

## **TUITION CONTRACT**

This Agreement made this 1<sup>st</sup> day of September 2021 by and between the Board of Education of the Malverne Union Free School District ("Sending District") having its principal place of business located at 301 Wicks Lane, Malverne, New York 11565 and the Hewlett-Woodmere Union Free School District, ("Receiving School") having its principal place of business for purposes of this Agreement at One Johnson Place, Woodmere, New York 11598.

### **WITNESSETH:**

**WHEREAS**, pursuant to Education Law §4402(2)(b) the Sending District is authorized to contract for special services or programs as the Sending District shall deem reasonable and appropriate for students with disabilities after consideration of the recommendations of the local committee on special education ("CSE"); and

**WHEREAS**, the Hewlett-Woodmere Union Free School District is a public school district authorized by New York State to conduct, operate and maintain an educational program and provide special education and related services to students with disabilities; and

**WHEREAS**, the Sending District has found the Receiving School adequate to provide such special education instruction and/or related services and is desirous of having the Receiving School provide such instruction and/or related services to certain students with disabilities residing within the Sending District; and

**WHEREAS**, the Receiving School acknowledges that it has reviewed the Individualized Education Program(s) ("IEP") of the student(s) to be served pursuant to this agreement and warrants that it is capable of providing and will provide the level of instructional and related services required by each applicable IEP;

**NOW, THEREFORE**, it is mutually agreed by and between the parties as follows:

1. **Term of Agreement:** The term of this Agreement shall be from September 1, 2021 to June 30, 2022, unless terminated earlier as set forth herein.
2. **Services:**
  - a. The Receiving School hereby agrees to provide instruction and/or services to students specified in Addendum "A" in accordance with their IEP for the applicable school year, and the services are to be provided by teachers and/or related service professionals possessing appropriate qualifications and certifications.

- b. The Receiving School shall make appropriate personnel available to participate in District Child Study, 504 Team and Committee on Special Education ("CSE") meetings, as appropriate. In addition, the Receiving School shall provide the Sending District with a copy of any progress reports, testing and/or observation reports, goals and objectives, etc. which are prepared in connection with the services provided pursuant to this Agreement, as well as any other reports or educational records, including but not limited to pupil attendance reports, requested by the Sending District. The Sending District shall have the right to visit the Receiving School upon reasonable request.

3. **Payments:**

- a. The Sending District will pay the Receiving School the fees set forth in Addendum "A" which shall be the non-resident tuition ("NRT") rate calculated in accordance with the regulations of the New York State Commissioner of Education. The NRT rate shall be billed as an estimated NRT rate. The estimated NRT rate that is used for purposes of initial billing is the New York State Education Department's estimated NRT rate applicable to that student for 2019-2020 school year attendance. Adjustments shall be made once the actual NRT rate for the 2020-2021 school year of attendance is finalized by the State Education Department and the Sending District shall be responsible to pay for any increases, or, if applicable, any prorated amounts which are based on the actual NRT, as a result of such adjustments.
- b. Invoices shall be submitted to the Sending District on a monthly basis. Invoices shall, at a minimum, reflect the dates services were rendered, types of services, fees due and any other information reasonably requested by the Sending District. The Sending District has the right to examine and be provided with all accounting records regarding the costs of services provided under this Agreement. Failure to dispute invoices shall not be deemed acceptance of the invoice and shall not be construed as a waiver of the Sending District's right to pursue action in law or equity. No parent/person in parental relation or other individual shall be required to make payment for service for any student covered under this Agreement.
- c. The Sending District may add or remove any student at any time during the term of this Agreement. Payment for students that are added or removed shall be prorated for the time the services were provided to the student.
- d. The Sending District shall only be responsible for making payment for services actually rendered. The Sending District shall not incur any

charges should the Receiving School, its employees and/or agents in any way fail to perform services.

