markings (basketball, volleyball, and others as needed by the School) The estimated cost of this work is \$35,000.
  2. WSU shall provide such funds to WPS upon receipt and review of price quote and related schedule for agreed-upon improvements to the gymnasium floor at Chandler Magnet School.
  3. WSU shall fund and procure the services necessary to relocate the two existing glass basketball backboards currently hanging in the WSU gymnasium to the Chandler Magnet School gymnasium.
  4. WSU shall fund and procure the services necessary to relocate the existing electronic scoreboard currently hanging in the WSU gymnasium to the Chandler Magnet School gymnasium.
  5. WSU shall pay all direct costs associated with the WSU's use of the Chandler Magnet School gymnasium. It is understood that the costs would be any custodial and site administrator charges as required by the Worcester Public Schools.
- B. WPS agrees to provide the following financial, material and labor resources in respect of the Project:
- WPS shall procure and oversee the full refinishing of the gymnasium floor at

Chandler Magnet School, including new markings (basketball, volleyball, and others needed by the school), to be completed by January 15, 2014.

- WPS shall provide WSU an opportunity to review and comment on the price quote and related time schedule for repairs to the gymnasium floor at the Chandler Magnet School prior to WPS executing a contract with a vendor.
- WPS shall provide WSU and its designee's access to the gymnasium at the Chandler Magnet School for the purpose of relocating the two existing glass basketball backboards currently hanging in the WSU gymnasium and to relocate the existing electronic scoreboard currently hanging in the WSU gymnasium.
- WPS shall waive all rental fees associated with the used of the Chandler Magnet School (custodial and site administrator charges would still apply).

## **TERM**

The arrangements made by the Parties by this Agreement shall remain in place from October 1, 2013 until August 31, 2016. The term can be extended only by written agreement of the Parties.

## **TERMINATION**

Each of the Parties reserves the right to terminate this Agreement with no less than thirty (30) days prior written notice to the other Party.

## **NOTICE AND CONTACTS**

All notices and statements to be given and all payments to be made hereunder, shall be given or made at the respective addresses of the parties as set forth below unless notification of a change of address is given in writing. Any notice shall be sent by certified mail or facsimile, and shall be deemed to have been given at the time it was mailed or transmitted.

### **A. For WSU:**

Kathleen Eichelroth  
Vice President for Administration and Finance  
Worcester State University  
486 Chandler Street  
Worcester, MA 01602  
508-929-8098  
[Kathleen.Eichelroth@worchester.edu](mailto:Kathleen.Eichelroth@worchester.edu)

B. For WPS:

Brian E. Allen  
Chief Financial and Operations Officer  
Worcester Public School  
20 Irving Street  
Worcester, MA 01609  
Fax: 508-799-3141  
[allenb@worc.k12.ma.us](mailto:allenb@worc.k12.ma.us)

## LIABILITY AND INDEMNIFICATION

- A. WPS acknowledges that WSU is not insured against any liabilities and is subject to the liability limits in Massachusetts General Law c. 258.
- B. To the extent permitted by law and not otherwise, each party (the "Indemnifying Party") hereto shall be responsible for and shall indemnify the other party (the "Indemnified Party") against any and all manner of action, causes of action, suits, damages, claims, fees and costs (including reasonable attorneys' fees) whether granted by administrative, judicial, arbitration or mediation award, or by settlement, arising from: (i) the Indemnifying Party's, its trustee's, officer's, employee's or agent's breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Indemnifying Party, its trustees, officers, employees or agents. The Indemnified Party must promptly notify the Indemnifying Party of any such claim or demand, and provide the Indemnifying Party with all reasonable assistance, except financial, in making its defense.
- C. The provisions of this Section shall survive the termination of this Agreement.

## RELATIONSHIP OF PARTIES

- A. WSU and WPS are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect. WPS and any person employed by or conducting business with the WSU shall not be a partner, employee, agent or joint venturer of the University.
- B. No debts, liabilities, obligations or contracts of whatever kind made or incurred by *either of the parties* hereto or any person employed by or conducting business with said party shall be in the name or upon the credit of the other party, and the other party shall not be liable or responsible therefor.
- C. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no other person or entity shall be regarded as a third-party beneficiary of this Agreement.

## ASSIGNMENT

To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of the University and WPS and their respective successors and permitted assigns. Neither party may subcontract or assign its rights or obligations under this Agreement to any other entity or person without the express written consent of the other, which consent may be withheld at its sole discretion. No waiver by any party of any default or non-performance shall be deemed a waiver of any subsequent default or non-performance.

## GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

## SEVERABILITY

If any provision of this Agreement is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

## ENTIRE AGREEMENT

- A. This document is intended by the parties as the final and binding expression of their agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations, and agreements and no representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
- B. None of the provisions of this Agreement may be waived, modified or amended except expressly in writing and signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.
- C. This Agreement may be executed in a number of duplicate originals, and each duplicate original shall be deemed to be an original.

**WORCESTER STATE UNIVERSITY**

**WORCESTER PUBLIC SCHOOLS**

By:

Its: Vice President

Date: \_\_\_\_\_, 2013

By:

Its: Superintendent

Date: 10-11, 2013