

**INDEPENDENT CONSULTANT AGREEMENT
BETWEEN
COLORADO SPRINGS SCHOOL DISTRICT NO. 11 (“District”)
AND**

(Name of individual or company) (“Provider”)

THIS AGREEMENT, dated _____ (add date), is for the performance of Consultant Services beginning (add date), through (add date). [Note: the completion date must be no later than June 30th of current budget year.]

THEREFORE: The parties agree as follows:

I. Provider Shall Perform the Following Services:

Identify all services to be performed, including related technical support services. The description of services should be detailed, and address expectations, including type and quality of end products expected, anticipated hours to complete, location and manner of services.

II. District Supplies and/or Equipment to be Used by the Consultant:

(If none, state none)

III. Payment Cycle:

In consideration for the services rendered, the District agrees to pay the Provider monthly, or on expiration of this contract, whichever occurs first. If fixed price, state fixed dollar amount. If an hourly rate, state hourly rate, and estimated number of hours, and the not to exceed amount. Include all reimbursable expenses. If the provider is charging a daily rate, state how many hours equal one a day. Payment terms are Net 30 days upon receipt and acceptance of a proper invoice.

IV. General Provisions

The Special and General Provisions dated _____ are attached and are incorporated into the agreement.

V. IN WITNESS WHEREOF, the undersigned agree to be bound by the terms and conditions of this agreement:

Colorado Springs School District No. 11

(Provider’s name)

By: _____
Budget Authority (Principal)

By: _____
Consultant or Authorized Agent

Date: _____

Date: _____

NOTE: The Contracting and Procurement Department will review and coordinate on all contracts above \$500.

Tax Identification No. or Social Security No.

By: _____
District Contracting Officer or other Contracting Authority

Date: _____

NOTE: Only principals and other designated persons receiving procurement authority through a letter of authorization from the Executive Director, Procurement and Contracting can obligate the District. This authority will be limited to consultant agreements not exceeding \$500.

NOTE: All contracts above \$500 will be awarded by a District Contracting Officer

VI. Special and General Provisions

Professional, Consultant & Other Service Agreements

Updated July 2020

Special and General Provisions

Insurance: The contractor shall maintain the minimum insurance coverage listed and checked below during the performance of this contract.

Special Provisions

- Workers' Compensation Insurance** to comply with Colorado Statutory Provisions. Including any required flow down, employer's liability must have limits of at least: \$1,000,000 per accident, \$1,000,000/disease each employee and \$1,000,000 accident/disease policy limit.
- Professional Liability Insurance** coverage part aggregate limit each occurrence \$2,000,000.
- Comprehensive General Liability Insurance** covering Bodily Injury of at least \$1,000,000/person, \$1,000,000/accident; and \$1,000,000/Property Damage.
- Comprehensive Automobile Liability Insurance** including coverage for all power mobile equipment used by contractor on district property, \$1,000,000/person, \$1,000,000/accident; and \$1,000,000/Property Damage.

Certificate of Insurance must be submitted to the District before starting work on site. Insurance Certificates must show coverage of all checked insurance requirements, must contain an endorsement naming the District as an Additional Insured and must provide coverage until final completion of the contract. If the expiration date of the insurance certificate is prior to final completion, the Contractor shall provide a new certificate of insurance prior to 30 days from the expiration of the current policy.

Multiple Year Commitment Subject to CRS 24-103-503 entitled Multiyear Contracts, any multiple year commitment beyond the current fiscal year is subject to availability of appropriated funds in future fiscal years. If funds are not available in a fiscal year to continue the contract, the contract will be terminated at no cost to the district, upon a 30-day written notice. Upon termination, any materials, supplies, or items of equipment, which have not been fully paid for by the district will be returned to the vendor at the vendor's expense. The district will not purchase similar materials, supplies, or items of equipment during the anticipated life of the terminated contract without notification of the terminated contractor and consideration of reinstating the terminated contract.

Internet Use If it has been determined that the Provider will have access to the District Internet resources in the performance of this requirement, a "Provider's Internet Use Agreement" must be signed by each individual having access to the District Network. The completed "Provider's Internet Use Agreement," will be maintained with this agreement. Misuse or inappropriate use of the District Network will be grounds for immediate termination of the agreement.

