

Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

October 7, 2021

AGENDA ITEM (ACTION ITEM):

Consider/Approve the contract between eSpark Scope and River Ridge to purchase a supplemental, standards-aligned reading and math resource for K-5 instruction, practice, and assessment for one year access through October, 2022 with the option for automatic renewal.

APPLICABLE BOARD POLICY:

01.11 General Powers and Duties of the Board

HISTORY/BACKGROUND:

eSpark is an online supplemental tool that includes adaptive and assignable lessons designed for use with small groups and/or center rotations. eSpark is standards based and provides teachers with ongoing progress reports and data to assist teachers with remediating and reinforcing reading and math concepts and skills.

FISCAL/BUDGETARY IMPACT:

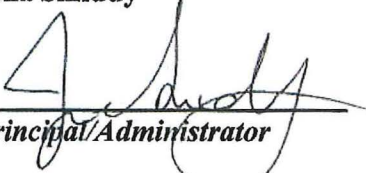
\$4080.00

RECOMMENDATION:


Approval of the contract between eSpark and River Ridge to purchase a supplemental, standards-aligned reading and math resource for K-5 instruction, practice, and assessment for one year access through October, 2022 with the option for automatic renewal.

CONTACT PERSON:

Jena Smiddy


Principal/Administrator


District Administrator


Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

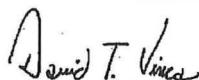
River Ridge Elementary (Kenton County)

2021-2022 School Year eSpark Quote

Quote Issued: October 6, 2021

Quote Expires: October 15, 2021

eSpark Learning Signature:



Date: 10/6/21

Print Name: David Vinca

Title: Founder/CEO

School Decision Maker Signature:

Date:

Print Name:

Title:

Invoice Details:

Date to Invoice:

Will a PO be required before invoicing? (If applicable)

Y / N PO#:

Payment Terms: Net 30 Days

Contact for Invoicing:

Name:

Email:

Phone:

Please return via:

Email: contracts@eSparkLearning.com

Fax: 312-436-2488 **ATTN:** Accounting

Mail: eSpark Inc, 2045 W Grand Ave Ste B #39739
Chicago, Illinois 60612-1577

Contract Terms. This agreement will automatically renew annually unless either party gives written notice of termination at least ninety (90) days prior to expiration of the current Term.

Terms & Conditions: This proposal incorporates and is subject to the the terms & conditions and privacy policy on our website (<https://www.esparklearning.com/terms>) and constitutes a binding contract entered into between eSpark Inc., a Delaware Corporation and the entity listed above.

Confidential - This document contains information that is proprietary and confidential of eSpark, Inc. which shall not be disclosed outside the recipient's organization.

River Ridge Elementary (Kenton County)



2021-2022 School Year | eSpark

1	eSpark Scope	Full Cost	Cost if Commit by October 15*	Select
Whole School	Math & ELA - K-5	\$8,500	\$4,080	<input type="checkbox"/>
Coupon Code: WHOLE4HALF				
<i>The September Promotion is being applied, enabling River Ridge Elementary to secure the September Pricing Discount (20% Off) as well as the WHOLE4HALF "Flash Sale" Discount. This allows River Ridge full Whole School implementation (\$8,500 value) for the price of the Half School Implementation.</i>				
Discount Extension Expiration:				
- Discount Approved by eSpark's VP Tracy Herbolich. Discount Extension is valid through 10/15/21 for the 21-22 School Year				

* Discounts will be applied based on the signing date of the contract. The invoice date can differ from the signing date.

Terms of Service and Master Service Agreement

**These terms and conditions have been modified to accommodate the request of the Kenton County School District.*

Terms of Use

Welcome to esparklearning.com! The esparklearning.com website and all products and services of eSpark, Inc. ("eSpark") available via this website (the "Site") are provided subject to the terms set forth herein. These terms govern your access to and use of all eSpark operated and controlled websites including esparklearning.com and all other online services controlled or provided by eSpark (collectively, the "Services"). If you visit the Site, you agree to be bound by these Terms of Use ("Terms").

eSpark reserves the right to make changes at any time to the Site or these Terms of Use. Any modifications to the Terms of Use will be effective upon posting. Your continued use of the Site following posting of any revised Terms of Use will constitute acceptance of the modified Terms of Use.

