

**CONSULTANT AGREEMENT BETWEEN {VENDOR}
AND Poudre SCHOOL DISTRICT R-1**

This Agreement is entered into as of the XX day of XX 20XX, by and between Poudre School District R-1, a school district organized and existing under the laws of the state of Colorado whose address is 2407 La Porte Avenue, Fort Collins, Colorado 80521 (the “District”), and {CONTRACTOR}, whose address is {ADDRESS} (“Contractor”), collectively referenced herein as the “parties.” In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to specify the terms and conditions pursuant to which Contractor will provide services, {SERVICES}.
2. **Term and Termination of Agreement.**
 - 2.1. This Agreement shall commence as of {DATE} and shall continue through and including {DATE}, unless earlier terminated as provided herein.
 - 2.2. Notwithstanding any other term or provision of this Agreement, the District’s obligations hereunder are expressly subject to its budgeting and appropriation of sufficient funds for each fiscal year (July 1 - June 30) an Agreement is in effect. In no event, shall the District’s obligations in an Agreement constitute a multiple-fiscal year direct or indirect debt or other financial obligation under Article X, Section 20(4)(b) of the Colorado Constitution.
 - 2.3. Notwithstanding the provisions of sections 2.1 and 2.2 above, either party may terminate this Agreement at any time in that party’s sole discretion for any reason, with or without cause, by providing the other party with thirty (30) days’ advance written notice. In the event of such termination: (a) the District shall pay Contractor for all Services performed under and in accordance with this Agreement up to the date of termination; and (b) Contractor shall reimburse the District for all payments made in excess of Services performed up to the date of termination.
3. **Obligations of Contractor.**
 - 3.1. The Contractor’s responsibility under this Agreement is to provide {SERVICE} within District {DEPARTMENT}, in accordance with the scope of work set forth in the District’s Request for Proposal (RFP) #{NUMBER} in the attached Exhibit A (hereinafter the “Services”)
 - 3.2. At the direction authorized by the District’s {DEPARTMENT HEAD} or {TITLE} designee, Contractor will provide at a minimum, all obligations identified in Exhibit {#}.
 - 3.3. Contractor will warrant all subcontractors and employees providing Services under this Agreement, will meet all requirements as outlined, and provide documentation as required.

- 3.4. **Materials.** All labor, licenses, materials, supplies, equipment, and all other items necessary to complete the Services required to be furnished by the Contractor (the "Materials") shall be part of and not in addition to the Agreement price. The Contractor shall be responsible and liable for any damage or destruction to any Materials resulting from any cause other than the deliberate or negligent acts of the District for which it could be held liable under the Colorado Governmental Immunity Act.
- 3.5. **Primary Contractor and Subcontractors.** The Contractor shall assume all responsibility for performance of all Services in this Agreement, whether or not the Contractor uses subcontractors. Any consequences resulting from non-performance under the terms of this Agreement are the sole responsibility and liability of the Contractor. The Contractor shall be the sole point of contact with the District with regard to all matters covered by this Agreement. The District shall not initiate or maintain contact with any subcontractor unless such contact becomes necessary to mitigate the District's damage in the event the Contractor is in default or breach of any term or obligation of this Agreement.
- 3.6. **Confidential Information.**
- 3.6.1. **Press Contacts/News Releases.** The Contractor shall not initiate any press, media, or social media, contact nor respond to press, media or social media requests regarding this Agreement and/or any related matters concerning the District without the prior written approval of the District.
- 3.6.2. **Ownership of Confidential Student Records, Information, Photography, and Developed Materials.** All confidential student records and information, photography, and developed materials shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, photography, and developed materials including but not limited to intellectual property rights in the confidential student records and information, photography and developed materials, belong to and are retained solely by the District. The District hereby grants to the Contractor a limited, nonexclusive license to access, view, collect, generate, and use confidential student records and information, photography, and developed materials solely for the purpose of performing its obligations under this Contract. Use of confidential student records and information, photography, and developed materials outside of the performance of this Contract, requires express written approval from the District.
- 3.6.3. **Fingerprinting and Background Checks.** Prior to and as a condition of the provision of any Services under this Agreement, Contractor shall require each person providing such Services to submit to fingerprinting and a background check administered by the District at the District's expense. Contractor shall ensure that no person to whom the District objects based on the results of said fingerprinting and background check provides any Services under this Agreement. If the District objects to any Contractor based on the results of the background check, the Contractor shall not be allowed to provide services. All information provided and all information received by the District through the Contractor

background check and/or other sources, shall be considered and maintained as confidential personnel file information under the Colorado Open Records Act and not subject to disclosure except on a “need to know” basis as authorized by law.

