

**AMENDMENT TO PUBLIC POLICY AND ENGAGEMENT SERVICES AGREEMENT
BY AND BETWEEN
BEYOND YOUR BASE
AND
THE BOARD OF EDUCATION OF DOWNERS GROVE
GRADE SCHOOL DISTRICT NO. 58**

THIS AMENDMENT is entered into this ____ day of _____, 2019, by and between the Board of Education of Downers Grove Grade School District No. 58, DuPage County, Illinois (“District”), and Beyond Your Base, a consulting group of Wight & Company (“Consultant”) (collectively referred hereto as “the Parties”).

WHEREAS, the District is developing a plan for future construction and renovation projects at the District’s facilities; and

WHEREAS, the Consultant has submitted a proposal for an agreement to perform community relations research and engagement services in connection with the District’s facility planning process, dated October 4, 2019 (the “Agreement”); and

WHEREAS, the Parties wish to amend the Agreement as stated herein.

NOW, THEREFORE, in consideration of the terms and conditions herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Conflict of Terms. In the event of a conflict between the terms and conditions of this Amendment and the Agreement, the terms and conditions herein shall govern. All other provisions of the Agreement not otherwise modified herein shall remain in full force and effect.
2. Intellectual Property. The Parties acknowledge that any intellectual property created in connection with the Services shall at all times be the property of the District. Moreover, the Consultant hereby waives any rights to any intellectual property created in connection with the Services.
3. Professional Services/Loyalty. Consultant has been engaged to provide services requiring a high degree of professional skill, and Consultant shall exercise skill and care consistent with the expertise, experience and qualifications of professionals necessary for the performance of its work. In performing the services, Consultant shall have a strict fiduciary duty to the Owner, including a duty of loyalty and the utmost good faith and honesty towards the Owner, and Consultant shall act solely in Owner’s best interests without regard to Consultant’s (or its parent or subsidiary firm’s) financial or other interests. Consultant shall disclose any potential conflicting interests in writing to Owner and obtain Owner’s informed written consent to any such conflicts. Because Consultant’s (or its parent or subsidiary firm’s) architectural and other fees will be based on the size of the capital projects recommended, Consultant shall implement and follow rigorous internal written procedures designed to ensure that any such prospective fees or interests

cannot affect its independent judgement in performing the services. Consultant shall provide a copy of such written conflict-screening procedures to Owner before commencing the work. Consultant shall undertake independent investigations at all times to ensure that it is not basing any recommendation on inaccurate or incomplete information.

4. Excluded Services. The Parties acknowledge that the Illinois *State Officials and Employees Ethics Act*, 5 ILCS 430/1-1 *et. seq.* and Board of Education Policy 4011 (2:105), prohibit District employees and Board members from engaging in any “prohibited political activity,” as defined in 5 ILCS 430/1-5. Accordingly, in providing the Services under this Agreement, Consultant shall not engage in (or take any actions that would cause the District’s employees or Board members to engage in) a prohibited political activity, as defined in 5 ILCS 430/1-5 and 5 ILCS 430/5-15, for or on behalf of the District, and shall otherwise comply with the Illinois *State Officials and Employees Ethics Act*, 5 ILCS 430/1-1 *et. seq.* and Board of Education Policy 4011 (2:105). In addition, Consultant shall comply with the Election Interference provision contained in the Illinois *Election Code*, 10 ILCS 5/9-25.1, and shall not engage in any activity that would cause the District to violate this provision. Further excluded services are as set forth in the Agreement and this Amendment.
5. Compensation Terms. The District will reimburse the Consultant for reasonable expenses incurred by the Consultant as set forth in the Agreement; provided, however, that all expenses must be preapproved by the District in writing prior to incurring the expense. The Consultant’s invoices shall itemize any expenses and shall include any necessary backup information or documentation requested by the District. All invoices shall be paid by the District in accordance with the Illinois *Local Government Prompt Payment Act*, 50 ILCS 505/1 *et seq.*
6. Compliance with Laws. Consultant shall comply with all applicable laws, ordinances, rules, regulations and codes in performing the Services required hereunder, including, but not limited to, the requirements of the *Illinois Human Rights Act*, 775 ILCS 5/1-101 *et seq.* and the provision of sexual harassment policies and procedures pursuant to Section 2-105 of that Act as well as Section 750.10 and Appendix A of the regulations of the Illinois Department of Human Rights, 44 Ill. Admin. Code 750.10 and 44 Ill. Admin. Code 750.Appendix A in providing the Services under this Agreement. Consultant also agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the *Americans with Disabilities Act*, 42 U.S.C. Section 12101 *et seq.*, and rules and regulations promulgated thereunder. Consultant shall comply with all state and federal laws regarding the content and transmission of calls, texts, and other messages sent during the Services, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the *Telephone Consumer Protection Act* (47 U.S.C. § 227) the FCC’s implementing regulations (47 C.F.R. § 64.1200). Additionally, Consultant represents and warrants that it is not barred from entering into this Agreement as a result of a conviction of bid rigging or bid rotating or the violation of any other State or Federal law. Consultant further represents and warrants that none of its employees or contractors providing any services at on the District’s property have been convicted of any crimes that would prevent them from being present on public school property.