Background Investigations and Finger Printing Any provider and/or partner, employee or other representative of any kind whether or not in paid status must agree to be fingerprinted and submit for a background investigation if that provider and/or partner, employee or other representative of any kind will be left alone (unsupervised) with any district student at any time during the performance of this agreement.

Colorado PERA Retiree In accordance with CRS 24-51-1101, the District will notify the Association (Colorado PERA) of any Association retiree working as a consultant/contractor to the District in an individual capacity or of any entity owned or operated by a service retiree or affiliated party. PERA Rule 11.12 C defines affiliated party to include: (1) any person who is the named beneficiary or co-beneficiary on the PERA account of the retiree, (2) any person who is a relative of the retiree by blood or adoption to and including parents, siblings, half-siblings, children and grandchildren, (3) any person who is a relative of the retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings, and (4) any person or entity with whom the retiree has an agreement to share or otherwise profit from the performance of services for a PERA employer by the retiree other than the retiree's regular salary or compensation. If as a result of an Association evaluation, it is determined by the Association that

Colorado PERA withholding is required, the employer contribution rate will be paid by the District directly to Colorado PERA. The contractor shall also responsible for submitting information directly to PERA. The required disclosure, Disclosure of Compensation for Service Provided Through an Affiliated Party, and additional information for PERA retirees working after retirement can be found at www.copera.org.

Replacement by District Employee This agreement may result from a situation where the District has an urgent need to contract work that is inherently employee work, but qualified employees are not available and qualified candidates are not available to be hired to perform the work. At any time during the performance period, if the District is able to identify a current employee or able to recruit a qualified employee, this agreement will be terminated at no cost to the District.

Audit Any labor hour, level of effort or cost reimbursement agreement may be subject to an audit. The District contracting officer, the District auditor or an independent auditor funded by the district may perform the audit.

General Provisions

Employer-Employee Relationship The Provider is not an employee of the District and is not covered by Workers' Compensation, group life, accident or health insurance, and other benefits associated with an employer-employee relationship.

Data, Documents and Computer Software or other Intellectual Property Rights All intellectual property including without limitation, databases, documents, research, as well as all reports, studies, project collected data, photographs, negatives or other documents, drawings or materials created or manufactured by the Contractor (deliverables) in the performance of its obligations under this contract, shall be the exclusive property of the District. Unless otherwise stated, all such materials shall be delivered to the District by the Contractor upon completion of this contract. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this contract without a prior written consent of the District. All right, title and interest in and to any deliverables that are prepared or developed by or for the Contractor specifically for District in connection with Purchase(s) under this Agreement shall vest in District and such program(s) shall be deemed to be works made for hire. However, to the extent that the deliverables are not considered works for hire, the Contractor assigns to District all rights, title and interest in and to the program(s), including right to copyrights in all copyrightable materials and in and to all patents that may be issued thereon.

Hold and Save Harmless The Provider agrees to indemnify, save harmless, and defend the District from and against any and all claims, demands, actions, debts, liabilities, and attorney's fees arising out of, claimed on account of, or in any manner predicated on loss of or damage to the property of, and injuries to or death of any and all persons whatsoever, in any manner caused or contributed to by the Provider, his or her agents, servants, or employees. Provider further agrees to indemnify and save harmless the District from and on account of damages of any kind, which the District may suffer as the result of the acts of any Provider's agents, servants, or employees.

Licenses, Taxes, Permits, and Fees It is the Provider's responsibility to obtain, at its own expense, all licenses and permits, and to pay all applicable taxes and fees, in the execution of the terms of this contract, including but not limited to excise tax, federal and state and local income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

Nonexclusive Agreement It is expressly understood and agreed that this Agreement does not grant to the Provider any exclusive privileges or rights and District may contract with other contractor(s) for the procurement of comparable services. The District makes no commitment for any minimum or maximum amount of purchases of services hereunder except as otherwise set forth in this Agreement.

Nondisclosure Of Confidential Information If a party to this agreement requires confidential information from the other party in the performance of this agreement, the party receiving the Confidential Information agrees as follows:

- a. To maintain and use the Confidential Information only for the purposes of this Agreement and only as permitted herein. To only make copies as specifically authorized and with the same confidential or proprietary notices as are on the original.

