

ACTION ITEM

Date: November 16, 2020

To: Members, Board of Education

From: Dr. Kari Cremascoli, Ph.D.,
Superintendent

Subject: Approve Service Agreements with Rapid Reliable Testing, LLC and Ambry Genetics Corporation for COVID-19 Testing and Laboratory Services

PROPOSED ACTION BY THE BOARD OF EDUCATION

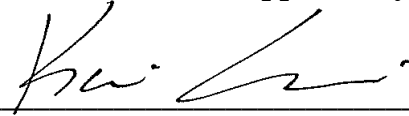
Move to approve service agreements with Rapid Reliable Testing, LLC and Ambry Genetics Corporation for COVID-19 testing and laboratory services, subject to the final review and approval of the Board's attorney

BACKGROUND

The District uses Ambry to provide an additional option for easily accessible PCR COVID-19 testing for employees. This test provides an option to employees for access to quick and reliable PCR testing. This access has afforded employees another option when needing to seek PCR testing. The quick and reliable access helps to reduce extended absences.

The administration would like to expand access to this testing program to District 39 students as an option and convenience to families. This test would be available to students who are symptomatic or have been exposed to an individual with COVID-19.

Recommended for approval by the Board of Education,



Dr. Kari Cremascoli, Superintendent

LABORATORY SERVICES AGREEMENT

This Laboratory Services Agreement (“Agreement”) is entered into between the Board of Education of Wilmette Public Schools District 39 (“Client”), and Ambry Genetics Corporation, a Delaware corporation (“Ambry”), with an effective date of the date of the last signature in the signature lines below (“Effective Date”) (Client and Ambry are sometimes collectively referred to as the “Parties,” and each individually as a “Party”).

RECITALS

1. Ambry is a CLIA-certified and CAP-accredited independent clinical reference laboratory with a principal place of business located at One Enterprise, Aliso Viejo, California 92656.
2. Client desires to contract with Ambry to provide testing services for Client, and Ambry desires to provide the services as described herein, in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following:

1. TESTING SERVICES

1.1. Ambry performs, or otherwise provides via its CLIA-certified, CAP-accredited reference laboratory partners, the tests listed in Ambry's current menu of services located at <http://www.ambrygen.com/tests> and Exhibit A (the “Test Description”), the same may be modified from time to time by Ambry. Ambry agrees to perform and/or provide the tests ordered by Client (collectively, the “Services”) during the term of this Agreement.

1.2. If requested by Client, Ambry will provide, as part of its charges for the Services, kits that are to be used by Client solely to collect, transport, process, or store any and all biological materials, specimens, and other materials needed for Ambry to conduct the Services ordered by Client (collectively, the “Specimens”). Ambry will receive Specimens at its designated location(s) on a daily basis Monday through Saturday of each week, except on holidays recognized in the United States, including New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

1.3. Ambry shall use commercially reasonable efforts to provide or transmit to Client the results of test(s) performed on Specimens within the times set forth in Ambry's then current turn-around-time schedule located at <http://www.ambrygen.com/turn-around-times> as applicable to such test(s) or Exhibit A, whichever is later.

1.4. Ambry shall use commercially reasonable efforts to make Ambry staff available to consult with Client by telephone during Ambry's normal working hours to discuss Ambry's procedures and to provide the status of test results.

2. SPECIMENS

2.1. To ensure accurate results, Specimens must be properly collected, labeled, handled, stored, packaged, and delivered to Ambry consistent with the requirements set forth at <http://www.ambrygen.com/specimen-requirements> or Exhibit A, as applicable. All Specimens must be accompanied by a Testing Requisition Form to be provided by Ambry (“TRF”). The TRF will confirm the Services

ordered for each Specimen and provide a detailed inventory of the Specimen(s) submitted for Services ordered. If Client issues electronic orders for laboratory testing, Client shall submit the signed electronic order form with the TRF and the Specimen.

2.2. All Specimen shipments shall be delivered to Ambry using FedEx (or similar) priority shipping and must meet Ambry's and the courier's handling and packaging requirements for each Specimen. Ambry does not charge for receiving or sending submission kits domestically. A prepaid FedEx Billable Stamp is included in all kits for return.

2.3. Ambry shall not be obligated to perform any Services with respect to any Specimens that Ambry deems to be insufficient, invalid, degraded, or that otherwise fail to meet Ambry's minimum Specimen and quality requirements set forth at <http://www.ambrygen.com/specimen-requirements> or Exhibit A, as applicable. Ambry does not guarantee results for Specimens that do not meet Ambry's requirements. Ambry shall notify the testing subject if a Specimen delivered to Ambry fails to meet Ambry's requirements. Client shall remain obligated to pay the fees and other amounts due to Ambry for any failed Services to the extent resulting from any Specimen that fails to meet Ambry's requirements. Ambry may destroy or discard Specimens that Ambry deems to have failed to meet Ambry's requirements. Ambry may charge a fee at its standard rates for expenses related to Specimen preparation, quality testing, disposal and destruction, as applicable, for each Specimen that fails Ambry's requirements.

