

28E AGREEMENT FOR MASTER'S PROGRAM

THIS 28E AGREEMENT FOR MASTER'S PROGRAM ("Agreement") is by and between the Des Moines Independent Community School District, an Iowa public school corporation ("School District"), and Drake University, an Iowa nonprofit corporation ("University").

WHEREAS, the School District is a public agency for purposes of Iowa Code Chapter 28E;

WHEREAS, the University is a private agency for purposes of Iowa Code Chapter 28E;

WHEREAS, the School District employs certain teachers on an Alternative Teaching Contact ("Teachers");

WHEREAS, the School District desires to implement a program in which cohorts of the Teachers have access to postsecondary education courses to earn a Master's level degree in effective teaching ("Program");

WHEREAS, the University is a postsecondary education institution and offers courses for the attainment of advanced degrees, including Master of Arts in various education-related areas;

WHEREAS, Iowa Code Chapter 28E authorizes public agencies and private agencies to enter into agreements for joint or cooperative actions; and

WHEREAS, the School District and the University believe that entering into this 28E agreement for the purpose of effectuating the Program will be to their mutual advantage and benefit.

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

1. School District Responsibilities.

A. Program Implementation. The School District will be responsible for implementing the Program by notifying the Teachers of the provisions of the Program, including appropriate eligibility and registration requirements set by the School District and/or required by the University. Upon request by the University, the School District will certify to the University the Teacher's eligibility for enrollment under the Program.

B. Payment. The School District will make payment to the University as set forth in Section 2.B for the University's administration of the Program and provision of courses to the Teachers in the Program.

C. Exclusivity. During the term of this Agreement, the School District agrees not to contract with any other institution of higher education to offer Teachers the Program.

2. University Responsibilities.

A. Program Administration and Provision of Courses. The University will be responsible for administering the Program by making timely contact with the Teachers and informing them of eligibility and registration requirements for the Program, receiving applications of Teachers to the Program, verifying the eligibility of the Teachers for enrollment under the Program, and registering the Teachers for the courses in the Program, in accordance with appropriate eligibility and registration requirements set by the School District and/or required by the University. The University will enroll a minimum of fifty (50) and a maximum of eighty (80) Teachers per cohort under the Program. The University will notify the School District of the Teachers who have been accepted and are enrolled in courses under the Program.

The University will also be responsible for providing the courses in the Program by providing suitable facilities, qualified personnel, and educational programming appropriate for the attainment of a Master's level degree in effective teaching.

- i. Fifty percent (50%) of the courses provided by the University will be held in School District facilities, as arranged by the School District in consultation with the University. Facilities for other course locations will be arranged by the University. The balance of facility usage described in this Paragraph may be adjusted by mutual agreement.
- ii. Fifty percent (50%) of the personnel provided by the University will be selected by the University, in consultation with the School District, from current faculty at the School District, unless otherwise agreed by the School District. However, for these personnel and all other personnel provided by the University under this Agreement, the University shall be considered the employer of the personnel and shall be responsible for all employer-related obligations in connection therewith, including, but not limited to, hiring, payment of wages and benefits due the personnel, evaluation, and discharge
- iii. The educational programming provided by the University will be delivered using a combination of site-based and online methods. The curriculum for the Program will align with the professional development of the Teachers and other needs of the School District. The courses provided under the Program will be offered at times that are accessible to the Teachers and coincide with the School District calendar. The courses, credit hours and course sequence will be determined by the Committee as set forth in Paragraph 6 prior to the launch of the Program and may be amended from time-to-time by mutual consent.

The University will meet with the Teachers on a regular basis and advise them regarding their progress in the Program. Teachers must successfully complete thirty-two (32) advisor approved credit hours in order to earn a master's level degree in effective teaching, which will take two (2) years for each of the three cohorts to complete on a part-time enrollment basis.

The University will award credit to a Teacher towards earning a master's level degree in effective teaching upon the Teacher's successful completion of a course under the Program, as determined by the University. Exceptions will be considered pursuant to University policy.

The parties will use their best efforts for the successful completion of the Program by the Teachers. The University will notify the School District of any Teachers who are not satisfactorily completing a course under the Program. The University and the School District will mutually determine any action to be taken as appropriate for the Teacher, including, but not limited to allowing the Teacher to retake the course under the Program.

In addition to the Teachers enrolled in the Alternative Teaching Contract program, the University will make available to other qualifying School District personnel ("Non-ATC Teachers") the Program based on available capacity, as mutually agreed upon by the School District and the University.

B. Billing. Once the students for each cohort have been declared eligible and enrolled, the University will bill the School District at the start of each semester for the sum of \$330 per credit hour for courses taken by eligible Teachers under the Program. The parties understand that this amount is inclusive of all tuition, textbooks and materials fees, and any other expenses related to the courses taken by eligible Teachers under the Program, and agree that no additional amounts will be charged by the University pursuant to this Agreement for the thirty two (32) hours required for degree completion. The University will submit a written invoice to the School District, together with supporting documentation itemizing the Teachers who have taken courses under the Program, the courses taken, and the credit hours for each course. In no event shall the charges attributable to courses taken by an individual Teacher exceed a total of \$10,560. The invoice will be payable in accordance with the University's standard billing procedures.

The School District may, in its sole and complete discretion, develop and enforce rules for the recovery from a Teacher of amounts paid by the School District on behalf of the Teacher in the event that the Teacher fails or does not complete the course, unless documentation is submitted to the School District that verifies the Teacher was unable to successfully complete the course for reasons determined by the School District. The University will cooperate with the School District in the enforcement of these rules under the Program.