Your Acceptance Of The Terms

Please be aware that these Terms constitute a binding legal agreement between you and eSpark outlining your legal rights, obligations, and remedies arising from your use of the Services. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority and are able to form this contract binding your employer, or the applicable entity, to these terms conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. By accessing or using the Services, you (the "User") signify that you have read, understand, and agree to be bound by these

Terms, and by the terms of eSpark's Privacy Notice

<https://www.esparklearning.com/privacy>, which provides information concerning our collection and use of your personal information. These Terms apply to anyone who accesses or uses the Services. By using the Services you are indicating your acceptance of the terms and conditions of the Terms and Privacy Notice, including any dispute resolution, arbitration, limitation of damages, and choice of law provisions.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BECOME BOUND BY THESE TERMS OF USE IN THEIR ENTIRETY. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS INCLUDED WITHIN THESE TERMS, THEN YOU MAY NOT ACCESS OR USE THE SERVICES.

Use of the Site

The Site may include information regarding eSpark and its products, services, publications and presentations which are proprietary to eSpark, and links to other eSpark-owned or third party websites. You may download, view, copy and print information, materials and any other aspect of this Site (i) solely for your personal, informational purposes; and (ii) provided that neither the materials, nor any proprietary notices or disclaimers therein, are modified or altered.

You agree you will not interfere, in any way, with others' use of or access to the Site and will not attempt to gain unauthorized access to the account or computer system of any other Site user. You further agree not to take any other action in connection with your use of the Site which violates any treaty, law or regulation and to fully comply with all applicable treaties, laws and regulations in your use of the Site.

You agree to access the Site through a web browser, and specifically agree not to use any third party applications to access the Site or any other page of the Site. You further agree that you will not use any robot, spider or other automatic device, manual process or application or data mining or extraction tool to access, monitor, copy or use the Site. You agree not to take any other action that imposes an unreasonable or disproportionately large load on the Site.

Except as expressly provided herein or elsewhere on the Site, you may not use, download, upload, reproduce, copy, duplicate, print, display, perform, republish, sell, license, post, transmit, disseminate, redeliver using "framing technology," otherwise distribute, or commercially exploit in any way the Site or any portion thereof or any information or content on the Site, without the prior written permission of eSpark. In addition, you agree not to link to any page of the Site other than the home page located at www.esparklearning.com.

Unauthorized Use of the Site

eSpark reserves the right to investigate and take legal action against any illegal and/or unauthorized use of the Site, including but not limited to: unauthorized access to the Site through a third party application, robot, spider, automated device, or data mining or extraction tool or other unauthorized means; interference with the Site; action that imposes an unreasonable load on the Site; or any link to any page of the website other than the home page. eSpark's decision not to pursue legal action for any violation of the Terms of Use shall not be construed as a waiver of these Terms of Use or eSpark's legal rights.

Account Registration

As a condition to using the Site, you may be required to register and select a password and username or provide additional contact information (hereafter referred to as the "Registration Data").

You must provide eSpark with accurate, complete, and updated Registration Data. You may not select or use as a Company User ID a name of another person with the intent to impersonate that person. You will not provide any false information or create an account for anyone other than yourself without permission.

Upon completion of the Registration Data, you certify: that you are 18 years of age or older, if signing up for a parent or teacher account; to provide true, accurate, current, and complete information about yourself and any other users of the account as required by the eSpark's registration form to maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

eSpark reserves the right to refuse registration of or cancel Registration Data in its discretion.

You shall be responsible for maintaining the confidentiality of your password and will not share with anyone or let anyone else access your account. You may not transfer your account to anyone.

Privacy

The terms of the eSpark Privacy Notice (<https://www.esparklearning.com/privacy>) are hereby incorporated as part of these Terms of Use.

