



Create & Learn

AGREEMENT FOR SPECIAL SERVICES

THIS AGREEMENT is made and entered into as of the date of the last signatory noted below between the **City of Columbia, Missouri**, hereinafter referred to as "Partner" or "City" and CREATE & LEARN INC., a corporation organized in the State of Delaware and with authority to transact business within the State of Missouri, hereinafter referred to as "Contractor" or "Create & Learn." Partner and Contractor are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Contractor has developed an online course platform designed to support asynchronous, teacher-led, noncredit online education; and

WHEREAS, the Partner desires to make Create & Learn online courses available to its residents as part of its recreational programming; and

WHEREAS, subject to the terms of this Agreement, Create & Learn is willing to make courses available to Partner for additional opportunities for recreational programming for its residents,

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Independent Contractor. IT IS UNDERSTOOD AND AGREED THE CONTRACTOR IN PERFORMANCE OF THIS CONTRACT IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF PARTNER.
2. Term. It is understood and agreed that the Contractor shall conduct the classes or activities listed in Exhibit B, or later agreed to in writing by the Parties. Contractor understands and agrees that the Contractor shall conduct this service during the term of this agreement. The "Term" of this Agreement shall commence on the Effective Date, and shall continue until the date that is one (1) year following the Effective Date. Thereafter, the Agreement shall automatically be renewed for up to four (4) successive terms of one year, unless the Agreement is terminated pursuant to the provisions of this Agreement.
3. CONTRACTOR agrees to hold class or classes if at least 2 students have enrolled for the course. Maximum class size will not exceed 10 students. CONTRACTOR shall provide Partner with a list of courses and per student pricing for each course. CONTRACTOR's course offerings for the initial term is contained in Exhibit B.
4. PARTNER, within fifteen (15) business days of the completion of each session or as close to that date as possible, shall pay Contractor for all services performed by the Contractor as hereunder stated:

CONTRACTOR shall be paid for the above services at the percentage rate of seventy percent (70%) OF PROCEEDS COLLECTED BY CITY (but not to include non-residency or administrative surcharges) DURING THE TERM HEREOF FROM PARTICIPANTS ENROLLED FOR THE

COURSE OF SUCH INSTRUCTOR. City shall be entitled to keep thirty percent (30%) of the proceeds collected by the City for each student enrolled in each Create & Learn course.

5. Termination. CONTRACTOR understands that the PARTNER may cancel this Agreement at any time should enrollment be insufficient or should funds or facilities become unavailable or should the Contractor not perform the services herein to the satisfaction of the Partner, and that the Partner shall not be liable for compensation of the Contractor for the remainder of the Agreement should it be canceled. In addition, the Partner may cancel this agreement at any time for any reason or for no reason with thirty (30) days notice. If the Agreement is terminated for convenience, Partner shall pay all outstanding uncontested Contractor invoices and make a final payment to Contractor of any registration/tuition fees collected by the Partner not yet invoiced by Contractor. Notwithstanding the foregoing, if, on the proposed termination date, a course has not been completed, Contractor shall complete the course and the Partner shall not interfere with the completion thereof. If the Agreement is terminated for breach caused by Partner, Partner shall pay all outstanding registration/tuition fees of any courses that were begun prior to the breach. If the Agreement is terminated for a breach caused by Contractor, Contractor shall refund all payments made for uncompleted courses.
6. CONTRACTOR shall acquire, repair and maintain at Contractor's sole cost and expense such equipment as needed for Contractor's personal use for the conduct of the aforementioned services. Contractor shall be responsible for setting up all materials and web platform. The Partner is not responsible for providing an online platform for the classes.
7. Class Cancellations. In the event a class is canceled by the Contractor, the Contractor shall make verbal or written communication with all enrolled students of that class, from a list provided by the Partner, at least forty-eight (48) hours prior to that class, OR, arrange for a qualified substitute instructor for that one class. Also, Contractor shall determine, with approval of Partner and consent of at least seventy-five percent (75%) of enrolled students, a makeup class. In the event the Partner cancels a class session, the Partner shall make verbal or written communication with all enrolled students three days prior to the first class meeting.
8. CONTRACTOR, in the conduct of the services contemplated hereunder, shall abide by all laws, ordinances, and rules and regulations adopted by the Partner's city and state regulations.
9. HOLD HARMLESS AGREEMENT: To the fullest extent not prohibited by law, CONTRACTOR agrees to indemnify, defend and hold harmless the Partner, City Council, Boards and Commissions, Officers, Agents, and Employees from any and all demands, claims, damages, or liability, including wrongful death, caused by or arising out of Contractor's, its officers', agents', or employees' negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on Contractor in the performance or failure to perform this agreement by Contractor.
10. Contractor shall maintain, on a primary basis and at its sole expense, at all times during the life of the Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Contractor is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under the Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A- VIII.
 - a. Commercial General Liability. Contractor shall maintain Commercial General Liability at a limit of not less than \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
 - b. Contractor may satisfy the minimum liability limits required for Commercial General Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of

liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for Commercial General Liability. Contractor agrees to endorse the City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- c. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least 10 days prior to the Effective Date of the Agreement between the contractor and the City. Contractor is required to maintain coverages as stated and required to notify the City of a Carrier Change or cancellation within two (2) business days. The City reserves the right to request a copy of the policy.
- d. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the City, or its elected officials or employees.
- e. Failure to maintain the required insurance in force may be cause for termination of the Agreement. In the event Contractor fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, the City shall have the right to cancel and terminate the Agreement without notice.
- f. The insurance required by the provisions of this article is required in the public interest and the City does not assume any liability for acts of the Contractor and/or their employees and/or their subcontractors in the performance of this Agreement.

11. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Parks and Recreation Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director

If to Contractor:

Create & Learn Inc.
12680 La Cresta Drive
Los Altos Hills, CA 94022
ATTN: Zhimei Jiang

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

13. No Third-Party Beneficiary. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

14. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

15. Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

16. General Laws. Contractor shall comply with all federal, state, and local laws, rules, regulations, and ordinances. Contractor shall comply with Article III of Chapter 12 of the City's Code of Ordinances, and with any state or federal laws or regulations relating to unlawful employment practices in connection with any work to be performed pursuant to this contract. Contractor shall include this obligation of compliance in its contracts with subcontractors on this project.

17. If applicable under Section 34.600 RSMo, and to the extent not in violation of any state or federal constitution, Contractor hereby certifies that Company is not currently engaged in and shall not for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel

18. Employment of Unauthorized Aliens Prohibited. Contractor agrees to comply with Missouri State Statute Section 285.530.

19. Nature of City's Obligations. All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

20. City is subject to the Missouri Sunshine Law. The Parties agree that the Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, as amended. Contractor shall maintain the confidentiality of information and records which are not subject to public disclosure under the Sunshine Law.

21. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

22. Americans with Disabilities Act

Contractor acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Contractor, shall be accessible to the persons with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and its related regulations. Contractor shall not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall cooperate with City and shall take reasonable steps to ensure that the Contractor's programs and classes are accessible to persons with disabilities, with respect to the elimination of both educational and programmatic barriers. Such cooperation shall include assisting with modifications to the classes or platform, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the class.

23. Contractor warrants and guarantees that the products, equipment, software and services do not include products, software and services prohibited by any presidential order, any state or federal law, rule or regulation, including but not limited to the 2019 National Defense Authorization Act.

24. Confidentiality. To the extent that there are any state or federal laws applicable to recreational programming or Contractor's Courses, Contractor shall be considered a school official, as such term is defined under the Family Educational Rights and Privacy Act of 1974, as amended. As such, Contractor may have access to the educational records and personally identifiable information about participants registered/enrolled in Contractor's courses. Contractor shall treat all such information as confidential, use the same only in connection with the course or courses taken by such participants, and not disclose any such information to third parties except as may be required by law.

25. Electronic Signature; Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

26. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit

- A Insurance Certificate
- B Courses

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

27. Entire Agreement

This Agreement represents the entire and integrated Agreement between Contractor and City relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises and conditions relating to Contractor's services described herein are superseded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement the day and the year of the last signatory noted below.

Contractor Signature:  _____
John Kleweis

Date: 5/11/21

Partner Signature: _____ 
John Glascock, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

Exhibit A Insurance Certificate



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NUTMEG INSURANCE AGENCY INC/PHS 02025657 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	CONTACT NAME: PHONE: (866) 467-8730 (A/C, No, Ext): E-MAIL: ADDRESS:	FAX: (888) 443-6112 (A/C, No):													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC#</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Sentinel Insurance Company Ltd.</td> <td>11000</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC#	INSURER A: Sentinel Insurance Company Ltd.	11000	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER F:															
INSURED Create & Learn 2955 CAMPUS DR STE 110 SAN MATEO CA 94403-2563															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	X		02 SBM BA4594	09/12/2020	09/12/2021	EACH OCCURRENCE	\$1,000,000
	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Per accident)	\$1,000,000
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$10,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			PER STATUTE	\$1,000,000
							OTHER	\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER City of Columbia, Missouri 1 S 7TH ST COLUMBIA MO 65201	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Suzanne Castaneda</i>
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Exhibit B - Courses

<u>CLASS NAME</u>	<u>CLASS START DATE</u>	<u>NUMBER OF CLASSES</u>	<u>PRICING</u>
SCRATCH NINJA	JUNE	12-week class (1 hr per week)	\$150 per student (70/30 split)
MOBILE COMPUTING FOR APPS & GAMES	JUNE	12-week class (1 hr per week)	\$150 per student (70/30 split)
MINECRAFT: CODE TO MOD	JULY 26	5-day Summer Camp (2.5 hrs each day)	\$250 per student (70/30 split)
JUNIOR ROBOTICS	JULY 26	5-day Summer Camp (2.5 hrs each day)	\$250 per student (70/30 split)
SCRATCH NINJA 1 or 2	FALL	12-week class (1 hr per week)	\$150 per student (70/30 split)
MOBILE COMPUTING FOR APPS & GAMES	FALL	12-week class (1 hr per week)	\$150 per student (70/30 split)
MINECRAFT: CODE TO MOD	FALL	12-week class (1 hr per week)	\$150 per student (70/30 split)
A.I. EXPLORERS	FALL	12-week class (1 hr per week)	\$150 per student (70/30 split)
SCRATCH NINJA 1, 2 or 3	WINTER	12-week class (1 hr per week)	\$150 per student (70/30 split)
MINECRAFT: CODE TO MOD	WINTER	12-week class (1 hr per week)	\$150 per student (70/30 split)
ROBOT ADVENTURES	WINTER	12-week class (1 hr per week)	\$150 per student (70/30 split)
LIGHTS AND BEATS WITH MICRO: BIT 1	WINTER	12-week class (1 hr per week)	\$150 per student (70/30 split)