

C 8761-FY20



INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES OF \$5,000 OR MORE

WHEREAS, Adams 12 Five Star Schools in the County of Adams and State of Colorado (the "District") has the statutory authority to contract with persons, firms, consultants, and/or entities for the provision of services to the District; and WHEREAS, the District has determined that a need exists to retain a Contractor to provide the service hereinafter specified; and

WHEREAS, Naviance, Inc. (the "Contractor") is qualified to provide the services required by the District; and WHEREAS, the District maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The District's trade secrets and other proprietary and confidential information includes the whole or any portion or phase of any of the following: student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, other information relating to any of the District's business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public ("Confidential Information"). Due to the value of the District's Confidential Information and the consequences if it is disclosed, taken or misused for any reason, the District seeks by this Agreement to protect the District's Confidential Information and any other confidential information the Contractor acquires as a result of the Contractor's provision of services to the District. The Contractor recognizes and respects the value of the District's Confidential Information.

NOW, THEREFORE, the parties desire to enter into this Agreement subject to the following terms and conditions:

1. **Scope of Services.** The Contractor shall perform the Services outlined in the Naviance order form/quote Q304135 dated April 8, 2019, including the Naviance Terms of Service, both of which are incorporated herein to the extent that they do not conflict with or materially alter any term or condition stated in the agreement. (Exhibit A). The agreement is subject to the District's Data Privacy Addendum (Exhibit B) which is incorporated herein. The Contractor will provide the services consistent with generally accepted industry standards for the Contractor's customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement
2. **Schedule.** The District and the Contractor agree that the services shall be provided at the following mutually agreed locations and times, or as agreed to in writing by the parties after the approval of this Agreement: Online
3. **Term.** The provision of services under this Agreement shall commence on August 1, 2019 and will terminate on July 31, 2021; however, under no circumstances will the Term exceed one fiscal year from the commencement date. The Contractor understands and agrees that the District has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise.
4. **Remuneration.** The Contractor's fee the District is obligated to pay for the services rendered under this Agreement is as follows: \$3,000.00 for 2019 and \$3,000.00 for 2020, and under no circumstances whatsoever shall the fee exceed \$6,000.00. The District shall process the Contractor's payment within thirty (30) days from the receipt of a valid invoice to the District's Accounts Payable office. Such invoice shall be submitted to the site administrator to be forwarded to Accounts Payable with the Voucher Request, the P.E.R.A. Retiree form and the Contractor's W-9 form.
5. **Invoicing Requirements.** The Contractor shall furnish the following information within invoices that are submitted for request for payment to the District:
 - a. Dates of which services.

6. Independent Contractor. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the District. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the District and the District shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this agreement. The parties agree that the District will not:

- a. Require the Contractor to work exclusively for the District; and
- b. Establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in Paragraph 1 that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products; and
- c. Pay the Contractor a salary or hourly wage, but rather will pay only the compensation stated in Paragraph 4; and
- d. Terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement; and
- e. Provide more than minimal training for the Contractor; and
- f. Provide tools or benefits to the Contractor; and
- g. Dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District; and
- h. Pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
- i. Combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.

7. No Agency Created. The Contractor agrees and understands that no authority exists through this Agreement permitting the Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind the District.

8. Conflict of Interest. The signatories aver that to their knowledge, no employee of the District has any personal or beneficial interest whatsoever in the service or property described in this agreement. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

9. No Unauthorized Use of Names. Neither party will use the other's name in any advertisement, promotion, business card, or similar circumstance, without the other party's prior written consent.

10. Assignment Prohibited. The Contractor shall not assign any of the services that require performance under the Agreement. In this regard, the Contractor understands that the performance of the scope of work is considered personal services under this Agreement.

11. Compliance with Law and District Policies. Contractor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. Contractor shall also comply with all applicable District policies. Contractor shall complete a criminal background check on all employees who work under this Agreement and maintain records of such during the term of the Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any crime involving a child will not be allowed to work on District property, with District staff or students, or have access to District information. Contractor shall provide proof of background checks upon request by the District. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.

