

AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into this 7th day of April, 2020, by and between GREEN HILLS AEA ("GHAEA"), and HARLAN COMMUNITY SCHOOL DISTRICT (the "School District").

WITNESSETH:

WHEREAS, the School District is in need of qualified personnel to provide certain educational services on an occasional, part-time basis; and

WHEREAS, GHAEA has qualified personnel who can provide the needed services to the School District.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purpose.** The parties have entered into this Agreement for the purpose of setting forth the terms and conditions relating to the School District's use of GHAEA employees to provide services to the School District.

2. **Scope of Services.** The School District shall purchase such services of GHAEA employees and for such number of days as specifically identified on Exhibit A, attached hereto and incorporated herein by reference. GHAEA shall be responsible for assigning a GHAEA employee or employees to the School District. The GHAEA employee or employees shall perform the duties reasonably requested by the School District, and such services shall be performed at the School District's facility or facilities. Any GHAEA employee shall be considered an employee or agent of GHAEA, and at no time shall any GHAEA employee be considered to be an employee of the School District. GHAEA shall be responsible for complying with all local, state and federal tax laws relating to its employees, specifically including, but not limited to, the payment and reporting of all federal and state income tax withholding and social security taxes.

3. **Term.** This Agreement shall be effective for the 2020-21 school year, unless earlier terminated as provided herein.

4. **Termination.** Any party may terminate this Agreement if one of the other parties fails to comply with or otherwise perform its obligations as set forth in this Agreement (a "Default"), which Default continues uncured for a period of thirty (30) days after the party claiming a Default has given written notice to the other party describing the nature of the Default and demanding its cure. In addition, either party may terminate this Agreement at any time upon ninety (90) days' prior written notice to the other party.

5. **Payment.** The School District shall be responsible for paying the salary and benefits per diem paid by GHAEA to each employee assigned to the School District as set forth on Exhibit A. GHAEA shall invoice the School District semiannually in the months of January and June for services rendered.

6. **Indemnification.**

(a) The School District shall indemnify, defend and hold harmless GHAEA and its officers, directors, employees, agents and other representatives from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and attorneys' fees) arising in connection with the School District's performance under this Agreement, except those losses, claims, liabilities, damages, costs or expenses arising out of the willful misconduct of GHAEA, its employees, agents or other representatives.

(b) GHAEA shall indemnify, defend and hold harmless the School District and its officers, directors, employees, agents and other representatives from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and attorneys' fees) arising in connection with GHAEA's performance under this Agreement, except those losses, claims, liabilities, damages, costs or expenses arising out of the willful misconduct of the School District, its employees, agents or other representatives.

7. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT.

8. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Iowa as applied to contracts entered into and performed entirely within the State by residents thereof. All disputes arising under this Agreement shall be brought in the District Court of the State of Iowa in Pottawattamie County or the United States District Court for the Southern District of Iowa, Western Division, as permitted by law. The District Court of Pottawattamie County and the United States District Court for the Southern District of Iowa, Western Division shall each have non-exclusive jurisdiction over disputes under this Agreement. The School District and GHAEA each consent to the personal jurisdiction of the above courts.

(b) **Attorneys' Fees.** In the event any proceeding or lawsuit is brought by GHAEA or the School District in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

(c) Notice. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or three (3) days after it is deposited in the United States mail, postage prepaid, sent certified or registered and addressed as follows:

If to the School District, to:

Harlan Community School District
2102 Durant St
Harlan, IA 51537
Attn: Lynn Johnson

If to GHAEA, to:

Green Hills AEA
Halverson Center for Education
24997 Hwy 92
Council Bluffs, IA 51503
Attn: Kris Wood

or to such other address or person as hereafter shall be designated in writing by the applicable party.

(d) Assignment. No party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

(e) Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decision.

(f) Waiver. No waiver by either party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by either party of any right under this Agreement shall be construed as a waiver of any other right.

(g) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

(h) Entire Agreement; Modification. This Agreement constitutes the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. The terms and conditions of any invoice, purchase order or other instrument issued by the parties in connection with this Agreement which add to or differ from the terms and conditions of this Agreement shall be of no force or effect. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

(i) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

(j) Construction. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

(k) Headings. Section headings are used for convenience only and shall not be considered a part of this Agreement or be used to interpret the meaning of any term hereof.