Disclaimer of Warranties and Limitation of Liability

By using the Services, you expressly represent and warrant that you are legally entitled to enter into this Agreement. If you reside in a jurisdiction that restricts the use of the Services because of age, or restricts the ability to enter into agreements such as this one due to age, you must abide by such age limits and you must not use the Services. By using the Services, you represent and warrant that you have the right, authority, and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement. If you are using the Services on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such entity, organization, or company. When using the Services, you agree to comply with all applicable laws from your home nation and the country, state and city in which you are present while using the Services.

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE, AND ANY INFORMATION, CONTENT, PRODUCTS, SERVICES AND MATERIALS CONTAINED IN, ACCESSED VIA, OR DESCRIBED ON THE SITE, IS AT YOUR OWN RISK, AND THAT ALL SUCH INFORMATION, CONTENT, PRODUCTS, SERVICES AND MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, eSPARK MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE AVAILABILITY, OPERATION AND USE OF THE SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES

ON OR ACCESSED VIA THE SITE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, eSPARK DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THE SITE IS ACCURATE, COMPLETE OR CURRENT, AND IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THEREIN OR FOR ANY ADVERSE CONSEQUENCES RESULTING FROM YOUR RELIANCE ON ANY ASPECT OF THE SITE. FURTHER, eSPARK MAKES NO REPRESENTATIONS AND WARRANTIES THAT THE SITE WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS.

IN NO EVENT SHALL eSPARK OR ITS AFFILIATES, OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF eSPARK OR ITS AFFILIATES (THE "eSPARK PARTIES") BE LIABLE TO YOU OR ANY THIRD PARTY FOR DAMAGES OF ANY KIND ARISING OUT OF THE USE OF, ACCESS TO, RELIANCE ON, INABILITY TO USE OR IMPROPER USE OF THE SITE OR ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES AVAILABLE THEREON (INCLUDING, BUT NOT LIMITED TO, ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS, GOODWILL OR REVENUE, BUSINESS INTERRUPTION, OR LOSS OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.

CERTAIN STATE LAWS MAY NOT PERMIT LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, AND THUS SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS ABOVE MAY NOT APPLY TO YOU.

Indemnification

You agree to indemnify and hold the eSpark Parties harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees, disbursements and court costs) arising from or in connection with (i) use of the Site or any content, information, materials, products or services contained, displayed or available therein by you or any other person accessing the Site under any password, user ID or other

access method assigned to you; (ii) your violation of these Terms of Use; or (iii) your violation of any rights of any third party.

Intellectual Property

eSpark and its licensors and partners own all rights, titles, and interests in and to the Services, and all related Intellectual Property rights, including all registered and unregistered trademarks, trade dress, graphics, logos, designs, page headers, button icons, scripts, service names, software code, inventions, copyrights, and copyrightable works, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services, excluding User Content (collectively, the “eSpark IP”). eSpark IP may not be used in connection with any product or service in any manner that is likely to cause confusion or otherwise violate the rights granted to us in eSpark IP, including use of any eSpark IP as part of third party trademarks, trade dress, and/or as part of domain names, email addresses, account names or handles, or other digital properties.

Except pursuant eSpark’s Software Development Kit license made available to educational app developers, eSpark IP may not be used in connection with any product or service that is not eSpark’s, in any manner that is likely to cause confusion among consumers, or to disparage or discredit eSpark. All other intellectual property not owned by eSpark or its licensors that appear on this Site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by eSpark. You may not use, copy, modify or display any of intellectual property appearing on the Site without the express written permission of the intellectual property owner.

This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Services, or any intellectual property rights owned by eSpark. Apple, the Apple logo, and iPad are trademarks of Apple Inc., registered in the U.S. and other countries. App Store is a service mark of Apple Inc.

Free Teacher Trial Terms

A limited number of teachers are selected to be eligible for a free trial for one academic year. We may ask teachers for help sharing eSpark with other teachers or their admins

in order to receive a full year of access. If a teacher used eSpark 10 or more times on a trial in a previous year they are no longer eligible.

A limit of 3 teachers per school can use the free trial. If a school has more than 3 teachers using eSpark, the school **needs to purchase**.

At any point, eSpark may offer teachers opportunities to unlock a second year of eSpark trial access.