12. Modification/Entire Agreement/No Prior Agreement. This Agreement including the Adams 12 School Data Privacy Addendum constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supersedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties. In the event of any conflict or inconsistency between the terms of this Agreement and the Naviance, Inc. Sales Order Form or the Naviance, Inc. Terms of Service, this Agreement shall control.

13. Fund Availability. Financial obligations of the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

14. Governing Law. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations or which purports to negate this or any other provision of this Agreement in whole or in part shall be null and void.

15. Severability. If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

16. Governmental Immunity. No term or condition of this agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

18. Binding Arbitration Prohibited. The District does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

19. Insurance. The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy. The Contractor shall provide the insurance as the service requires and no later than seven days after execution of this Agreement, the Contractor shall provide the District with certificates of insurance evidencing each of the types and amounts specified below:

- a. Standard Workers' Compensation coverage as required by Colorado law.
- b. Comprehensive General Liability Insurance for operations and contractual liability adequate to cover the liability assumed hereunder and with limits of not less than \$1,000,000 for each occurrence and \$500,000 for bodily injury or property damage, and \$5,000 for medical expenses for any one person.
- c. Automobile Liability Insurance in those instances where the Contractor uses an automobile, regardless of ownership, for the performance of Services.

The Contractor shall require that any of its agents and subcontractors who enter upon the District's premises shall maintain like insurance. Certificates of such insurance shall be provided to the District upon request. With regard to all insurance, such insurance shall (i) be primary insurance to the full limits of liability herein before stated; and (ii) should the District have other valid insurance covering the loss, the District insurance shall be excess insurance only; and (iii) the District shall be named as an additional insured.

20. No Waiver. No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, expressed or implied, unless it is in a written document executed by the party against whom the waiver is sought to be enforced.

21. Public Contracts for Services. Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment

eligibility of all employees who are newly hired for employment in the United States to perform work under this agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this agreement. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this agreement is being performed, (b) shall notify the subcontractor and the District within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the District a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the District may terminate this agreement for breach and, if so terminated, Contractor shall be liable for damages.

22. Public Contracts with Natural Persons. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this agreement

23. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

24. Conflict. In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

25. Relief the District May Seek. The Contractor further agrees that, if the Contractor violates Paragraph 27 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraphs 27 of this Agreement, the District will be entitled to an Order for injunction relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

26. Confidential Information Belongs Solely to the District. The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting and of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services for reasons other than as necessary for providing the services to District;
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business in any way adverse to the District's interests;
- d. The Contractor will cause each of its Employees any any contractor/subcontractor who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.

- e. On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information, provided however, that Contractor may retain a copy of any materials necessary, other than student personally identifiable information for its reasonable business and record-keeping purposes or legal obligations.
- f. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- g. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractor's duties to the District under the Colorado Uniform Trade Secrets Act, C.R.S. 7-74-101, et seq., and other applicable law. Additionally, the Contractor's obligation regarding the preservation and return of the District's Confidential Information will continue indefinitely, both during and after the time during which the Contractor may provide services and products to the District.

78. Non-solicitation. The Contractor shall not solicit directly or indirectly any of the District's employees for a period of two (2) years following the termination of this Agreement without prior written consent of the District.

28. Attorneys' Fees, Experts' Fees, Costs. In any litigation of any dispute between the parties, in addition to any relief, order or award that enters, if the District is the prevailing party, it will be awarded and the Contractor shall be liable for reasonable attorneys' fees, expert witness fees and costs.

29. Notices, Process. Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address provided in this Agreement, while the District's Notice address is as follows: Adams 12 Five Star Schools, Chief Operating Officer, 1500 East 128th Avenue, Thornton, CO 80241; or at such other address that either party may provide later to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement and the parties further agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated below:

Acknowledged Before Me

By: Pamela Rothaermel

This 21 day of June, 2019

Witness My Hand and Official Seal

My Commission Expires: 11/30/23
Pamela Rothaermel

By: Pamela Rothaermel
Notary Public REGISTRATION # 7807906
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
NOVEMBER 30, 2023

CONTRACTOR:

[Signature]

Signature

Paul McConville - SVP Sales

Name and Title

3033 Wilson Blvd, Ste 500

Address

Arlington VA 22201

City, State, Zip

20-4027223

Tax ID

6/21/19

Date

I hereby certify that the individuals requested in this Agreement are not school district employees, and are not family members of mine. Any finding to the contrary may require repayment and/or further disciplinary action up to and including termination.

