



Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 1/18/2024

Contract/Agreement Vendor:

Playscripts, Inc.

Name of Vendor & Contact Person

AMANDA@BROADWAYLICENSING.COM

Vendor Email Address

Licensing for OMS production of "Superheroes". Production dates in March 2024.

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

OMS Drama

Reason/Audience to benefit

2/12/2024

BOE Date

\$ 360.22

Amount of agreement

Person Submitting Contract/Agreement for Review: Merica Hogan, OMS Drama

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: Adam J. Foreman, Assoc. Dir. of Fine Arts

Does this Contract/Agreement utilize technology? YES/NO

If yes, Technology Admin: n/a

Leadership Team Member: Steve Dunn

Funding Source: 68-844

Fund/Project

Activity Fund, OMS Drama, Fund 68, Proj 844

OCAS Coding

☒ **Consent**

☐ **Action**

Licensing for OMS production of "Superheroes". Production dates in March 2024.
Synopsis:

"For superheroes, saving the world is tough, but the time spent away from work is tougher. The Hulk has to do taxes, a crime-fighting sidekick joins a support group, and Batman goes stir-crazy without enough criminals to take down. SUPERHEROES is a funny, fast-paced series of vignettes that explores how the caped crusaders deal with life in street clothes."

Summary

This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.



Licensing Agreement

Licensing Agreement for *SUPERHEROES* by Ian McWethy: Amateur Performance Rights

This Agreement is entered into as of January 12th, 2024 by and between Playscripts, Incorporated, a Delaware corporation ("Playscripts") and the following individual(s), organization and/or institution (collectively, the "User"):

Merica Hogan
Oliver Middle School

Playscripts and the User agree to the following provisions with respect to the licensing of Amateur Performance rights of the following dramatic work (the "Play") entitled:

SUPERHEROES by Ian McWethy

1. Grant of Performance Rights. Subject to the terms of this Agreement, Playscripts grants the User a nonexclusive and nontransferable license to produce and perform 3 total Amateur Performance(s) of the Play on or between the following date(s) (the "Run"):

Mar 28, 2024 - Mar 29, 2024

2. Payments and Script Delivery.

2.1 Amateur Royalty. In consideration of the rights granted herein, the User shall pay a royalty fee of \$60.00 per Amateur Performance of the Play during the Run (collectively, the "Amateur Royalty").

2.2 Script Delivery. Playscripts shall provide the User with sufficient copies of the Play (the "Scripts") for the Amateur Performances permitted hereunder upon its receipt from the User of: (a) the Amateur Royalty; and (b) the applicable book fee covering the number and type of Scripts requested by the User (the "Book Fee"). The User expressly agrees that no performance or promotion of the Play may be undertaken until Playscripts has received from the User the Amateur Royalty.

3. User's Covenants. The User covenants to Playscripts as follows:

3.1 Definition of Amateur Performances. The User acknowledges that "Amateur Performances" shall include any and all performances by living actors in the immediate presence of an audience, as staged by little theaters, community theaters and/or drama associations; colleges, universities, high school and other school groups; churches and other religious institutions; and/or puppetry theaters, clubs, and other amateur organizations or groups therein or connected therewith, (a) irrespective of the size or nature of the audience; (b) regardless of whether or not an admission fee is charged; and (c)

regardless of whether the performance is given by paid or unpaid actors and production staff. Amateur Performances does not, however, include performances given by any theater or group using a cast which consists entirely, or of a majority, of paid actors and production staff and/or that has normally been known to handle stock pursuant to one of the Actors Equity Association agreements governing employment of actors.

3.2 Limitation of Licensing. The User acknowledges that Amateur Performance rights to the Play are controlled exclusively by Playscripts. The User agrees that it shall not perform the Play in a manner inconsistent with the license granted in Section 1 without obtaining prior written permission from Playscripts.