4. **Termination:**

The Sending District reserves the right to terminate services for any child at any time and for any reason and shall only be responsible for the pro-rated portion of payment for services provided up to the effective date of the termination.

The Receiving School may not terminate this Agreement or its application with regard to any individual student(s) except upon fourteen (14) days notice to the Sending District. Such termination may only take place after consultation with the Sending District, including but not limited to consultation with the Sending District's Administration and Committee on Special Education ("CSE".) In the event of termination, the Receiving School shall cooperate with the Sending District to wind down any activities hereunder and all reports or other materials due to the Sending District from the Receiving School shall be promptly completed.

5. **Incidents:** The Receiving School shall notify the Sending District promptly of any problems, situations or incidents that occur during the provision of services. The Receiving School shall make available any incident reports and/or other documentation regarding incidents and make available any employee as may be necessary to serve as a witness in an administrative hearing, court action or other proceeding.

6. **Attendance:** The Receiving School shall provide the Sending District with monthly attendance records.

7. **Project SAVE:** The Receiving School shall be responsible for compliance with the requirements of Project SAVE and the SAFE SCHOOL ACTS ("Project SAVE"), with respect to any person providing services by or through the Receiving School under the terms of this Agreement. All persons providing services by or through the Receiving School under the terms of this agreement shall have received appropriate fingerprinting clearances required by law prior to providing services to the Sending District. The Receiving School shall provide a complete roster of all persons who will and/or may be providing services in connection with this Agreement and shall be responsible for immediately providing the Sending District with any modification to that roster throughout the course of the Agreement. In the event the Provider sends a provider to the Sending District who has not obtained fingerprinting clearance with the State Education Department, the Sending District shall have the right to immediately terminate this Agreement. The Receiving School expressly agrees to defend and indemnify the Sending District for any action brought by any authority, individual and/or other entity that relates to

the Receiving School's obligations under this paragraph and/or pursuant to Project SAVE.

8. **Hold Harmless:** Both parties further agree that they shall defend, indemnify and hold harmless the other party to the agreement including its Board of Education, officers, directors, agents, and employees, all in their corporate and individual capacities, for all loss, costs, damages, and expenses, including, but not limited to, attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by either party to the agreement or any of its officers, directors, agents, or employees taken or made with respect to this Agreement. This provision shall survive termination of this Agreement. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. This coverage must span the duration of this Agreement and include a modification and/or cancellation notice to the District of at least thirty (30) days. An applicable insurance endorsement, naming the Sending District as an additional insured, shall be provided to the Sending District by the Receiving School upon execution of this Agreement.
9. **Notice of Litigation:** In the event litigation is initiated in connection with the provision of services under this Agreement, the Receiving School shall promptly give written notice of same to the Sending District.
10. **HIPAA:** Both parties acknowledge that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and shall comply with said regulations, where applicable. If at any time during the course of this Agreement it is determined by agreement of both parties or an entity with appropriate jurisdiction that either district is considered a "covered entity" as defined by HIPAA, the Sending District and Receiving School agree to enter into a Business Associate Agreement to ensure compliance with the Standards for Privacy of Individually Identifiable Health Information pursuant to HIPAA."
11. **Compliance with Law:** All services will be provided in accordance with Federal, State, Sending District and local law, rules, regulations, ordinances, policies, procedures, rules and standards.
12. **Licensing:** The Receiving School will ensure that its staff possess any requisite licenses and qualifications to perform the services contracted for. The Receiving School shall verify the existence and validity of licenses and credentials and in the event the required license and/or certification of any



agent, contractor or employee of the Receiving School providing services under this Agreement is revoked, terminated, suspended or otherwise impaired, the Receiving School shall immediately notify the Sending District. Upon request, copies of such credentials shall be made available to the Sending District by the Receiving School. Where applicable, the Receiving School agrees to submit to the Sending District written proof of certification and/or licensing and forms to document the evaluation of and services provided to Medicaid eligible students.

