

28E Agreement for Joint or Cooperative Action Between:

**Linn-Mar Community School District (“LMCSD”), Marion, Iowa
And
Four Oaks Family and Children’s Services (“Four Oaks”), Marion, Iowa**

THIS 28E AGREEMENT FOR JOINT OR COOPERATIVE ACTION (“Agreement”) is made and entered into, pursuant to Iowa Code Chapter 28E, by and between the Linn-Mar Community School District, an Iowa Public School District organized and existing under Iowa Code Chapter 274, (“LMCSD”) and Four Oaks Family and Children’s Services, an Iowa not-for-profit corporation authorized and licensed to provide programming for juveniles with the State of Iowa, (“Four Oaks”). LMCSD and Four Oaks are sometimes referred to herein as the “Parties” and each as a “Party”).

I. RECITALS

WHEREAS, Four Oaks operates a residential treatment center in Marion, County of Linn, State of Iowa providing Foster Group Care Services; and

WHEREAS, LMCSD is the Local Education Agency and provides general and special education services to students who are residents of Four Oaks in Marion (the “Four Oaks Residential Students” and each, a “Four Oaks Resident Student”); and

WHEREAS the Parties believe that joint and cooperative action will be to their mutual benefit and advantage; and

THEREFORE, the Parties hereby enter into this Agreement as follows:

II. PURPOSE

Recognizing the need for specialized education for Four Oaks Residential Students, Four Oaks seeks to collaborate with LMCSD to offer a program for general and special educational services at LMCSD (the “Program”). Only students currently residing on the Four Oaks campus will be eligible for these Program services.

III. DURATION OF THE AGREEMENT AND REVIEW

This Agreement shall begin on August 27, 2019, and terminate on June 30, 2020, but may be extended for additional one-year periods if mutually agreed upon by both Parties in writing. Either Party may cancel the Agreement under the termination procedures described herein.

IV. RESPONSIBILITIES OF THE PARTIES

LMCSD AGREES TO THE FOLLOWING:

1. Based on Four Oaks' current resident enrollment of fifteen (15) students, LMCS D will at its expense provide one (1) classroom, associated workspace, and secure entry access for the provision of educational programming.
2. LMCS D will at its expense provide two (2) classroom teachers and two (2) associates to staff the Program, along with appropriate substitutes if necessary, along with all necessary instructional materials and supplies. LMCS D will be the sole employer of the classroom teachers and associates.
3. If additional Four Oaks Resident Students are added to the Program during the term of this Agreement, LMCS D and Four Oaks will jointly determine whether additional staff are required to meet the needs of the Program.
4. LMCS D will ensure that the employees of Four Oaks providing Program services are aware of all applicable LMCS D policies and procedures when Four Oaks employees are working on LMCS D property.
5. LMCS D will at its expense be responsible for maintaining any applicable IEP or 504 Plan documents for each Four Oaks Resident Student attending at LMCS D.
6. LMCS D will at its expense provide furniture and fixtures necessary to provide educational services hereunder. LMCS D will at its expense provide computers, printers, and other office equipment located in the designated space for the Program at LMCS D, and LMCS D will secure and maintain during the term of this Agreement its own insurance coverage for all property owned by LMCS D.
7. LMCS D is responsible for the academic content of the Educational Program for the Four Oaks Resident Students in compliance with all federal, state, and local requirements.
8. LMCS D will at its expense provide transportation of Four Oaks Resident Students to and from LMCS D at the beginning and end of each regular school day during the term of this Agreement. Each regular school day at LMCS D begins at 8:45 a.m. and ends at 2:50 p.m. for purposes of this Agreement.
9. LMCS D will at its expense provide local phone service, utilities, Wi-Fi, general ongoing maintenance, and cleaning of the LMCS D facility to be utilized for the Program.
10. LMCS D will pay all invoices submitted by Four Oaks within 30 days of receipt of the invoice.

FOUR OAKS AGREES TO THE FOLLOWING:

1. Based on Four Oaks' current resident enrollment of fifteen (15) students, Four Oaks will provide two (2) counselors to work on-site at LMCS D to support the Four Oaks Resident Students attending the Program. Four Oaks will be the sole employer of the counselors, and will be responsible for evaluating, paying, and providing any applicable benefits to its employees. These counselors are to remain available solely for the purpose of serving the Four Oaks Resident Students at LMCS D and shall not be directed to provide any other

services for Four Oaks during LMCS D's regular school hours during the term of this Agreement.