2.4. Any and all Specimens supplied to Ambry that are not used in the performance of the Services will be destroyed or discarded after completion of the Services or the termination of this Agreement in accordance with Ambry's destruction schedule. Upon Client's written request and subject to Ambry's written consent, unused Specimens provided by Client may be stored for future use, provided that Specimens stored may incur fees and charges in accordance with Ambry's standard rates.

3. FEES FOR DIRECT CLIENT BILLING

3.1. Client agrees to pay, to the extent responsible for payment, for the Services pursuant to the fee schedule set forth in Exhibit B (the "Fee Schedule"), as the same may be modified from time to time by Ambry. Client shall pay the greater of the fees listed in the Fee Schedule or the charges to or incurred by Ambry for reference testing performed by a laboratory not owned by or affiliated with Ambry (collectively, the "Fees").

3.2. Client acknowledges that Ambry may develop or provide new technologies or new methodologies during the term of this Agreement. Ambry shall notify Client when such new technologies or methodologies are made commercially available by Ambry and the fees associated with such new technologies or methodologies. Ambry will have the right to modify the Fee Schedule to reflect the Fees associated with such new technologies or methodologies by giving written notice thereof to Client, and when so modified will constitute a part of the Fee Schedule under this Agreement.

3.3. If, during the term of this Agreement, any nationally recognized professional medical association makes recommendations that establish or change a standard of care applicable to any of the Services, the Parties will work in good faith to agree on an appropriate adjustment to the Fees applicable to such Service(s). If the Parties cannot reach agreement within 15 days after Ambry provides notice of such proposed adjustment, both parties will have the right to terminate this Agreement by giving ten (10) days' written notice to the other party.

3.4. Client will not bill any third parties for the Services.

3.5. Ambry will submit to Client a monthly itemized statement of Services rendered to Client by Ambry for the prior month. Payment for Services is due in accordance with the Local Government Prompt Payment Act,

50 ILCS 505/1 et seq. If any Fees are sixty (60) or more days overdue, Ambry may, without limiting Ambry's other rights and remedies, suspend Client's access to the Services until such amounts are paid in full.

3.6. The Fees do not include any applicable present or future sales, use, value added, excise, or other taxes. Client is a tax-exempt entity.

4. THIRD PARTY BILLING

4.1. Unless otherwise instructed by Client and in accordance with the provisions of this Agreement, Ambry will first bill the testing subject's health insurance. Client acknowledges, however, that the testing subject's health insurance may not reimburse Ambry, if the following circumstances occur, among other circumstances:

4.1.1. If Ambry is not supplied with all necessary billing information required for Ambry to bill and collect from appropriate third party payors for Services rendered by Ambry hereunder, including the financially responsible party, insurance identification numbers (including complete Medicare or Medicaid coverage information), and, if applicable, Advanced Beneficiary Notice forms that were signed by appropriate Medicare patients prior to the time the Specimen(s) were collected from such individuals for any Services to be performed by Ambry.

4.1.2. If Ambry is not provided, on reasonable request, medical records of individuals for whom orders for Services are submitted to Ambry;

4.1.3. If an order of testing is not medically necessary for the diagnosis or detection of a disease, illness, impairment, syndrome, or disorder, or if the test results will not be used in the medical management and treatment decisions of the individual for whom the order was submitted; or

4.1.4. If the individuals who submit orders to Ambry are not legally authorized to order Services or if such individuals do not comply with state reporting requirements applicable to submitters and ordering providers.

4.2. In the event Ambry has reasonably determined or been notified that the applicable Services are not reimbursable by such third parties (including by way of a claim denial or recoupment), or if Ambry does not receive complete third-party billing information in a timely manner, Ambry will notify Client, and Client will be responsible for the Fee in accordance with the payment terms contained herein.

4.3. Whenever Client orders any Services that are to be furnished to Client under arrangements with Ambry to any patient who is a Medicare beneficiary, Ambry shall bill Client or Medicare for such Services as required under Medicare's Hospital Billing Guidelines. Client hereby confirms its understanding of said requirement and agrees to pay Ambry for any and all such Services that Client orders at the prices listed on the Fee Schedule. Client also agrees to pay Ambry for any Services that Ambry is required to bill Client directly under the rules of any Medicaid program, or any private third party payer, which Services are performed by Ambry on orders by Client for any patients who are covered by such Medicaid program or by such private third party payer.

4.4. Client acknowledges and understands that Ambry cannot and will not, to the extent not otherwise required by law, routinely waive or limit patient deductibles, co-pays, or co-insurance, and Client agrees that it will not ask Ambry to do so. When Ambry is responsible for billing appropriate third-party payors under this Agreement, Client will direct patient billing inquiries to Ambry, and Ambry will handle such inquiries directly with patients and in compliance with applicable law, regulations, and contractual requirements.

5. ACCREDITATION OF AMBRY

Ambry shall be and remain a duly licensed clinical laboratory under applicable federal, state, and local law. Reasonable documentation of such credentials will be provided to Client upon written request of Client delivered to Ambry.