13. **Right to Reject Services:** The Sending District reserves the right to accept or reject the services of any professionals employed by the Receiving School. The Receiving School shall provide supervision of all Receiving School employees under this Agreement.
14. **Assignment:** It is expressly understood that no party may assign their rights, duties and/or obligations under this Agreement without the written consent of the other party.
15. **No Discrimination:** Services provided under this Agreement shall be performed without regard to race, creed, color, sex, sexual orientation, national origin, religion, age, or disability.
16. **Notices:** All notices which are required or permitted under this Agreement shall be in writing and shall be deemed to have been given if delivered in person or sent by registered or certified mail, addressed as follows:

To the Sending District: 301 Wicks Lane,  
Malverne, New York 11565

Attn: Christopher Caputo, Assistant Superintendent for Business

To the Receiving School: One Johnson Place,  
Woodmere, New York 11598.

Attn: Mrs. Marie Donnelly, Assistant Superintendent for Business

17. **Audits:** The Receiving School agrees to cooperate with the State and its Agents and provide all information to them as may be required for the State and its Agents to fulfill their auditing or other legal responsibilities.
18. **Independent Contractor:** The relationship of the Receiving School and the Sending District over the course of this Agreement shall at all times be deemed an Independent Contractor. Employees of the Receiving School are solely deemed employees of the Receiving School for purpose of this Agreement and the Receiving School is entirely responsible for their

supervision, work, and compensation. Employees of the Receiving School will not be entitled to participate in any of the Sending District's employee benefit programs such as workers' compensation, unemployment insurance, retirement benefits, fringe benefits, disability benefits, or other similar programs.

19. **Confidentiality:** Both parties acknowledge and agree to comply with all laws, rules and/or regulations as applicable and pertaining to the confidentiality of information obtained, transmitted, reviewed, generated, requested, provided, maintained and/or otherwise utilized in connection with this Agreement. This shall include but not be limited to the requirements of the Individuals with Disabilities Education Act ("IDEA"), the Family Educational Rights and Privacy Act ("FERPA") and any concurrent Federal and/or State law, rule and/or regulation. The Receiving School agrees that it will not disclose confidential information to third parties except as provided for and necessitated under this Agreement. This provision will survive the termination of this Agreement.
20. **Reservation of Rights:** Both parties reserve all rights in law or in equity not otherwise expressly provided for in this Agreement.
21. **Enforcement:** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce every provision of this Agreement.
22. **Entire Agreement:** This Agreement contains the entire agreement between the parties and shall not be modified, except in writing and signed by both parties.
23. **Severability:** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
24. **Execution:** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same document as if all parties had executed a single original document. This Agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.
25. **Warranties:** Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered and that the performance of its obligations under this Agreement do not conflict with any order, law, rule or regulation or any Agreement or understanding by which such party is bound.

26. **Record Retention:** Both parties shall comply with all record retention requirements applicable under law to the records pertaining to this Agreement and in no event shall records be retained for less than six (6) years from the date of this Agreement.
27. **Governing Law:** This Agreement shall be governed in all respects by the laws of the State of New York and applicable Federal laws and regulations. Each of the parties agrees to submit to the jurisdiction of the courts of the State of New York, County of Nassau or the Federal Court otherwise having jurisdiction.
28. **Authorization for Agreement:** The undersigned parties' representatives warrant and agree that they are duly authorized agents who possess the legal right and authority to enter into this Agreement and bind each party with respect to its obligations set forth herein. This Agreement shall not become valid and binding upon either party hereto until it is fully executed and approved by a formal resolution of the parties' Boards of Education at duly convened meetings of the respective Boards.

By: \_\_\_\_\_  
President of the Board of Education of the  
Malverne Union Free School District

Date: \_\_\_\_\_

By: \_\_\_\_\_  
President of the Board of Education of the  
Hewlett-Woodmere Union Free School District

Date: \_\_\_\_\_