Consultant acknowledges that it is unlawful for a child sex offender to knowingly be present on school property when persons under the age of 18 are present without the specific notification to and permission of the Superintendent of Schools. To the extent any of Consultant's employees have direct, daily contact with students, the employees shall submit to a fingerprint-based criminal background check as required under 105 ILCS 5/10-21.9, and Consultant shall certify that each employee has complied with and provided to Consultant the necessary evidence of examination and physical fitness required by 105 ILCS 5/24-5. Consultant acknowledges that purchases by the Board of Education are exempt from sales, use and other taxes, and the School District shall provide proof of such exemption upon request. However, as required by law, the Consultant certifies that it and all its affiliates will collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois *Use Tax Act* (35 ILCS 105/1 *et seq.*) regardless of whether the Consultant or its affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the *Use Tax Act* (35 ILCS 105/2). The Consultant further certifies that to the extent applicable, it will provide a drug free workplace as required by the Illinois *Drug Free Workplace Act* (30 ILCS 580/1 *et seq.*). Consultant acknowledges that the District is subject to the *Freedom of Information Act*, 5 ILCS 140/1, *et seq.* ("FOIA"), and any and all information submitted by the Consultant to the District may be subject to disclosure to third parties in accordance with FOIA. If the Consultant requests that the District withhold any submitted information as trade secrets, commercial information, or financial information from disclosure to a third party in response to a FOIA request, the Consultant must notify the District of such request at the time such information is submitted to the District, along with a statement that disclosure of such information will cause competitive harm to the Consultant, as provided by FOIA Section 7(1)(g), 5 ILCS 140/7(1)(g). Any content not so marked by the Consultant at the time of submission to the District will be presumed to be open to public inspection. The Consultant may be required to substantiate the basis for its claims at a later time. Notwithstanding timely notice received from the Consultant in accordance with Section 7(1)(g), the District reserves the right, in its sole discretion and subject only to applicable law, to withhold or release the subject information in response to a FOIA request. The Consultant waives any rights she may have, or claim to have, to challenge, protest, enjoin or otherwise assert a claim relating to, connected with or arising from any FOIA request. As a potential provider of a governmental function on behalf of the District, the Consultant agrees to cooperate with the District, without additional charge, in responding to any FOIA request, including by timely providing any documents requested by the District that directly relate to the governmental function that the Consultant has been engaged to perform on behalf of the District. To the extent Consultant has any access to individually identifiable student information, Consultant shall further sign the District's separate confidentiality agreement concerning student records.

7. **Indemnification.** To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the District, its board members, officers, employees, students, volunteers, and agents (“Indemnitees”) against all loss, liability, claims and expenses (including reasonable attorney’s fees, expert witness fees, and court costs) arising out of, related to or connected with Consultant’s acts or omissions under the Contract Documents, or any breach thereof.

8. **Insurance.** Consultant shall obtain and maintain in effect during the term of this Agreement, at its own expense, commercial general liability insurance in the amount of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Consultant shall name the Indemnitees as an additional insureds on the commercial general liability insurance and any umbrella or excess insurance maintained by the Consultant. Consultant shall also obtain and maintain during the term of this Agreement, at its own expense, professional liability insurance in the amount of no less than \$1,000,000. Such policies will be primary and noncontributory and will specifically cover Consultant’s indemnification obligations under this Agreement. To the extent that Consultant is required by law to maintain worker’s compensation insurance, Consultant shall maintain worker’s compensation insurance in the amounts required by law. Consultant shall provide the District with certificates of insurance verifying such coverage. Consultant may utilize umbrella or excess insurance to meet the requirements of this Paragraph. Such excess or umbrella policies shall be subject to the same requirements of the commercial general liability insurance and such policies shall follow the commercial general liability insurance policy. To the fullest extent permitted without invalidating any insurance of the Consultant, Consultant on its behalf and on behalf of its insurers, waives any right of subrogation that the Consultant and its insurers may have against any Indemnitee.

9. **Venue and Governing Law.** Any action to enforce the terms and conditions of the this Agreement shall be brought on the Cook County Circuit Court or the U.S. District Court, Northern District, Eastern Division. Illinois law shall govern all aspects of this Agreement and all matters thereto.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the dates indicated below.

**BOARD OF EDUCATION OF
DOWNERS GROVE GRADE
SCHOOL DISTRICT NO. 58**

**BEYOND YOUR BASE
A CONSULTING GROUP OF
WIGHT & COMPANY**

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____