6. TERM AND TERMINATION

6.1. This Agreement will have an initial term of one (1) year (“Initial Term”) commencing on the Effective Date and may be renewed for additional periods of one (1) year each by mutual written agreement of the Parties (“Renewal Term”) at the end of the Initial Term and each Renewal Term (the Initial Term and, if applicable, the Renewal Term are collectively referred to herein as the “Term”), unless earlier terminated by either Party as provided in this Agreement.

6.2. This Agreement may be terminated prior to the expiration of the Term as follows:

6.2.1. by mutual written agreement of the Parties;

6.2.2. by the non-breaching Party upon 30 days’ notice to the other Party if the other Party breaches any provision of this Agreement and such breach is not cured within such 30-day notice period; provided, however, if Client fails to pay or has underpaid any Fees or other amounts due to Ambry under this Agreement and fails to promptly remit such payment to Ambry within 10 days’ notice thereof by Ambry, Ambry will have the right to terminate this Agreement upon expiration of such ten-day period, reserving all rights and remedies Ambry may have with respect thereto;

6.2.3. by the non-affected Party immediately and automatically upon the occurrence of any of the following (unless the non-affected Party specifically waives such termination in writing): (a) a receiver or trustee is appointed for the other Party or all or substantially all of its assets; (b) the other Party makes an assignment for the benefit of its creditors; (c) the other Party commences a voluntary proceeding in bankruptcy, insolvency, or other similar proceeding; (d) an involuntary proceeding in bankruptcy, insolvency, or other similar proceeding is commenced against the other Party, which proceeding is not discharged within 60 days after the commencement thereof; (e) the other Party commences to liquidate or dissolve itself; or (f) the other Party ceases the active conduct of its business; or

6.2.4. by either Party, with or without cause, at any time by giving the other Party not less than sixty (60) days’ prior written notice.

6.3. ***Effect of Termination.*** On termination of this Agreement, the following will occur: (a) Client shall pay all amounts due and payable under this Agreement; (b) Ambry will cease providing Services to Client; and (c) Client will no longer have the right to or benefit of any Services.

6.4. ***Survival.*** Notwithstanding the termination of this Agreement, the defined terms in this Agreement (to the extent applicable), Client’s obligations to pay the Fees and other amounts due or payable to Ambry, and Sections 2.4, 3, and 6 through 11 will survive the termination of this Agreement and remain fully enforceable by the Parties in accordance with their terms.

7. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

7.1. Except as permitted under this Agreement, each Party agrees it will not use, disclose, or reverse engineer the other Party’s Confidential Information, except as authorized in writing by other Party or as required by Applicable Law; provided that, if a Party is compelled by Applicable Law to disclose the Confidential

Information of the other Party, such party shall notify the Party whose information is required to be disclosed within a reasonable time prior to making such disclosure and cooperate with the other Party efforts to seek a protective order or otherwise prevent or restrict such disclosure. “**Confidential Information**” means any and all technical, financial, or business information disclosed by a Party or known to the other Party as a result of or through performance of this Agreement that is not publicly known, whether in writing, orally or in any other form and whether or not labelled confidential or otherwise, but does not include information that a Party can demonstrate through written records (i) is known publicly through no breach of this Agreement, (ii) was in its possession free of any obligation of confidence to Client at the time of disclosure, (iii) was received from a third party free to disclose such information without restriction, or (iv) was independently developed without accessing, using or referring to Confidential Information or otherwise breaching this Agreement.

7.2. All rights, title, and interests in and to any and all Confidential Information technologies, know-how, pricing, processes, methodologies, proprietary information, trade secrets, marks, and other intellectual property rights in connection with Ambry or any Services or that may be disclosed or provided by or on behalf of Ambry to Client in connection with this Agreement will at all times remain the sole property of Ambry.

7.3. Neither Party may issue any press release relating to the Services provided under this Agreement, or the existence or content of any meeting, discussion, or communication between the Parties related thereto, without the prior written consent of the other Party.

7.4. Neither Party may use the other Party’s name, trademark, or logo on such Party’s website, in any marketing materials, or otherwise, without the prior written consent of the other Party.

7.5. Notwithstanding the foregoing or any other provisions of this Agreement to the contrary, the Client shall have sole discretion to determine what information shall be released pursuant to a Freedom of Information Act (“FOIA”) request made to the Client, and a release of information pursuant to a FOIA request shall not constitute a breach of this Agreement. Ambry waives any rights it 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. Ambry shall cooperate with the Client and shall immediately provide any requested “public records” generated under this Agreement to assist the Client in responding to any FOIA request.

8. CHANGE IN LAW OR REGULATION

8.1. The terms of this Agreement are intended to be in compliance with all federal, state, and local statutes, regulations, and ordinances applicable on the date the Agreement takes effect, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Stark Law (42 U.S.C. § 1395nn), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b), and their implementing regulations (collectively, “Applicable Laws”).