- b. To restrict access and disclosure of Confidential Information to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality according to this provision.

Confidential Information shall at all times remain the property of the disclosing party. Upon request, Confidential Information shall be returned or certified destroyed to the disclosing party within thirty (30) days from termination or expiration of this Agreement.

Except as may be required by applicable law, regulations, legal or agency order, demand or process, neither party shall disclose to a third party any Confidential Information without the prior written consent of the other party. The obligations of this provision shall be satisfied by handling Confidential Information with the same degree of care which the receiving party applies to its own similar confidential information but in no event less than reasonable care.

Changes The Contracting Officer, at any time, by written order, may make changes in or additions to the services to be performed by this contract, issue additional instructions, require modified or additional work or services within the general scope of the contract, or vary the amount of District-furnished property. If any of said changes cause any increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment will be made in the contract price or term of performance, or both, and the contract will be modified in writing accordingly. Any claim by the Provider for adjustment under this clause must be asserted within thirty calendar days from the date of receipt by the Provider of the notification of changes provided. However, the Contracting Officer, if he or she decides that the facts justify such action, may receive and act on any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the clause of this contract titled "Disputes." However, nothing in this clause excuses the Provider from proceeding with the contract as changed, and it is limited to proceeding with its appeal pursuant to the provision titled "Disputes."

Payment Rates Payment for services performed by the Provider, as set forth in this Contract, will be made at the rates prescribed hereto, upon submission by the Provider of proper invoices to the District designated herein and at the time provided for herein.

Order Of Precedence Any inconsistency in a resulting Contract shall be resolved by giving precedence in the following order: (a) This Contract Terms and Conditions (b) Statement of Work (c) District exhibits and attachments.

Disputes This contract is subject to the Contract Disputes under Colorado Revised Statutes (CRS) Title 24 Article 109; but, only to the extent provisions from such statutes are specifically cited herein and within the District Contract Regulation (DAR) Part 7. Except as provided in the CRS, all disputes arising under or relating to this contract shall be resolved under this clause. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim until certified as required by this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six months after accrual of the claim to the Contracting Officer for a written decision. A claim by the District against the Contractor shall be subject to a written decision by the Contracting Officer. The contractor shall provide the certification specified in this clause when submitting any claim exceeding \$50,000.

The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Contractor." The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim. For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer

must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made. The Contracting Officer's decision shall be final unless the Contractor appeals to the Head of the Purchasing Agency or Executive Director, or files a suit as provided in the CRS. As defined in CRS 24-101-301: The Head of the Purchasing Agency is the Deputy Superintendent/Chief Financial Officer; The Executive Director is the Superintendent.

If the claim by the Contractor is submitted to the Contracting Officer or a claim by the District is presented to the Contractor, the parties agree first to attempt to resolve the dispute through alternative dispute resolution (ADR), as defined in DAR 7.201. The parties agree not to discuss any dispute(s) with the press/media during the resolution process. Interest will be computed in accordance with CRS 24-109-301, except interest shall be calculated at a rate of eight percent. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

Immunities The District retains all of its rights and immunities under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. This Agreement shall not be construed to create any right or benefit for any person who is not a party to this Agreement. The relationship between the District and the Provider is contractual. It is not intended in any way to create a legal agency, partnership, joint venture or employment relationship. The Provider shall at all times maintain its independent status and both parties acknowledge that neither is an agent, partner, joint venture or employee of the other for any purpose.

Termination for Convenience The District may terminate performance of this contract with written notice in whole, or in part if the District determines that a termination is in the District's interest. After receipt of a Notice of Termination, the Contractor shall stop work on the cancellation date specified in the Notice. The District will conduct an audit of the Contractor's costs to determine reasonable costs expended to date of cancellation, or the District may determine the contractor's cost based the schedule of values or exact cost of any work performed. The contractor will not be reimbursed for any anticipated profit.