The University will charge Non-ATC Teachers enrolled in the Program the same per credit hour rate as the Teachers. Non-ATC Teachers will be billed directly pursuant to the regular billing practices of the University.

3. Term and Termination.

A. Term. The initial term of this Agreement shall commence on July 1, 2015, and shall continue in effect until June 30, 2018. The first courses to be offered under the Program will begin in January 2016. Upon the expiration of the initial term and any subsequent renewal term, this Agreement may be renewed for a subsequent term of three years upon

the written agreement of the parties. The parties will evaluate the Agreement and make the determination as to whether the Agreement will be renewed for a subsequent term no later than sixty (60) days prior to the end of the then-current term. The University will have the right of first refusal for subsequent three-year terms.

B. Termination. Prior to the expiration of the initial term or a renewal term of this Agreement, either party 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 that written notice of the breach shall be given to the breaching party and the breaching party shall have at least thirty (30) days to cure the breach.

Either party may also terminate this Agreement immediately upon written notice to the other party if the other party loses accreditation, or 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, or if the other party dissolves or otherwise ceases to exist.

In addition, this Agreement may be terminated by written agreement of the parties at any time.

Upon any termination of this Agreement, the School District will make payment to the University for amounts earned under the Agreement through the effective date of termination.

4. Insurance and Indemnification.

A. Insurance. Throughout the term of this Agreement, each party shall carry, at its own expense, commercial general liability insurance for protection of each, respectively, from liability arising under this Agreement due directly or indirectly to the actions or omissions of the insured. Liability policies shall have limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate.

Each party shall be responsible for maintaining workers' compensation insurance for its personnel as required by law.

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 evidencing the required insurance upon request.

B. Indemnification. To the extent permitted by law, each party shall indemnify and hold harmless the other party from any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees, to the extent that such claims, liabilities, damages, losses, and expenses are incurred by the indemnified party as a result of the actions or omissions of the indemnifying party under this Agreement. In the event that it shall become necessary for either party to institute legal proceedings against the other party for recovery of any amounts due and owing under this Agreement, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs related to such collection, including reasonable attorney fees and all expert

witness fees incurred during pre-suit collection attempts, suit, and post judgment, appeal, or settlement collection. The provisions of this paragraph shall survive termination of this Agreement.

5. 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.

6. 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 Chief Financial Officer of the School District and the Chief Financial Officer of the University shall be designated as the administrators of the Agreement for purposes of Iowa Code Chapter 28E. The parties agree to establish a committee, comprised of an equal number of designated representatives of each party, to facilitate the provisions of this Agreement.

No joint budget will be established for purposes of carrying out this Agreement, nor is it contemplated that any real or personal property will be acquired by either party for the purpose of carrying out this Agreement.

7. Compliance/Cooperation.

Notwithstanding anything in this Agreement to the contrary, both parties agree to comply with all federal, state, and local laws and regulations as applicable to the performance of their obligations under this Agreement. The parties agree to cooperate as needed to assure that all responsibilities are met.

8. Miscellaneous.

A. Assignment; Binding. Neither party may assign this Agreement in whole or in part, without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

B. Notices. All notices or other communications to be given under this Agreement shall be deemed given when either personally delivered or mailed by certified mail to the following addresses until otherwise notified:

| | |
|--------------------|--|
| To the University: | Drake University Attn: Teresa Krejci Chief Financial Officer 2507 University Ave. Des Moines, IA 50311 |
|--------------------|--|

To the School District: Des Moines Independent Community School District
Attn: Thomas Harper
Chief Financial Officer
2323 Grand Ave.
Des Moines, IA 50312

C. 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 of a party's right or remedy will affect the other provisions of this Agreement.

D. Governing Law and Forum. This Agreement shall be governed by Iowa law. The parties consent to the jurisdiction of the appropriate federal or state court for Polk County, Iowa, for all matters relating to this Agreement.

E. Entire Agreement. The Agreement between the parties consists of this Agreement (and attached Exhibit) as well as the School District's Request for Proposals No. 7164 and the University's Proposal submitted in response thereto, which are hereby incorporated herein. The foregoing documents are listed in order of precedence and, in the event of any inconsistency between the terms of this Agreement, the Request for Proposals, or the Proposal, the terms set forth in the document first listed shall govern. This Agreement supersedes all previous agreements or arrangements between the parties with respect to the subject matter hereof, and constitutes the entire agreement between the parties. No change in, additions to, or deletions from this Agreement shall be valid unless agreed to in writing by the parties.

F. 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.

G. 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.

H. Waiver/Consent. The parties to this Agreement have agreed to request Ahlers & Cooney, P.C., legal counsel, to act as the scrivener for this Agreement, and each such party has agreed to waive any potential conflict of interest and has consented to Ahlers & Cooney, P.C. acting as the scrivener for all parties, which the governing bodies of the parties, by approving and executing this Agreement, expressly ratify and confirm.

I. Filing with Iowa Secretary of State. Following execution by both parties, this Agreement shall be filed with the Iowa Secretary of State in accordance with Iowa Code Section 28E.8.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the dates set forth under their signatures below.

DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT

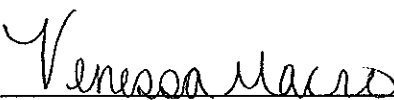
By: 

Name: Cindy Elsbernd

Title: Board President

Date: July 8, 2015


DRAKE UNIVERSITY

By: 

Name: Venessa Macro

Title: Chief Administration

Date: July 2, 2015

By: 

Name: Thomas Harper

Title: Board Secretary

Date: July 12, 2015

01114278-1\10390-000\