8.2. The Parties agree to execute such amendments as may be necessary or advisable, as reasonably determined by Ambry, for compliance with Applicable Laws and as Applicable Laws may change when additional regulations are promulgated or become final and effective. Should Ambry reasonably conclude that any portion of this Agreement is or may be in violation of any Applicable Laws, or if any change or proposed change of any Applicable Laws would alter or likely alter either Party’s rights or obligations under this Agreement, including the amount or method of compensating Ambry for any Services, or that may increase the cost of Ambry’s performance of its obligations hereunder, as determined in good faith by Ambry, Ambry may amend this Agreement by delivering to Client a written amendment to this Agreement incorporating the legally required modifications (the “Legally Required Amendment”), along with an explanation of why such Legally Required Amendment is necessary. . If Client objects to the Legally Required Amendment, then Client and Ambry shall confer in good faith regarding Client’s objection(s). If Client and Ambry are unable to resolve Client’s objection(s) to the Parties’ mutual

satisfaction within thirty (30) days of Client's notice, then, within sixty (60) days of Client's notice, Client may elect to terminate this Agreement upon sixty (60) days' prior written notice to Ambry, and the Legally Required Amendment to which Client objected shall not be effective as to Client during the termination notice period.

9. COVENANTS, REPRESENTATIONS, AND WARRANTIES BY CLIENT

9.1. Client additionally covenants, represents, and/or warrants that, during the Term of this Agreement and in connection with this Agreement:

9.1.1. Client shall comply with all Applicable Laws;

9.1.2. For each order of testing submitted to Ambry, Client will provide a blank consent form and instruct the individual submitting the specimen to include a signed consent form with its specimen. Ambry will retain all written consents that Ambry receives and provide copies upon request;

9.1.3. Client has not been debarred, suspended, declared ineligible, or excluded from Medicare, Medicaid, or any other federal or state government healthcare program.

10. LIMITED WARRANTY BY AMBRY

10.1. Ambry warrants to Client that neither Ambry nor any of its employees or owners have been debarred, suspended, declared ineligible, or excluded from Medicare, Medicaid, or any other federal or state government healthcare program. Ambry warrants to Client that all Services provided hereunder will be in conformance with Ambry's specifications and in accordance with applicable federal, state, and local laws, including laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, veteran status, or any other basis protected by federal, state, or local law.

10.2. If Ambry breaches any of its warranty or other obligations under this Agreement (except as provided in Sections 11.15 through 11.17), Client's sole and exclusive remedy will be for Ambry to correct such breach by re-performing such Services or, at Ambry's election, to refund to Client the applicable Fees paid by Client for the applicable Services.

10.3. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 10, NO OTHER REPRESENTATIONS OR WARRANTY IS MADE BY AMBRY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, OF ANY MATTER OR NATURE WHATSOEVER, INCLUDING ANY REPRESENTATION OR WARRANTY CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10.4. IN NO EVENT WILL AMBRY BE RESPONSIBLE FOR ANY PUNITIVE DAMAGES OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES OF CLIENT OR OF ANY THIRD PARTY.

10.5. THE MAXIMUM LIABILITY OF AMBRY WILL BE LIMITED TO AND NOT EXCEED THREE TIMES THE FEES RECEIVED BY AMBRY (FROM CLIENT OR HEALTH INSURERS) PURSUANT TO THIS AGREEMENT.

11. GENERAL

11.1. *Notices.* Any notice or request required to be given pursuant to the terms and provisions hereof shall be in writing and shall be personally delivered or sent by a courier service for next business day delivery as follows:

If to Ambry at:

Ambry Genetics Corporation
One Enterprise
Aliso Viejo, CA 92656
Attn: General Counsel

If to Client at:

Wilmette Public Schools District 39
615 Locust
Wilmette, IL 60091
Attn: Kari Cremascoli, Ph.D. cremasck@wilmette39.org, Superintendent of Schools

11.2. **Independent Relationship.** None of the provisions of this Agreement is intended to create, nor will be deemed or construed to create, any relationship between Client and Ambry other than that of independent entities contracting with each other solely for the purpose of effectuating the provisions of this Agreement. Neither of the Parties, nor any of their respective employees, agents, or representatives will be construed to be the agent, employee, or representative of the other.

11.3. **Force Majeure.** Ambry will not be liable for any claims, liabilities, damages, failures, or delays and will be excused for such claims, liabilities, damages, failures, and delays in the performance of its obligations under this Agreement due to any act or cause beyond the reasonable control and without the fault of Ambry, including acts of God, fire, flood, tornado, earthquake, or other natural disasters; acts of government (e.g., quarantines, civil injunctions or enacted statutes and regulations); or acts or events caused by third parties such as riot, war, terrorism, strike, power outage or explosion; or pandemics or epidemics; or the inability due to any of the aforementioned causes to obtain necessary labor or materials.

11.4. **No Third-Party Beneficiaries.** This Agreement is intended to inure only to the benefit of Ambry and Client. This Agreement is not intended to create, nor will be deemed or construed to create, any rights in any third parties.

11.5. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any of the other terms or provisions in that jurisdiction or of the entire Agreement in any other jurisdiction. If any provision is held invalid by a court of competent jurisdiction, such will be severed, and this Agreement will be interpreted as though the severed provision had not existed.