3.6.4. **Non-Disclosure of Confidential Information.** Contractor understands that while performing Services under this Agreement, it may have access to information protected from disclosure to third parties under the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.), the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and the Colorado Open Records Act (C.R.S. §§ 24-72-201 et seq.). Accordingly, Contractor hereby agrees that it shall keep confidential and shall not disclose any information, including but not limited to information regarding any District student, student family, student health/medical condition, student disability, student IEP and/or student accommodation, to which it gains access in connection with its provision of the Services. At the termination of this Agreement or earlier, if requested by the District, Contractor shall promptly return all such information, and/or shall at the request of the District destroy or delete any and all copies or duplicates of said information, whether the information is in hard copy or electronic form. If Contractor violates the terms of this section 3.6.4, Contractor agrees to indemnify, defend and hold harmless the District, and/or its employees and agents, from any and all claims, liabilities, or causes of action, including attorney fees and costs, asserted against the District and/or its employees or agents as a result of the violation. Contractor also agrees to indemnify the District, and/or its employees and agents, from the costs of complying with and/or resolving any regulatory investigation caused by the violation, including costs and attorney fees.

4. **Independent Contractor.**

- 4.1. Contractor shall provide the Services under this Agreement as an independent contractor of the District. As such, Contractor shall have the right to determine how and by whom the Services will be provided and the right to provide the Services free from the direction and control of the District, subject to and consistent with the terms and conditions of this Agreement.
- 4.2. Contractor shall be exclusively responsible for: (a) all compensation, employment tax withholdings and payments, and all fringe benefits for its employees (if any) in full compliance with all applicable federal, state and local laws; (b) all insurance coverages and benefits for its employees (if any) in full compliance with all applicable federal, state and local laws, including but not limited to pension or retirement benefits, workers' compensation, unemployment compensation, and Social Security benefits; and (c) all payments to its contractors and subcontractors for goods and/or services directly or indirectly related to this Agreement.
- 4.3. Nothing in this Agreement shall be construed as creating a single enterprise, partnership, joint venture or employer-employee relationship between Contractor and the District. Contractor is not a partner, agent or representative of the District and shall not represent itself to be a partner, agent or representative of the District. The District is not a partner,

agent or representative of Contractor and shall not represent itself to be a partner, agent or representative of Contractor.

4.4. Contractor shall not attempt or purport to extend the faith and credit of the District to any third party, person or entity. Contractor acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate the District. The District shall not attempt or purport to extend the faith and credit of Contractor to any third party, person or entity. The District acknowledges and agrees that it has no authority to enter into any contract with a third party that would bind or in any way obligate Contractor.

5. **Certification Regarding Illegal Aliens.** Contractor certifies, represents, warrants and agrees that it will not knowingly employ or contract with an illegal alien to provide services under this Agreement, and will not enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to provide services under this Agreement. Contractor also certifies, represents, warrants and agrees that it will confirm the employment eligibility of all its employees who are newly hired for employment to provide services under this Agreement through Contractor's participation in either: (a) the E-Verify Program created under federal law and jointly administered by the Department of Homeland Security and the Social Security Administration; or (b) the Colorado Department of Labor and Employment Program ("Department Program") established pursuant to C.R.S. § 8-17.5-102(5)(c).

5.1. Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. If Contractor obtains actual knowledge that a subcontractor providing services under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall notify the subcontractor and the District within three (3) days that Contractor has such actual knowledge, and terminate the subcontract within three (3) days of providing the notice if the subcontractor has not stopped employing or contracting with the illegal alien. Contractor shall comply with any reasonable request made by the Department of Labor and Employment in the course of an investigation undertaken pursuant to the authority of C.R.S. § 8-17.5-102(5). If Contractor participates in the Department Program, it shall: (a) notify the District and the Department of Labor and Employment of such participation as required by law; and (b) within twenty (20) days after hiring an employee to provide services under this Agreement, provide to the District a written notarized copy of an affirmation that it has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. § 1324a, and not altered or falsified the identification documents for such employee.