Links to Other eSpark-Owned Sites/Third Party Sites/Third Party Advertisements

eSpark may provide links on the Site to other eSpark-owned websites. The use of such other eSpark-owned websites, and privacy policies related thereto, are governed by separate terms and conditions of use and privacy statements, which can be found at those websites.

You acknowledge that, from time to time, eSpark may provide links to the websites of third parties. eSpark is not responsible for the content of any linked site which is not owned by eSpark, or any link contained in a linked site. The display of any link to a third party website does not imply endorsement by eSpark of the linked site or any information or content therein. If access to these websites is blocked within your or your students' network, you grant eSpark permission to provide access to this content through our system. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Services.

You acknowledge that, from time to time, eSpark may serve videos to students from third party websites that our team has curated. If access to these websites is blocked within your or your students' network, you grant eSpark permission to provide access to this content directly through our servers. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Services.

IN NO EVENT WILL eSPARK BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANYONE FOR ANY DAMAGE OR LOSS ARISING FROM OR RELATING TO ANY USE, CONTINUED USE OR RELIANCE ON ANY ADVERTISEMENT DISPLAYED ON THE SITE, OR ANY PRODUCTS, SERVICES OR OTHER MATERIALS RELATING TO ANY SUCH ADVERTISEMENT, ANY LINKED THIRD PARTY SITE, OR ANY LINK CONTAINED IN A LINKED SITE.

Feedback

Except where otherwise expressly provided by eSpark, all comments or feedback which is solicited by or provided to eSpark regarding your experiences with, preferences for, opinion of or suggestions regarding this Site or eSpark products or services (collectively, "Feedback") shall be considered non-confidential and eSpark's property. By submitting such Feedback to eSpark, you agree that you assign to eSpark, without charge, all worldwide rights, title and interest, including copyrights and other intellectual property rights, in and to such Feedback, and that eSpark shall be free to use such Feedback in any manner or media whatsoever, on an unrestricted basis and without any attribution, compensation or royalties to you.

eSpark Does Not Endorse Comments of Users

eSpark does not endorse, support, sanction, encourage, verify, or necessarily agree with the comments, opinions, or statements of third parties displayed on or transmitted via the Site ("Third Party Content"). Any Third Party Content placed on the Site are the views and responsibility of those who post the statements, and do not necessarily represent the views of eSpark.

Modification or Discontinuance of the Site by eSpark

At any time, without notice to you, and for any or no reason, eSpark may modify or discontinue the Site. eSpark shall in no way be held liable for any consequence which results from eSpark's decision to modify or discontinue providing the Site.

Governing Law

The laws of the State of Kentucky will govern these Terms of Use, without giving effect to any principles of conflicts of laws. You agree that any action arising out of the Terms of Use or your use of the Site shall be brought in state or federal court in Kentucky and you consent to the jurisdiction of such courts.

Notice and Procedure for Making Claims of Intellectual Property Infringement

eSpark respects the intellectual property rights of others. We will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable Intellectual Property laws. Upon receipt of notices complying or substantially complying with the DMCA, we may act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and may act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. We may terminate access for Users of the Services who are infringers.

To provide eSpark with notice of an infringement, you must provide a written communication to the attention of "eSpark: DMCA Notification Department" at <https://www.esparklearning.com/dmca-takedown> that sets forth the information specified by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is infringing your copyright.

An electronic or physical signature of the person authorized to act on behalf of the owner of the intellectual property interest;

A description of the intellectual property right that you claim has been infringed;

A description of where the material that you claim is infringing is located on the Site;

Your address, telephone number, and e-mail address;

A statement by you that you have a good faith belief that the disputed use is not authorized by the intellectual property owner, its agent, or the law;

A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the intellectual property owner or authorized to act on the intellectual property owner's behalf.