11.6. **Waiver.** No course of dealing between Client and Ambry or any delay on the part of Ambry in exercising any rights it may have under this Agreement will operate as a waiver of any of the rights of Ambry or Client. No waiver of any provision of this Agreement will be valid unless the same will be in writing and signed by the Parties, which writing specifically references such as a waiver to this Agreement. No express waiver will affect any condition, covenant, rule, regulation, right, or remedy other than the one specified in such written waiver and only for the time and in the manner specifically stated.

11.7. **Modification.** This Agreement may only be modified in a writing signed by authorized representatives of each Party, which writing specifically references this Agreement.

11.8. **Entire Agreement.** This Agreement together with the Exhibits referenced herein constitute the entire understanding between the Parties concerning the subject matter of this Agreement and is a complete

statement of the terms thereof and will supersede all previous understandings between the Parties, whether oral or written with respect to the subject matter herein. In the event of any inconsistency between the terms of the Exhibits and this Agreement, the terms of the Exhibit shall prevail. The Parties will not be bound by any representation made by either Party or agent of either Party that is not set forth in this Agreement.

11.9. **Successors and Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement is not assignable by Client, either in whole or in part, without the prior written consent of Ambry.

11.10. **Indemnification.**

11.10.1. Client agrees to indemnify and hold harmless Ambry against any third party claims, liabilities, and expenses, including attorneys' fees, arising out of any breach of the Client's obligations, covenants, representations, or warranties under the Agreement.

11.10.2. Ambry shall indemnify, defend, and hold harmless Client, and its individual Board members, employees and agents from and against any claims, liabilities, and expenses, including attorneys' fees, arising out of any breach of the Ambry's obligations, covenants, representations, or warranties under the Agreement, or any negligent errors or omission of Ambry in the performance of the Services.

11.11. **Dispute Resolution.** Any controversy, claim, or issue arising out of or relating to a Party's performance under this Agreement or the interpretation, validity, or effectiveness of this Agreement, and any other provision of this Agreement in the event the Parties fail to agree, shall, upon the written request of a Party, be referred to senior management representatives of each Party for resolution. Such representatives shall promptly meet and, in good faith, attempt to resolve the controversy, claim, or issue referred to them.

11.12. **Construction.** When a reference is made to a Section, Paragraph, Schedule, or Exhibit, such reference will be to a Section, Paragraph, Schedule, or Exhibit of or to this Agreement unless otherwise indicated. Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Unless the context requires otherwise, words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein will be deemed to include the other genders. References to "dollars" or "\$" are to U.S. dollars. The terms "hereof," "herein," "hereby," "hereto," and derivative or similar words refer to this entire Agreement. Except when used together with the word "either," or otherwise for the purpose of identifying mutually exclusive alternatives, the term "or" has the inclusive meaning represented by the phrase "and/or." This Agreement was prepared jointly by the Parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation. The headings contained in this Agreement are inserted for convenience only and will not be considered in interpreting or construing any of the provisions contained in this Agreement.

11.13. **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles. Venue for any dispute arising out of or in connection with this Agreement shall be in the state or federal courts (as applicable) situated in Cook County, Illinois.

11.14. **Signature.** This Agreement may be executed by a Party's signature transmitted by facsimile or electronically in .pdf or similar format, and copies of this Agreement so executed and delivered will have the same force and effect as originals. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

11.15. **Required Certifications.** Ambry shall comply with all applicable laws, ordinances, rules, regulations and codes, including but not limited to (if and to the extent applicable) 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, including the regulations promulgated thereunder; the Equal Employment Opportunity Clause at Title 44, Part 750, of the Illinois Administrative Code (see 44 Ill. Admin. Code 750.20), which is fully incorporated herein; 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; prohibitions against smoking on school district property; prohibitions against the presence of sex offenders on school district property; certifications concerning not being barred from bidding and complying with Illinois Use Tax requirements under the Illinois School Code (105 ILCS 5/10-20.21); and the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.).

11.16. **Insurance.** Ambry shall obtain and maintain in effect during the term of the Agreement, at its own expense, general liability insurance coverage and provide the Client with a certificate of insurance verifying such coverage in an amount of no less than \$1,000,000 per occurrence in the aggregate. Ambry shall also maintain cyber liability insurance in an amount of no less than \$1,000,000. Ambry shall name the Client and its individual Board members, employees and agents as additional insureds on all insurance required hereunder. All insurance of Ambry shall be primary and noncontributory. Ambry waives any right of subrogation it and its insurers may have against the additional insureds.

11.17. **Confidentiality of Client Data.**

11.17.1. *Client Data.* As used herein, “Client Data” means all data and information that Client and its students, employees, or their family members provide to Ambry concerning any individual students, employees (and their family members) of Client.

11.17.2. *Confidentiality.* Ambry and individuals performing services through Ambry shall have access to Client Data only to the extent necessary for performance of Ambry’s obligations under this Agreement. Ambry agrees that any information it receives from Client or otherwise in the performance of the Services shall be treated and maintained by Ambry as Confidential Information and used only for the identified purposes in conjunction with services under the Agreement.