3.3 Restriction of Alterations. The User shall not delete, alter, or make changes of any kind to the Play, including the changing of character gender, the cutting of dialogue, or the alteration of objectionable language, unless granted express written permission by Playscripts. The User shall not alter the title of the Play.

3.4 Use of Approved Script. The User shall only perform the Play as it appears in the Script(s) published and approved by Playscripts.

3.5 Author Credit. The User shall give credit to **Ian McWethy** (the "Author") as the sole and exclusive author of the Play. This obligation applies to the title page of every program distributed in connection with performances of the Play, and in any instance that the title of the Play appears for purposes of advertising, publicizing, or otherwise exploiting the Play and/or a production thereof. The name of the Author must appear on a separate line, in which no other name appears, immediately beneath the title and of a font size at least 50% as large as the largest letter used in the title of the Play. No person, firm, or entity may receive credit larger or more prominent than that accorded the Author. The name of the Author may not be abbreviated or otherwise altered from the form in which it appears in the Play.

3.6 Publisher Attribution. The User shall include the following notice in all programs, advertisements, and other printed material distributed or published in connection with the production of the Play:

Produced by special arrangement with Playscripts, Inc. (www.playscripts.com)

3.7 Other Required Credits. The User shall give credit to any other parties, such as producer credits and commission credits, in the form and manner specified in the Production Materials.

3.8 Prohibition of Unauthorized Copying. The User acknowledges that any unauthorized copying of the Scripts or excerpts from Scripts is strictly forbidden by law. The User agrees that no part of the Scripts shall be reproduced, stored in a retrieval system, or transmitted in any form, by any means now known or yet to be invented, including photocopying or scanning, without prior permission from Playscripts.

3.9 Refund Policy. The User agrees to the following refund policy: (a) the Amateur Royalty (or any portion thereof) applicable to any Amateur Performance of the Play may be refunded by Playscripts only in the event that a scheduled Amateur Performance of the Play is cancelled; *provided, however,* that the User shall have provided Playscripts with written notice of such cancellation(s) prior to the last day of the Run; and (b) the Book Fee is non-refundable.

3.10 Audit Rights. Upon reasonable notice and during normal business hours, the User shall allow Playscripts or its designee to inspect the User's books and records relating to the Play and all Amateur Performances thereof. The User shall make such books and records available in the form in which they are maintained (including digital form as well as print form, if so maintained by the User), and shall provide reasonable assistance during such audit. If a reliable audit shows that Playscripts has been underpaid, the User shall promptly make all necessary royalty payments (with interest on the unpaid amounts at a rate of one percent (1%) per month) and shall reimburse Playscripts for reasonable audit expenses, upon submission of supporting invoices. Without limiting the foregoing, the User expressly agrees to keep and maintain the User's books and records relating to the Play and all Amateur Performances thereof for a period of two (2) years following the Run.

3.11 Infringement penalties. The User acknowledges that under the United States Copyright Act, any person who exercises a copyright owner's exclusive rights without permission may be liable as an infringer; that Playscripts, as the legal and beneficial owner of certain exclusive rights to the Play, is entitled to institute legal action for any infringement of those rights committed while Playscripts owns them; that infringement of a registered work may subject the infringing party to actual damages, statutory damages, and attorneys' fees; and that a court has discretion to award statutory damages in amounts up to one hundred fifty thousand dollars (\$150,000) for willful infringements.

3.12 Playscripts' Right to Terminate. The User acknowledges that Playscripts reserves the right to terminate this Agreement at any time, in its sole discretion. In the event of such termination, the Amateur Royalty previously paid by the User shall be promptly refunded by Playscripts, subject to Section 3.9, and notwithstanding anything to the contrary set forth in Section 4.

4. Indemnification. The User agrees to defend, indemnify and hold harmless Playscripts and its affiliates, shareholders, officers, directors, employees, agents, authors, and contributors from and against any and all claims, damages, costs and expenses, including attorney's fees, arising from or related to (a) use of the Play by the User, or (b) any breach by the User of the terms or conditions of this Agreement.