Providing eSpark with Counter-Notification

If we remove or disable access to content in response to an infringement notice, we may make reasonable attempts to contact the owner or administrator of the affected content. If your material has been removed and you feel that your material does not constitute infringement, you may provide us with a counter notification by written communication to the attention of "eSpark: DMCA Counter Notification Department" at <https://www.esparklearning.com/dmca-takedown> that sets forth all of the necessary information required by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is not infringing the copyrights of others. If you are uncertain whether an activity constitutes infringement, we recommended seeking advice of an attorney.

eSpark's agent for notice of claims of copyright infringement or other intellectual property infringement on the Site can be reached as follows:

Intellectual Property Agent

eSpark, Inc.

2045 W Grand Ave Ste B #39739

Chicago, IL 60612

312-894-3100

info@esparklearning.com

Email Notifications

As part of your use of the Services, you elect to receive email notifications from eSpark and its partners. These messages may include event updates and other promotions. Your election to receive such messages represents your express written consent to receiving emails from eSpark related to the Services. You may opt-out of receiving certain notifications in association with the Services by completing the opt-out process provided to you with each email message. By opting out of receiving notifications, you understand that we may not be able to communicate important information to you. Please note we may still need to contact you regarding certain important service announcements or notifications.

Notices

You consent to receive from eSpark all communications, including notices, agreements, legally required disclosures or other information in connection with the Services (collectively, "Notices") electronically. eSpark may provide such Notices by posting them on or within the Services, by electronic mail to your email address on record in eSpark's account information, or by written communication sent by first class mail or pre-paid post to your address on record. You agree that we may communicate with you regarding eSpark and other entities by electronic means to your mobile device and that certain information about your usage of the Services may be communicated to us.

Miscellaneous

You may not assign or otherwise transfer these Terms of Use or any rights or obligations hereunder. eSpark's failure to act on any breach of any provision hereof shall not be construed as a waiver of the enforcement of any provision unless eSpark agrees to such waiver in writing.

If any portion of these Terms of Use is deemed unlawful, void or unenforceable, that portion will be deemed severable and will not affect the validity or enforceability of the remaining provisions. These Terms of Use set forth the entire understanding between you and eSpark with respect to the subject matter hereof and supersede any prior or contemporaneous communications, representations, or agreements, whether oral or written, between you and eSpark with respect to such subject matter.

Denial of Access

eSpark may prohibit you from using or accessing the Site for any or no reason, at any time, in its sole discretion, without notice to you.

Proposal Term & Termination

Term

These Terms commence on the date an Proposal Form is executed by both parties and shall continue until the expiration of the Service Term for all of the Services.

Termination for Cause

A party may terminate these Terms for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

Outstanding Fees

Termination shall not relieve Client of the obligation to pay any fees accrued or payable to eSpark prior to the effective date of termination.

Marketing

eSpark shall be permitted to use Client's name and logo on the eSpark website, in testimonial content, in press releases, and within marketing materials. With Client's prior consent, eSpark may issue press releases relating to these Terms.

Fees

Client shall pay the fees as specified in the Proposal Form, in any signed and approved additional Proposal Forms. All fees are quoted in United States Dollars. Fees are non-refundable.

Overdue Payments

Any payment not received from Client by the due date may accrue, at eSpark's discretion, late charges at the rate of two percent (2%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower; from the date such payment was due until the date paid.

Taxes

eSpark's fees are exclusive of all local, state, federal, and foreign taxes, levies, or duties of any nature ("Taxes"), and Client is responsible for payment of all Taxes, excluding only United States taxes based on eSpark's income. If eSpark has the legal obligation to pay or collect taxes for which Client is responsible, the appropriate amount shall be invoiced to and paid by Client, unless Client provides eSpark with a valid tax exemption certificate authorized by the appropriate taxing authority.

Technology Requirements

WiFi is required in order to implement eSpark. For the best eSpark experience, devices must have a minimum WiFi connection of 5MB.

eSpark will provide your technology team with a list of hosts, ports and domains which will need to be whitelisted. Additionally, we recommend installing an ad-blocker on your students' eSpark devices.

If I have questions, who do I contact?

eSpark, Inc. is located in the United States of America. Questions regarding these Terms should be directed to us via any of the following methods:

Mailing address: 2045 W Grand Ave Ste B #39739, Chicago, IL 60612

Telephone number: (312) 894-3100

E-mail address: info@esparklearning.com