11.17.3. *Compliance with Laws.* Ambry further agrees to comply with all applicable state and federal records laws, including, but not limited to (if applicable), the Illinois School Student Records Act, the Family Educational Rights and Privacy Act of 1974, the Illinois Mental Health and Developmental Disabilities Confidentiality Act, the Health Insurance Portability and Accountability Act of 1996, the Illinois Personal Information Protection Act, Illinois Identity Protection Act, and all rules and regulations governing the release of personnel and medical records of Client and its students, employees, their family members.

11.17.4. *Data Breach.* If there is a breach of Client Data (i.e. disclosure to a third party by Ambry or agent of Ambry), Ambry shall, within without undue delay after learning of the incident (or shorter period if required by law), inform Client of the breach and the data affected. At the request and with the assistance of Client, Ambry shall notify each affected individual, if required by applicable law.

11.17.5. *Destruction of Data.* Ambry shall comply with all applicable laws, rules, and regulations, and reasonable directions provided by the Client with respect to the return, destruction, or disposal of Client Data. Unless otherwise directed by the Client, Ambry may not delete, destroy or render inaccessible to Client any Client Data without a thirty (30) day notice and opportunity for the Client to copy and download such Client Data.

11.17.6. *Security of Data.* Ambry will use commercially reasonable efforts to maintain reasonable administrative, physical and technical safeguards for the security, confidentiality and accessibility of Client Data based on industry best practices.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

**BOARD OF EDUCATION OF WILMETTE
PUBLIC SCHOOLS DISTRICT 39**

AMBRY GENETICS CORPORATION

By: _____

By: _____

Name: _____

Name: Linh H Le

Title: _____

Title: Chief Operating Officer

Date: _____

Date: _____

EXHIBIT A
TEST DESCRIPTION

1. **Test.** Test Code: 2019. The COVID-19 RT-PCR test (the “COVID-19 Test(s)”) is a reverse transcription polymerase chain reaction test to detect SARS-CoV-2, the virus that causes COVID-19. The SARS-CoV-2 primer and probe sets are designed to detect RNA from 2019-nCoV in saliva specimens from patients who meet CDC 2019-nCoV clinical criteria. Primer and probe set sequences are based on CDC recommended guidelines that identify two known distinct regions within the SARS-CoV-2 genome. Amplification of both targets will signify a positive result; amplification of one of two targets will signify an indeterminate result; and no amplification of either target, but amplification of internal control, will signify a negative result. Ambry recommends a new specimen be collected if the first COVID-19 Test generates indeterminate results.

2. **Specimen collection and shipping.** Client’s employees, their family members, and students will use OM-505 sample collection device and ship to Ambry in accordance with instructions supplied by Ambry. Ambry will ship OM-505 kits to Client (or one of its employees, their family members, or students) upon Client’s reasonable request and Ambry will provide pre-paid return shipping labels for shipping back to Ambry.

3. **Reporting.** Ambry shall deliver results for COVID-19 Tests to Client in the manner mutually agreed to by the project management teams of the parties. Ambry shall comply with state-by-state reporting requirements for all COVID-19 results and Client acknowledges that results will be shared consistent with such requirements. Client shall facilitate this reporting to the extent allowable. Ambry shall notify Client in advance of receiving specimens should it need any additional information per state requirements.

4. **Turnaround time.** Results for each COVID-19 Test ordered under this Agreement shall be delivered to Client and testing subject within seventy – two (72) hours starting from the time when Ambry receives and accepts a specimen for the COVID-19 Test.

EXHIBIT B
FEE SCHEDULE

The Fee for the Covid-19 Test outlined in Exhibit A is \$100. Unless otherwise instructed by Client and in accordance with the provisions of this Agreement, Ambry will first bill the testing subject's health insurance. In the event that the testing subject's health insurance will not reimburse Ambry for the Covid-19 Test, the Client will be responsible for the Fee.

For testing that is requested by Client for individuals who are asymptomatic and have not had a close contact with an infected individual, the fee will not exceed \$119 per test for up to twenty-five (25) tests, and not exceed \$75 per tests for twenty-five (25) or more tests if twenty-five (25) or more samples for testing are included in one shipment.

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SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “Agreement”) is made as of November 16, 2020, by and between the Board of Education of Wilmette Public Schools District 39 (the “Company”) and Rapid Reliable Testing, LLC (“RRT”).

RECITALS:

WHEREAS, Company is a public school district located in Wilmette, Illinois that desires to arrange for the COVID-19 testing (“COVID-19 Testing”) of its employees, their family members, and students;

WHEREAS, MD1 Medical Care, P.C. (the “Practice”) and Ambry Genetics Corporation (the “Lab”) provide components of COVID-19 Testing, which includes the provision of specimen collection services on behalf and under the direction of a duly licensed and authorized medical services provider employed or engaged by the Practice and the prompt processing of those specimens through the Lab, a CLIA and CAP certified reference laboratory;

WHEREAS, RRT has arrangements with the Practice and the Lab to coordinate the provision of COVID-19 Testing Services and is authorized to act as their agent as set forth herein;

WHEREAS, Company desires that RRT assist with coordinating the provision of certain aspects of COVID-19 Testing by the Practice and the Lab to employees, their family members, and students of the Company, as more specifically stated in Schedule 1; and

WHEREAS, RRT agrees to provide such services upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual promises hereinafter contained, the parties hereto agree as follows:

1. Services. Company hereby engages RRT to provide the services that are described in Schedule 1 hereto (“Services”).

(a) All Services provided pursuant to this Agreement that are provided by a medical services provider shall be provided by duly licensed physicians employed or engaged by the Practice.