5. Disclaimer of Warranties. The Play and all related materials or associated documentation are provided "AS IS" without warranty of any kind. The entire risk as to use of the Play and all related materials or associated documentation is assumed by the User. THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. THE FOREGOING SHALL FURTHER NOT BE ENLARGED OR OTHERWISE AFFECTED BY PLAYSSCRIPTS' RENDERING OF ANY ADVICE

OR SERVICE IN CONNECTION WITH THE PLAY OR ANY RELATED MATERIALS OR ASSOCIATED DOCUMENTATION OR THE USER'S USE THEREOF.

6. Limitation of Liability. NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES SUCH AS LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN ADDITION, IN NO EVENT SHALL THE LIABILITY OF PLAYSRIPTS TO THE USER UNDER THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THAT ACTUALLY PAID BY THE USER TO PLAYSRIPTS UNDER THIS AGREEMENT.

7. Miscellaneous.

7.1 Assignment. The User shall not have the right to transfer the performance rights granted by this Agreement to another party. Playscripts may transfer its rights under this Agreement upon written notice delivered to the User.

7.2 Entire Agreement; Inconsistent Terms. The terms and conditions of this Agreement constitute the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous proposals, representations, statements, understandings or agreements, written or oral, express or implied, including but not limited to any other terms provided in any purchase order form provided by User. Playscripts objects to all terms and conditions different from or additional to those in this Agreement, whether or not signed by authorized representatives of the parties. Additional or different terms or conditions will only be valid if expressly agreed to in writing on a document that specifically purports to do so, noted on the face of such document and signed by representatives of both parties. User acknowledges that it did not enter into this Agreement in reliance upon any representation by Playscripts or understanding by User that is not set forth herein. This Agreement can only be modified by a written instrument signed by both parties.

7.3 Governing Law. This Agreement shall be governed by the internal laws of the State of New York, without regard to principles of conflict of laws.

7.4 Jurisdiction. Each party hereby expressly consents to the personal jurisdiction of, and waives any objection to venue in, the state and federal courts located in New York, New York for any lawsuit filed there against arising from or related to this Agreement.

7.5 Notices. All notices required by this Agreement shall be sent by regular mail and/or e-mail to the parties at their last known addresses.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date hereof.

Playscripts, Inc. grants Oliver Middle School (the "User") the non-exclusive right to videotape a single performance and to make one (1) copy per cast/crew member of its production of SUPERHEROES. This authorization includes the following provisions:

- The video recording of the Play may be created as a non-commercial venture for archival purposes, which video may not be sold, leased or rented.

- The video recording will be done by a single stationery camera. There will be no attempt to create an artistic work.
- As a condition to the rights granted herein, the User agrees to use good faith efforts to inform all audience members of the restrictions and limitations on video recording and the subsequent use thereof, as set forth herein. At a minimum, User agrees to include a statement in the Play's program substantially in the form provided below and shall further inform audience members of the below limitations by way of an announcement prior to the start of each performance of the Play.
- ANY VIDEO RECORDING MADE OF THIS PERFORMANCE IS AUTHORIZED FOR PERSONAL, AT-HOME, NON-COMMERCIAL USE ONLY. THE SALE OR DISTRIBUTION OF SUCH RECORDING IS STRICTLY PROHIBITED UNDER FEDERAL COPYRIGHT LAW.
- The User understands and confirms that no other rights are granted and that the User is specifically prohibited from utilizing the video in any other manner, including but not limited to, Facebook, You Tube, Vimeo, etc.
- A license fee of \$75.00 is required by credit card or institutional check payable to Playscripts, Inc. and due upon signing below by authorized representative. Please return signed agreement for countersignature.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date hereof.

Merica Hogan
Oliver Middle School

Date

Title

PLAYSCRIPTS, INCORPORATED:

By: Amanda DeLalla

Name: Amanda DeLalla

Title: Play Licensing Associate