2. If additional Four Oaks Resident Students are added to the Program during the term of this Agreement, LMCS D and Four Oaks will jointly determine whether additional staff are required to meet the needs of the Program.
3. Four Oaks certifies that it will not send any employee to serve on LMCS D property who is listed on the Sex Offender Registry, the Child Abuse Registry, or the Dependent Adult Abuse Registry, or who has been convicted of a felony or aggravated or serious misdemeanor. Four Oaks will provide LMCS D with a copy of such employee's background check report upon LMCS D's request.
4. LMCS D reserves the right to remove any Four Oaks employee from LMCS D property, in its discretion, with or without notice. Four Oaks agrees to promptly assign another counselor to serve in the Program if necessary due to removal of a Four Oaks employee by LMCS D.
5. Four Oaks will cooperate with all reasonable requests for information from LMCS D necessary to comply with the process of developing, revising, or re-evaluating the Four Oaks Resident Student(s)' IEP or 504 Plans. Four Oaks will also provide, upon written request from LMCS D, one or more appropriate representatives to attend IEP or 504 team meetings for the Four Oaks Resident Students.
6. Four Oaks will ensure that the employees of LMCS D providing Program services are aware of all applicable Four Oaks policies and procedures when LMCS D employees are working on Four Oaks property.
7. Four Oaks will at its expense provide any needed transportation to the Four Oaks Resident Students for any emergencies or other transportation needs that arise outside of the LMCS D's regular bussing schedule. A Four Oaks counselor may chaperone a Four Oaks Resident Student back to Four Oaks for any emergencies that may occur during the school day, and may further remain with the Four Oaks Resident Student at Four Oaks for the remainder of that school day.
8. Four Oaks will bill LMCS D on a quarterly basis in the amount of \$18,500.00 for two counselors provided to the program. Four Oaks will also bill LMCS D for the actual cost of supplies, training, travel, and administrative costs that are directly related to administration of the Program for the Four Oaks Resident Students at LMCS D, as those costs may arise. Four Oaks will provide adequate documentation of services billed to LMCS D.

V. ADMINISTRATION

1. No separate legal or administrative entity shall be created by this Agreement. The Superintendent of LMCS D shall be designated as the Administrator of the Agreement for purposes of Iowa Code Chapter 28E.

2. It is not contemplated that there will be any joint acquiring, holding or disposing of real or personal property in connection with the joint undertaking outlined in this Agreement. The Parties agree that all real and/or personal property purchased by or otherwise belonging to a Party shall be and remain the property of that Party.

3. No separate budget shall be established in connection with this Agreement, and LMCSO will serve as the fiscal agent for this Agreement.

VI. INDEMNIFICATION AND INSURANCE

1. **Indemnity:** To the extent permitted by law, LMCSO and Four Oaks each respectively agree to defend, indemnify, and hold each other harmless against any third party claim (including but limited to, claims of governmental agencies) arising from their alleged negligent acts or omissions or the alleged negligent acts or omissions of their respective employees, agents or subcontractors in connection with the services provided pursuant to this Agreement. This section shall survive termination of this Agreement.

2. **Insurance:** LMCSO and Four Oaks will each keep its respective property interests in the building and contents and its liability in regard to this Agreement, reasonably insured against hazards and casualties, including those items usually covered by extended coverage. Each Party shall provide to the other Party proof of commercial general liability and errors and omissions coverage in a responsible company or companies licensed to do business in the State of Iowa in an amount not less than \$1,000,000.00 for any act or occurrence and \$2,000,000 annual aggregate coverage. LMCSO and Four Oaks will procure and deliver to each other a certification from its respective insurance company evidencing such coverage. Each Party shall be listed as an additional loss payee on the other's Party's insurance policies hereunder. The Parties shall provide proof of insurance to one another on or before September 3, 2019.

VII. ADDITIONAL PROVISIONS

1. **CONFIDENTIALITY:** The Parties agree to comply with all state and federal laws, rules, and regulations while performing services under this Agreement, including the Family Educational Rights and Privacy Act (FERPA) and the rules and regulations of the Iowa Department of Education (the "Applicable Laws" and each, an "Applicable Law"), and shall hold in trust and confidence any confidential student or personal records and proprietary information or data relating to each other's business and shall not disseminate or disclose such confidential information to any individual, unless specifically permitted in each instance by the other or as required by law.

2. **TERMINATION:** Either Party may terminate this Agreement for any reason upon thirty (30) days' written notice to the other Party.

3. **APPLICATION OF LAWS, RULES AND REGULATIONS:** This Agreement and all policies, rules, and regulations adopted by the parties to govern the operation of the Program shall comply with the Applicable Laws.

LMCSD and Four Oaks shall refrain from any action which would violate any Applicable Law.

LMCSD and Four Oaks agree to cooperate as needed to assure that all required services and responsibilities are provided to Four Oaks Resident Students pursuant to this Agreement are operated in compliance with all Applicable Laws.

4. FORUM/LAW: The Parties consent to the jurisdiction of the Linn County, Iowa District Court for all matters relating to this Agreement and agree that this Agreement shall be governed by internal Iowa law.

5. SEVERABILITY: If any provision of this Agreement shall be held illegal or invalid, the illegality or invalidity of such provision shall not affect any of the remaining provisions, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

6. 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. In addition, no waiver of a Party's right or remedy will affect the other provisions of this Agreement.

7. 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 if such Party is prevented from doing so by reason of events beyond the reasonable control of the Party.

8. ASSIGNMENT: Neither Party may assign any right or obligation under this Agreement, in whole or in part, without the prior written approval of LMCSD's Board and an authorized signatory of Four Oaks. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

9. SUBCONTRACTING: No work under the Agreement may be subcontracted without prior written approval of the Parties.

10. NO THIRD PARTY BENEFICIARIES: This Agreement is entered into by and between the Parties hereto for their benefit. There is no intent by any Party to create, imply or establish a third party beneficiary or status or rights in any person except as expressly set forth in this Agreement and no such third party shall have any right to enforce any benefit created or established under this Agreement.

11. ENTIRE AGREEMENT: This Agreement supersedes all previous agreements, amendments, arrangements, and understandings between the Parties with respect to the subject matter hereof and constitutes the entire agreement between the Parties.

12. AMENDMENTS: This Agreement may not be amended, modified, qualified, or otherwise changed or altered except in writing executed by an authorized signatory of each Party hereto.

13. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each