6. **Obligations of District.**

6.1. The District will provide a District School Contact at each working location. The District {DEPARTMENT HEAD} will be the point of contact for Services provided on-site. All questions regarding Agreement, payments and disputes will be directed to the District's {DEPARTMENT HEAD} or {TITLE} designee.

6.2. {ADDITIONAL REQUIREMENTS}

7. **Rates and Invoicing.**

7.1. Contractor will provide invoices for the Services at the rate specified in Contractor's Response to RFP #{NUMBER}, which is part of this Agreement and attached hereto as Exhibit {#}. Invoices shall be submitted to the District's {DEPARTMENT HEAD} or {TITLE} designee, within thirty (30) days of Services provided, but no less than every fifteen (15) days. Invoices for Services shall include name of provider, location of Services, dates Services were provided, name of employee for which substitution was provided, hours worked per date and a description of the Services provided. Hours will be billed in no less than fifteen (15) minute increments.

7.2. Invoices received from the Contractor pursuant to this Agreement will be reviewed and approved by the District's representative, indicating that services have been rendered in conformity with the Agreement and then will be sent to the Finance Department for payment. Invoices will generally be paid within thirty (30) days following the District representative's approval.

7.3. All invoices must be submitted within 45 days of fiscal year end June 30 and may not include items received by the District outside of the fiscal year July 1 – June 30.

7.4. **Travel Expenses.** The payment of travel expenses shall be allowed under this Contract. Contractor is expected to procure the most cost-efficient travel arrangements. No payment shall be made for work performed before the Effective Date of this Contract. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.

7.4.1. *Air Travel.* Air Travel is Not Permitted Under this Agreement.

7.4.2. *Car Rental and Ridesharing.* The District agrees to reimburse the Contractor's car rental and ridesharing expenses related to the performance of this Contract. Car rental and ridesharing expenses shall be reimbursed at actual costs, supported by a copy of the original receipt with the invoice. Contractor must select the lowest rental rates for an appropriate vehicle.

7.4.3. *Lodging.* The District agrees to reimburse Contractor's lodging expenses related to the performance of this Contract. The Contractor shall be reimbursed for lodging/hotel at the rate of one hundred and thirteen dollars (\$113.00) per day, not to exceed three (3) days. Requests for reimbursement shall state the amount allowed for lodging/hotel and list the actual number of travel days on the Contractor's invoice.

7.4.4. *Meals.* The District agrees to reimburse Contractor's meal expenses related to the performance of this Contract. The Contractor shall be reimbursed for meals at the rate of sixty-one dollars (\$61.00) per day and seventy-five (75) percent of the daily rate on travel days. This reimbursement amount includes all meal, beverage,

and refreshment expenses incurred during the day. Requests for reimbursement shall state the amount allowable for meals and list the actual number of travel days on the invoice.

8. **Remedies.** If Contractor fails to comply with any of the foregoing requirements at any time during or after the term of the Contract the District may, as applicable, terminate the Contract and/or disqualify Contractor from future contracts and subcontracts with the District.
 - 8.1. Upon failure of the Contractor to deliver the service(s) and/or deliverables in accordance with the specifications and to the satisfaction of the District within the time stated, the Contractor shall be subject to charges for liquidated damages in the amount of five (5) percent of the total contract value per day for each and every calendar day that the service(s) and/or deliverables are not delivered to, and accepted by, the District. As compensation due to the District for loss of use and for additional costs incurred by the District due to such noncompletion of work, the District shall have the right to deduct said liquidated damages from any amount due or that may become due to the Contractor under this agreement or to invoice the Contractor for such damages if the costs incurred exceed the amount due to the Contractor.
9. **Notices and Communications.** All notices and communications required or permitted under this Agreement shall be in writing and shall be: (a) sent via certified mail, return receipt requested and postage prepaid, to the address of the other party set forth below; or (b) sent via e-mail to the other party via the e-mail address set forth below.

Poudre School District R-1
Attn: Tracy Stibitz
2407 LaPorte Avenue
Fort Collins, CO 80521
E-mail: tstibitz@psdschools.org

{CONTRACTOR NOTICES}

10. **General Provisions.**

- 10.1. **No Assignment.** The Contractor shall not assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the District, which consent may be withheld for any reason or no reason as determined by the District in its sole discretion.
- 10.2. **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.
- 10.3. **Survival of Certain Contract Terms.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable by the District as provided herein in the event of such failure to perform or to comply by the Contractor.