(l) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

(m) Remedies. The rights and remedies provided herein are cumulative and are not exclusive of any remedies that might be available to any party at law or in equity or otherwise.

(n) Waiver of Jury Trial. THE SCHOOL DISTRICT AND GHAEA EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

GREEN HILLS AEA

By: _____
Name: Ed Gambs
Title: Board President
Date: _____

HARLAN SCHOOL DISTRICT

By: _____
Name: Amy Rueschenberg
Title: Board President
Date: _____

EXHIBIT A

SCOPE OF SERVICES

Services shall be provided by GHAEA for a total of 38 days (0.2 FTE) as noted below:

Master Social Worker Services

Lindsey Baughman –

38 days @ \$308.55 per day including FICA and IPERS = \$11,724.90

Benefits yet to be determined

Plus associated travel

AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into this 28th day of April, 2020, by and between GREEN HILLS AEA ("GHAEA"), and Harlan Community School District (the "School District").

WITNESSETH:

WHEREAS, the School District is in need of qualified personnel to provide certain educational services on an occasional, part-time basis; and

WHEREAS, GHAEA has qualified personnel who can provide the needed services to the School District.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purpose.** The parties have entered into this Agreement for the purpose of setting forth the terms and conditions relating to the School District's use of GHAEA employees to provide services to the School District.

2. **Scope of Services.** The School District shall purchase such services of GHAEA employees and for such number of days as specifically identified on Exhibit A, attached hereto and incorporated herein by reference. GHAEA shall be responsible for assigning a GHAEA employee or employees to the School District. The GHAEA employee or employees shall perform the duties reasonably requested by the School District, and such services shall be performed at the School District's facility or facilities. Any GHAEA employee shall be considered an employee or agent of GHAEA, and at no time shall any GHAEA employee be considered to be an employee of the School District. GHAEA shall be responsible for complying with all local, state and federal tax laws relating to its employees, specifically including, but not limited to, the payment and reporting of all federal and state income tax withholding and social security taxes.

3. **Term.** This Agreement shall be effective for the 2020-21 school year, unless earlier terminated as provided herein.

4. **Termination.** Any party may terminate this Agreement if one of the other parties fails to comply with or otherwise perform its obligations as set forth in this Agreement (a "Default"), which Default continues uncured for a period of thirty (30) days after the party claiming a Default has given written notice to the other party describing the nature of the Default and demanding its cure. In addition, either party may terminate this Agreement at any time upon ninety (90) days' prior written notice to the other party.

5. **Payment.** The School District shall be responsible for paying the salary and benefits per diem paid by GHAEA to each employee assigned to the School District as set forth on Exhibit A. GHAEA shall invoice the School District semiannually in the months of January and June for services rendered.

6. **Indemnification.**

(a) The School District shall indemnify, defend and hold harmless GHAEA and its officers, directors, employees, agents and other representatives from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and attorneys' fees) arising in connection with the School District's performance under this Agreement, except those losses, claims, liabilities, damages, costs or expenses arising out of the willful misconduct of GHAEA, its employees, agents or other representatives.

(b) GHAEA shall indemnify, defend and hold harmless the School District and its officers, directors, employees, agents and other representatives from and against any and all loss, claim, liability, damage, cost or expense (including, without limitation, court costs and attorneys' fees) arising in connection with GHAEA's performance under this Agreement, except those losses, claims, liabilities, damages, costs or expenses arising out of the willful misconduct of the School District, its employees, agents or other representatives.

7. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT.

8. **Miscellaneous.**

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Iowa as applied to contracts entered into and performed entirely within the State by residents thereof. All disputes arising under this Agreement shall be brought in the District Court of the State of Iowa in Pottawattamie County or the United States District Court for the Southern District of Iowa, Western Division, as permitted by law. The District Court of Pottawattamie County and the United States District Court for the Southern District of Iowa, Western Division shall each have non-exclusive jurisdiction over disputes under this Agreement. The School District and GHAEA each consent to the personal jurisdiction of the above courts.

(b) **Attorneys' Fees.** In the event any proceeding or lawsuit is brought by GHAEA or the School District in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

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If to the School District, to:

Harlan Community School District
2102 Durant St
Harlan, IA 51537
Attn: Ms. Lynn Johnson

If to GHAEA, to:

Green Hills AEA
Halverson Center for Education
24997 Hwy 92
Council Bluffs, IA 51503
Attn: Kris Wood

or to such other address or person as hereafter shall be designated in writing by the applicable party.