(b) All Services provided pursuant to this Agreement that are provided by the Lab shall be performed by a CLIA and CAP certified reference laboratory.

2. Fee; Payment. In return for the Services provided herein, Company shall pay RRT the fees set forth in Schedule 1 (the “Fees”). Company acknowledges that some portion of the Fees are due to the Practice and/or the Lab, as more specifically stated in Schedule 1. RRT is authorized by the Practice to act as its agent to collect their portion of the Fee. RRT will invoice Company via email the amount due for the Services. Company agrees to remit payment to RRT within fifteen (15) days of receipt via credit card or ACH as directed on Exhibit A (“Payment Forms”). Company agrees that any payment due hereunder to any party is not contingent upon any payments that Company may collect from other sources.

3. Compliance with Laws.

(a) The parties represent, warrant and covenant that throughout the term of this Agreement and during any applicable period thereafter, each shall perform under this Agreement in accordance with all applicable federal and state laws, rules, regulations and agency guidelines.

(b) The parties enter into this Agreement with the intent of conducting their relationship and implementing the agreements contained in this Agreement in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "Anti-Kickback Law") and Section 1877 of the Social Security Act (the "Stark Law"), as amended. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, no party will intentionally conduct itself under the terms of this Agreement in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law or any similar New York State law, rule or regulation. Without limiting the generality of the foregoing, the parties expressly agree that nothing contained in this Agreement shall require any party to refer any patients to the others, or to any affiliate or subsidiary of the others.

4. Insurance. RRT shall ensure at all times during the term of this Agreement that the Practice and the Lab maintains professional liability insurance covering the individuals providing the Practice Services and Lab Services hereunder, having minimum coverage amounts of \$1,000,000 occurrence/\$3,000,000 aggregate. In addition, RRT shall obtain and maintain in effect during the term of the Agreement, at its own expense, general liability insurance coverage and provide the Company with a certificate of insurance verifying such coverage in an amount of no less than \$1,000,000 per occurrence in the aggregate. RRT shall also maintain cyber liability insurance with a limit of no less than \$1,000,000. RRT shall name the Company and its individual Board members, employees and agents as additional insureds on all insurance required hereunder. All insurance of RRT shall be primary and noncontributory. RRT waives any right of subrogation it and its insurers may have against the additional insureds.

5. Terms and Termination.

(a) This Agreement shall commence as of the day and year first above written and shall continue in force for one (1) year and renew annually, unless sooner terminated in accordance with the provisions of Section 5(b) below.

(b) Any party may terminate this Agreement by providing the other parties with thirty (30) days prior written notice.

6. Notices. All notices and other communications hereunder shall be in writing and shall have been deemed to have been duly given if delivered by certified mail, charges prepaid, return receipt requested or sent by overnight mail by a national overnight courier (Fedex, UPS, etc.) to:

If to RRT:

Rapid Reliable Testing, LLC
35 West 35th Street, 5th Floor
New York, NY 10001
Attn: Michael Witkowski
email: mwitkowski@ambulnz.com

If to Company:

Wilmette Public Schools District 39
615 Locust
Wilmette, IL 60091
Attn: Kari Cremascoli, Ph.D
email: cremasck@wilmette39.org

or such other address as any of the above shall indicate in writing. If notice is sent by certified mail, return receipt, then such notice shall become effective, if properly addressed and with proper postage, three (3) business days after they are sent. If notice is sent by national overnight courier, then such notice shall become effective, if properly addressed and paid for, one (1) business day after they are sent.

7. Miscellaneous. This Agreement shall be governed by the laws of the State of Illinois. The parties consent to the exclusive jurisdiction of the state courts located in Cook County, Illinois in connection with any action or proceeding arising under, or relating to, this Agreement. By execution and delivery of this Agreement, each such party hereby (i) accepts the jurisdiction of the aforesaid courts; (ii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iii) further waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. This Agreement is the entire agreement among the parties concerning the subject matter hereto and supersedes all prior agreements, understandings, memoranda, and other such communications, whether written or oral. If any provision of this Agreement, or the application of any provision hereto to any person or circumstance, is held to be legally invalid, inoperative or unenforceable, then the remainder of this Agreement shall not be affected unless the invalid provision substantially impairs the benefit of the remaining portions of this Agreement to all of the parties. No omission or delay by either party in exercising any right, remedy, privilege or option hereunder, or under any other agreement or instrument between Company and RRT shall operate as a waiver or partial waiver of any such right or remedy thereof; nor shall any single or partial exercise of any such right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy. No waivers shall be binding unless in writing and signed by the party against whom such waiver is to be enforced. This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement shall only be amended or modified by a written instrument signed by both parties. This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding agreement.