Termination for Cause If either party is in default under this contract, it shall have an opportunity to cure the default within 10 days after it is given written notice of default by the other party, specifying the nature of the default. If the default is not cured within 10 days after notice of default has been given; the non-defaulting party shall have the right, in addition to all other remedies at law or equity, to immediately terminate this contract. Failure to complain of any action, non-action or default under this Agreement shall not constitute a waiver of any of the parties' rights hereunder. The District may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the District, upon request, with adequate assurances of future performance. In the event of termination for cause, the District shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the District for any and all rights and remedies provided by law. If it is determined that the District improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Force Majeure District may delay delivery, performance or acceptance occasioned by causes beyond its control. Provider shall hold such goods or delay performance at the direction of the District and shall deliver goods or perform services when the cause affecting the delay has been removed. The District shall be responsible only for Provider's direct additional costs in holding the goods or delaying performance of this agreement at District's request. Causes beyond District's control shall include government action or failure of the government to act where such action is required, strike or labor disputes, fire or unusually severe weather.

Inspection and Acceptance The District's Requirement office through the Contracting Officer's Technical Representative (COTR) is responsible for performing inspection and acceptance of services rendered, including inspection of any records maintained by the Provider.

Execution of Contract This contract contains the entire understanding of the parties and supersedes all prior understandings, agreements, or representations by or between the parties, whether oral or written, which in any way relate to the subject matter of this agreement. Execution of this contract constitutes a representation by the Provider that to the best of the Provider's knowledge no conflict of interest exists between the District representatives and the Provider or its employees and agents.

Illegal Aliens If Provider has any employees or subcontractors, Provider shall comply with § 8-17.5, C.R.S. regarding Illegal Aliens – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:

1. Provider shall not:
 - a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
 - b. Enter into a contract with a subcontractor that fails to certify to Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
2. Provider has verified or attempted to verify that Provider does not employ any illegal aliens and, will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.
3. Provider will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
4. If Provider obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:
 - a. Notify the subcontractor and the District within three days that Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - b. Terminate the subcontract with the subcontractor if within three days of receiving the notice under 4.a., the subcontractor does not stop employing or contracting with the illegal alien. However, the Provider shall not terminate the contract with the subcontractor if during this three day period
 - i. The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and
 - ii. The Provider will not employ the illegal aliens in the performance of any District contract.
5. Provider shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.
6. If Provider violates this provision, the District may terminate the Agreement for a breach of contract. If the Agreement is terminated, the Provider shall be liable for actual and consequential damages.

Payment

Payment by Electronic Funds Transfer (January 2007)

(a) Method of payment.

(1) All payments by the District under this contract shall be made by direct deposit using electronic funds transfer (EFT) except as provided in paragraph (a)(2). The term "EFT" refers to the funds transfer and may also include the payment information transfer. The term "Contractor" is understood to mean "Vendor" as indicated on the District 11 Direct Deposit Form (see j)

(2) In the event the District is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request the District to extend payment due dates until such time as the District makes payment by EFT.

(b) Submission of Contractor's EFT information.

(1) The Contractor is required to provide the District with the information required to make payment by EFT (see paragraph (j)). The Contractor shall provide this information directly to the designated payment office (see paragraph (k)). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office.

(2) EFT information supplied to the District shall be applicable only to contracts that identify the District as the payment office.

(c) Mechanisms for EFT payment. The District may make payments directly through electronic means to the indicated financial account provided by the vendor.

(d) Suspension of payment.

(1) The District is not required to make any payment under this contract until after receipt, by the designated District payment office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

(2) If the EFT information changes after submission of correct EFT information, the District shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent

payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the District used the Contractor's EFT information incorrectly, the District remains responsible for—

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of District release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the District is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the District shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment requirements if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) to the designated office, and shall be paid by EFT in accordance with the terms provided herein. In all respects, the requirements shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the District, is incorrect EFT information within the meaning of paragraph (d).

(h) Liability for change of EFT information by financial agent. The District is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) Payment information. Payment information will be provided via e-mail to the designated e-mail address provided by the Contractor.

(j) EFT information. The Contractor shall complete the required information regarding the financial institution and account and obtain the signature of an authorized agent on a District 11 Direct Deposit Form which can be obtained from the Contracting Officer of the Designated Payment Office. The completed form may be returned by mail or facsimile to the Designated Payment Office and a copy provided to the designated Contracting Officer.

(k) The Designated Payment Office for this contract is:

Colorado Springs School District 11
Accounts Payable Department
1115 N El Paso Street
Colorado Springs, CO 80903

Person to Contact: Mark Capps, Telephone Number: 719.520.2060, E-Mail address: mark.capps@d11.org