(d) Assignment. No party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

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(f) Waiver. No waiver by either party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by either party of any right under this Agreement shall be construed as a waiver of any other right.

(g) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

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(k) Headings. Section headings are used for convenience only and shall not be considered a part of this Agreement or be used to interpret the meaning of any term hereof.

(l) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

(m) Remedies. The rights and remedies provided herein are cumulative and are not exclusive of any remedies that might be available to any party at law or in equity or otherwise.

(n) Waiver of Jury Trial. THE SCHOOL DISTRICT AND GHAEA EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

GREEN HILLS AEA

By: _____
Name: Ed Gambs _____
Title: Board President _____
Date: _____

HARLAN SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

SCOPE OF SERVICES

Services shall be provided by GHAEA for a total of 15 days as noted below.

Library Services - Sarah Fink

15 days @ \$390.23 per day plus FICA and IPERS = \$5,853.45

Plus prorated benefits to be determined

Plus associated travel

AEA PURCHASING AGREEMENT 2020- 2021

This purchasing agreement ("Agreement") is entered into by the AEA Purchasing, an entity formed by a 28E Agreement filed on or about February 7, 2011 and the Harlan Community School District/Customer (hereafter the "Eligible Member") located in Area Education Agency (hereafter the "AEA") Greenhills for the 2020-2021 school year.

SELECTION OF PROGRAMS

Eligible Member elects to participate in the program(s) which Eligible Member has checked below. Products available under these bids are for use in the Eligible Member's Child Nutrition Programs:

- A. AEA PURCHASING Food Bid X (Martin Brothers)
- B. AEA PURCHASING Small Wares Bid X (TBD)
- C. AEA PURCHASING Ware Wash Bid X (EMS Detergent-Northeast Southeast Service Zone) (Martin Brothers-Northwest Southwest Service Zone)

PURCHASE CATEGORIES AND COMMITMENT TO BUY

The Eligible Member agrees to purchase an aggregate monthly total of 60% of its food and supplies (excluding milk, bread, small wares and ware wash) from the vendor selected by AEA Purchasing ("Prime Vendor") for the AEA Purchasing.

ELIBIBLE MEMBER COMMITMENT TO PARTICIPATE

Eligible Member agrees to participate in the activities of the selected purchasing programs operated by the AEA Purchasing, which includes responding to requests for information from the AEA Purchasing reporting any service, product, invoicing, or other problems which may arise between the Eligible Member and any Prime Vendor; being willing to serve on committees of Eligible Members which may be established by the AEA Purchasing from time to time, and/or providing input to such committees to facilitate the work of such committees; and participation in audits as requested by the AEA Purchasing.

EFFECTIVE DATE

To be effective beginning July 1, 2020, this Agreement must be signed no later than June 30, 2020. After June 30, 2020, new members may join only as follows: **their membership will be effective January 1 of the following year if they sign this Agreement before December 31**, their membership will be effective July 1 of the same year if they sign this Agreement by June 30.

PRIME VENDOR RESPONSIBILTIES

The Prime Vendor has agreed to perform the following functions:

The Prime Vendor will provide any product data information which will include nutrition fact labels, CN label information and any manufacturer's statements.

Provide sales people to visit all Eligible Members bi-weekly and establish a schedule for regular salesperson visits and truck deliveries to AEA Purchasing's Eligible Members in Iowa.

Establish, in conjunction with AEA Purchasing, a schedule for product shows, seminars and marketing events in all aspects of food service. Prime Vendor and AEA Purchasing or its Eligible Members will jointly provide staff to plan and carry out these events.

Submit monthly sales volume reports to the AEA Purchasing in the form or forms requested by AEA Purchasing.

Submit to Eligible Members and AEA Purchasing monthly and weekly product lists with current pricing expressed in dollars and cents. Product areas with monthly price changes are dry grocery goods, frozen items, frozen pizza, frozen potatoes, paper/plastic products and chemicals. Product areas with weekly price changes are fresh meat, dairy products and fresh produce.

Invoice and deliver products directly to Eligible Members.

Assist those Eligible Members that wish to use the Prime Vendor computer ordering and inventory system.

AEA PURCHASING ADMINISTRATIVE FEE

The AEA Purchasing administers a \$.50 per case and a \$.10 per broken case amount to help cover the expenses of running the program.