8. Confidentiality of Company Data.

(a) *Company Data*. As used herein, “Company Data” means all data and information that Company and its employees, their family members, and students provide to RRT concerning any individual employees, their family members, or students of Company.

(b) *Confidentiality*. RRT and individuals performing services through RRT shall have access to Company Data only to the extent necessary for performance of RRT’s obligations under this Agreement. RRT agrees that any information it receives from Company or otherwise in the performance of the Services shall be treated and maintained by RRT as confidential information and used only for the identified purposes in conjunction with services under the Agreement.

(c) *Compliance with Laws*. RRT further agrees to comply with all applicable state and federal records laws, including, but not limited to (if applicable), the Illinois School Student Records Act, the Family Educational Rights and Privacy Act of 1974, the Illinois Mental Health and Developmental Disabilities Confidentiality Act, the Health Insurance Portability and Accountability Act of 1996, the Illinois Personal Information Protection Act, Illinois Identity

Protection Act, and all rules and regulations governing the release of personnel and medical records of Company and its employees, their family members, and students.

(d) *Data Breach.* If there is a breach of Company Data (i.e. disclosure to a third party by RRT or agent of RRT), RRT shall, within without undue delay after learning of the incident (or shorter period if required by law), inform Company of the breach and the data affected. At the request and with the assistance of Company, RRT shall notify each affected individual, if required by applicable law.

(e) *Destruction of Data.* RRT shall comply with all applicable laws, rules, and regulations, and reasonable directions provided by the Company with respect to the return, destruction, or disposal of Company Data. Unless otherwise directed by the Company, RRT may not delete, destroy or render inaccessible to Company any Company Data without a thirty (30) day notice and opportunity for the Company to copy and download such Company Data.

(f) *Security of Data.* RRT will use commercially reasonable efforts to maintain reasonable administrative, physical and technical safeguards for the security, confidentiality and accessibility of Company Data based on industry best practices.

9. Required Certifications. RRT shall comply with all applicable laws, ordinances, rules, regulations and codes, including but not limited to (if and to the extent applicable) 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, including the regulations promulgated thereunder; the Equal Employment Opportunity Clause at Title 44, Part 750, of the Illinois Administrative Code (see 44 Ill. Admin. Code 750.20), which is fully incorporated herein; 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; prohibitions against smoking on school district property; prohibitions against the presence of sex offenders on school district property; certifications concerning not being barred from bidding and complying with Illinois Use Tax requirements under the Illinois School Code (105 ILCS 5/10-20.21); and the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.).

10. Indemnification. RRT shall indemnify, defend, and hold harmless Company, and its individual Board members, employees and agents from and against any claims, liabilities, and expenses, including attorneys' fees, arising out of any breach of the RRT's obligations, covenants, representations, or warranties under the Agreement, or any negligent errors or omission of Ambry in the performance of the Services.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

BOARD OF EDUCATION OF
WILMETTE PUBLIC SCHOOLS
DISTRICT 39

By: _____

Name:

Title:

RAPID RELIABLE TESTING, LLC

By: _____

Name:

Title:

Schedule 1

Service Description and Fees

RRT shall provide the following services (“Services”):

Practice Services: RRT will arrange for the Practice to provide a standing order for COVID-19 RT-PCR testing and shall apprise the Company of COVID-19 results and recommendations on behalf of its employees, their family members, and students on an as-needed basis. If requested by the Company, RRT shall also provide the following services: (i) the collection of COVID-19 RT-PCR specimens in accordance with the directions of the Practice and in accordance with the Centers for Disease Control and Prevention guidelines for collecting clinical specimen for persons for COVID-19, and (ii) the coordination of the delivery of clinical specimen to the Lab.

Lab Services: None.

Minimum: Company does not commit to a minimum number of specimen collections.

Fees: Company shall pay RRT a fee of \$10.00 per result reported (“Fees”). Company acknowledges that, with respect to each \$10.00 Fee, \$1.00 is due the Practice, which will be handled by RRT.

EXHIBIT A
PAYMENT OF FEES

Credit Card Authorization Form

Please complete all fields. You may cancel this authorization at any time by contacting us. This authorization will remain in effect until cancelled.

Credit Card Information
Card Type: <input type="checkbox"/> MasterCard <input type="checkbox"/> VISA <input type="checkbox"/> Discover <input type="checkbox"/> AMEX <input type="checkbox"/> Other _____
Cardholder Name (as shown on card): _____
Card Number: _____
Expiration Date (mm/yy): _____
Cardholder ZIP Code (from credit card billing address): _____

I, _____, authorize _____ to charge my credit card above for agreed upon purchases. I understand that my information will be saved to file for future transactions on my account.

Customer Signature

Date

ACH DETAILS

Name on account/recipient:

Rapid Reliable Testing, LLC

Bank: Bank of America

Routing #: 026009593

Account #: 483075020726

Any questions, please call Russ Manco at 848.482.1442

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