ADAMS 12 FIVE STAR SCHOOLS
IN THE CITY OF THORNTON, COUNTY OF ADAMS
STATE OF COLORADO

RECOMMENDED BY:

[Signature]

Site Administrator's Signature

Priscilla Straughn, CAO

Name and Title

Learning Services

School or Department

Date

APPROVED BY:

[Signature]

Authorized Designee of the Board of Education

Cindy Roth, Sr Buyer

Name and Title

7-1-19

Date

This form must be completed in full, submitted to the District's Purchasing Department, and approved and executed by the duly authorized designee of the Board of Education prior to the commencement of the Contractor's provision of services. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO SAID APPROVAL.

Exhibit A



400 E Business Way Suite 400
Cincinnati, OH 45241 www.hobsons.com

Sales Order Form

Sold To: Adams 12 Five Star Schools
Name: Anjela Schwab
Address: 1500 E 128th Ave, Thornton, CO 80241-2601
Email: anjela.schwab@adams12.org
Phone: (720) 972-4427
Naviance ID: 0806900dus

Order Date: April 8, 2019
Valid Until: 8/1/2019
Quote Number: : Q304135
Contract Start Date: 8/1/2019
Contract End Date: 7/31/2021
Contract Term (In months): 24
Currency: USD

Hobsons Contact:
Name: Pete Curtis
Email: pete.curtis@hobsons.com
Phone:

Purchase Order:
Payment Term: Net 30

Product or Service	Quantity	Unit	Start Date	Term (In Months)	Sub-Total
Strategic Consulting Hours	12	Hours	8/1/2019	12	3000.00
Strategic Consulting Hours	12	Hours	8/1/2020	12	3000.00

Total Price: 6,000.00

Notes: (if applicable) Professional Services must be utilized within twelve (12) months from date of purchase. If the term is longer than twelve (12) months and Professional Services are purchased for additional term years, Professional Services must be used within the term defined. Client is responsible for travel expenses associated with onsite consulting.

Comments: All figures quoted are exclusive of sales tax.

Please complete or update the following information:

Account Contacts	Name	Email Address
Primary	Anjela Schwab	anjela.schwab@adams12.org
Billing	Anjela Schwab	anjela.schwab@adams12.org

Payment Method:

Purchase Order #

Paying by credit or debit card?

Check

Credit Card #

Wire Transfer #

Card Holder Name:

Expiration Date (MM/YY):

Billing Zip Code:

Security Code:

Country:

CEEB Code:

Unless separate invoice and payment terms are specified, Hobsons will issue invoices once per year, with the first taking place upon execution of the order form and then annually thereafter throughout the term of the contract.

The services are delivered in accordance with applicable terms that can be found at <https://static.naviance.com/html/policies/tos.html>. By signing below, you agree to be bound by such terms and that such terms are made a part of this contract.

Please complete the contact and payment information as indicated, then sign below to indicate your acceptance. By signing this contract, you are stating that you are authorized by your institution to make this purchase. If a Purchase Order is required for payment to be issued, please indicate below. If you have selected professional services, travel expenses for on-site professional services will be billed separately following your session(s).

____ Yes, a Purchase Order is required. It will be sent to Hobsons by _____

Upon execution by Authorized Signatory, Client hereby agrees to the Terms of Service which will become effective together with this Order Form as of the Signature Date below.

 Signature
Priscilla Straughn, CAO Printed Name and Position
5/22/2019 Signature Date

Purchase Order & Order Forms:
Naviance, Inc.
400 E. Business Way, Suite 400
Cincinnati, OH 45241

Remit To:
Naviance, Inc.
P.O. Box 504571
St. Louis, MO 63150-4571

IF YOU CHOOSE TO FAX, THEN PLEASE CLICK ON THE 'SIGN ON PAPER' BUTTON FOLLOWED BY 'PRINT AND FAX' BUTTON AND FAX YOUR SIGNED ORDER FORM TO THE NUMBER PROVIDED ON THE COVERPAGE OF THE DOWNLOADED DOCUMENT