After expenses are paid, the balance is refunded to our Eligible Members. In school year 2018-2019 the amount sent back as a year-end food rebate was \$289,468.00

Iowa's AEA (through the appointed representatives on the AEA Purchasing board) will provide oversight and management to this program but no funding.

ORDERING AND BILLING

Eligible Members may place their individual orders with Prime Vendor at any time during the term of this Agreement.

All invoices for payment shall be sent directly to the Eligible Member ordering under the terms and conditions of this Agreement. The Eligible Member will make payment directly to the Prime Vendor.

TERMS

Normal terms are net amount due in 30 days. (Net 30 days).

PAYMENT

All invoices for payment shall be sent directly to Eligible Member ordering under the terms and conditions of the agreement between the Prime Vendor and the AEA Purchasing. Eligible Member will remit payment directly to Prime Vendor. Eligible Member will pay applicable administrative fees included on its invoices, which administrative fees will be paid to AEA Purchasing by Prime Vendor pursuant to the agreement between AEA Purchasing and Prime Vendor. AEA Purchasing will refund to Eligible Member on a pro rata basis any excess of administrative fees, after AEA Purchasing determines allowable costs pursuant to USDA regulations at the conclusion of this Agreement. Eligible Member will return any such refund to the appropriate school meals account as required by USDA regulations.

PRICE LISTS AND PRICE CHANGES

The AEA Purchasing will transmit monthly price lists to all Eligible Members on or about the first day of each month. Price lists shall be transmitted weekly for weekly priced items, and monthly for monthly priced items.

Firm prices will prevail for one calendar month with the exception of fresh meat, dairy products and fresh produce. Prices on fresh meat, dairy products and fresh produce will be for one week at a time.

MINIMUM ORDER AND DELIVERY

The minimum order requirements for one Eligible Member for delivery to one building will be \$500.00 for food. The Prime Vendor will deliver and unload goods directly to the Eligible Members during the normal operating hours or at other mutually agreed times. Schools that order under \$500 order will still get the same AEA Purchasing prices but will incur a \$15 service fee. There will be no fuel surcharge.

SALES REPRESENTATION/MARKETING

Prime Vendor has agreed to provide sales people to visit all Eligible Members on a bi-weekly basis, along with providing support from their telemarketing staff. Prime Vendor has agreed to sponsor product shows and other educational seminars in the Midwest for Eligible Member personnel at no charge.

ELIGIBLE MEMBER RESPONSIBILITY

Eligible Member acknowledges its responsibility to comply with all regulations of the United States Department of Agriculture ("USDA") and the Iowa Department of Education ("DE") which are applicable to School Food Authorities (SFA's) as defined in the National School Lunch Program regulations (NSLP), including but not limited to retention of records. Eligible Member agrees to adhere to all provisions of the Code of Conduct adopted by the AEA Purchasing which are applicable to Eligible Members.

NO RESALE

Eligible Member will not resell to any other organization or individual the products purchased by Eligible Member from a Prime Vendor pursuant to an agreement between the Prime Vendor and the AEA Purchasing.

COMPLIANCE BY AEA PURCHASING

The AEA Purchasing will at all times when conducting its business comply with any and all applicable federal and state laws, rules, and regulations related to the bidding of projects and contracts by Iowa school districts and area education agencies for the purpose of securing, purchasing and delivering goods and services used by school districts in Iowa, including, but not limited to, food, beverages, and supplies used in the National School Lunch Program, and additionally, shall comply with any and applicable federal laws, rules and regulations issued or amended by the USDA related to the procurement of food, beverages and supplies for use in schools and related educational institutions.

TERMINATION

Both Eligible Member and the AEA Purchasing have the option to terminate this Agreement prior to June 30, 2021 upon thirty (30) days' advance written notice.

SIGNATURES

Eligible Member/School District

AEA Purchasing Signature

AEA Purchasing Foodservice Division
1521 Technology Parkway, Cedar Falls IA 50613
PHONE: 319-268-7725
EMAIL: dan@aeapurchasing.org

Harlan Community School District
Name of School District/Customer

AEA Purchasing Director Signature

Signature

Date

Board President or Title

Date

712-755-2152
School District Phone Number

Superintendent email address: lynn.johnson@hesdcyclones.com

Business Manager email address: kgubbels@hesdcyclones.com

Foodservice Director email address: ellen.walshrosmann@hesdcyclones.com