- 10.4. **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the District and the Contractor in the same manner and with the same formality as was done for this Agreement.
- 10.5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- 10.6. **Insurance.** Contractor shall procure and maintain the required insurance specified below for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. Specified coverage and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. If not otherwise required by law, lower amounts may be acceptable upon review and written approval by the District’s Director of Records and Risk Management. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. Contractor shall furnish the District’s Director of Records and Risk Management with certificates of the required insurance prior to the District’s approval and signing of this Agreement, and with renewal certificates prior to the expiration of any required insurance that expires during the term of this Agreement. Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days’ advance written notice to the District prior to cancellation or change of coverage. The insurance requirements specified in this section 10.6, shall not reduce the indemnification liability that Contractor has assumed in section 10.7 below.

Commercial General Liability

- a. Each Occurrence Bodily Injury & Property Damage \$1,000,000
- b. Each Event Personal Injury \$1,000,000
- c. General Aggregate \$2,000,000
- d. Coverage must be written on an “occurrence” basis
- e. Poudre School District and its elected officials and employees shall be named as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance.

Commercial Automobile Liability Providing Coverage for Owned, Non-Owned, and Leased or Hired Vehicles

- a. Bodily Injury & Property Damage Combined Single Limit \$1,000,000
- b. Medical Payment Coverage \$5,000
- c. Poudre School District and its elected officials and employees shall be named as additional insureds; copy of policy endorsement must be attached to the Certificate of Insurance.

Workers' Compensation

- a. State of Colorado Statutory
- b. Employer's Liability \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee
- c. Waiver of subrogation in favor of Poudre School District R-1; copy of policy endorsement must be attached to the Certificate of Insurance.

10.7. **Indemnification.** The Contractor shall indemnify and hold harmless the District and the District's Board members, employees, representatives and agents from and against any and all liability arising from any suit, action, grievance, charge or proceeding brought in connection with or related to: (a) the Contractor's operations; (b) the Contractor's provision of the Services; (c) the Contractor's actual or alleged infringement of any third party's patent or copyright; and/or (d) the conduct of any of the Contractor's employees, volunteers, agents or representatives. The indemnification and hold harmless obligation hereunder shall include all attorney fees, costs and expenses incurred by the District and/or the District's Board members, employees, representatives and/or agents in defense of said suits, actions, grievances, charges and/or proceedings. Nothing in this section 10.7 or otherwise in this Agreement shall be construed in any way or applied in any manner as a compromise or waiver of the District's rights and protections under the Colorado Constitution or the Colorado Governmental Immunity Act.

10.8. **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the Contractor. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the Contractor. It is the express intent of the parties that any third person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

10.9. **Attorney Fees and Costs.** In the event it becomes necessary for either party to institute litigation or mutually agreed-upon arbitration proceedings to enforce any provision of this Agreement, the substantially prevailing party in such litigation or arbitration shall receive, as part of any judgment or award entered, its reasonable attorney fees and costs, including expert witness fees.

10.10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

10.11. **Headings.** The headings used in this Agreement are for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

10.12. **Conflict of Terms.** In the event of any conflict of terms found between this Agreement or any other terms and conditions, end user license agreements or privacy policies, the terms of this Agreement shall prevail.

10.13. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties regarding the subject matter addressed herein and supersedes all prior Agreements, whether oral or written, pertaining to said subject matter.

10.14. **Signatures.** This Agreement may be executed and delivered via portable document format (pdf), and the pdf signature of any party shall be considered valid, binding, effective and an original for all purposes.

10.15. **Warranty of Authority.** The individuals signing below represent and warrant that they have the authority to execute this Agreement on behalf of their respective organizations and bind their respective organizations to the terms of this Agreement.

IN WITNESS WHEREOF, the District and the Contractor have signed this Agreement as of the date first set forth above.

{CONTRACTOR}

POUDRE SCHOOL DISTRICT R-1

By: _____

By: _____

{NAME}

{TITLE}

R. David Montoya
Executive Director of Finance

By: _____

{NAME}

{TITLE}