

## Professional Services Agreement (PSA)

Bid # \_\_\_\_\_

Department \_\_\_\_\_

This PSA agreement represents a contractual agreement between **DICKINSON INDEPENDENT SCHOOL DISTRICT** ("the District" or "DISD") and \_\_\_\_\_ ("Contractor") for services to be provided during the \_\_\_\_\_ school year.

### SERVICES

I (DISD Employee) \_\_\_\_\_ request that the Contractor shall perform the services attached, if applicable, and as described herein ("Services"). For services that are to be paid with federal grant funds, see additional required provisions in Appendix A of this agreement. Detailed services to be provided:

Services shall be provided at the following **locations**: \_\_\_\_\_

### AGREEMENT TERM

Agreement of service will begin on \_\_\_\_\_ and remain valid until \_\_\_\_\_ . Agreement terms are only valid for the current school year.

### RATE OF PAY

Contractor shall perform services described above for a fee of \$ \_\_\_\_\_ per \_\_\_\_\_ . The rate of pay shall not exceed \$ \_\_\_\_\_ during the agreement.

**NAME OF CONTRACTOR** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**PHONE NUMBER** \_\_\_\_\_ **EMAIL ADDRESS** \_\_\_\_\_

**ALL FORMS REQUESTED BY THE DISTRICT SHALL BE RETURNED TO:**

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
\_\_\_\_\_ E-mail Address: \_\_\_\_\_

## TERMS AND CONDITIONS

### PAYMENT

Payment will be rendered upon receipt of a detailed invoice provided by the contractor listing services performed, services provided, dates of services, and location(s) where services were provided during the billing period.

A completed, current W-9 form and conflict of interest questionnaire must be completed prior to initiation of services.

All services must be invoiced **monthly** after services are received and paid upon verification of receipt of services. Failure to provide this will result in a delay of payment.

Travel fees are non-reimbursable.

DISD shall only pay for expenses and fees stated in the above "Rate of Pay". To receive payment, Contractor shall submit invoice to Accounts Payable.

DISD remits payments to vendors via Electronic Funds Transfer (EFT). Vendors shall submit a completed EFT Vendor Information Request form to Business Services.

### AGREEMENT

This Professional Services Agreement will be considered in effect when all signatures have been received and all signing parties have received a copy of this contract.

This Professional Services Agreement constitutes the sole agreement of the parties relative to the purpose of this contract and supersedes any and all other oral or written understandings or agreements.

This Professional Services Agreement may only be amended in writing with the consent of both parties.

This Professional Services Agreement may be terminated by either party with or without cause with thirty (30) days advance written notice. This contract is not assignable. If Contractor is permitted to subcontract any of the Services, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the Services.

This Professional Services Agreement shall be construed under the laws of the State of Texas and mandatory and exclusive venue in any action arising out of this Contract shall be in Galveston County, Texas. Parties are required to mediate any disputes prior to the initiation of any suit or claim.

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless DISD and each of its trustees and employees from and against all liability, loss, expense (including reasonable litigation costs and attorney fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, "Claim") to the extent the Claim arises from the negligence, willful act, breach of contract or violation of law by Contractor, its employees, contractors or subcontractors.

Each party paying for the performance of governmental functions must make those payments from current revenues available to the paying party and in conformity with all applicable federal, state and local policies and procedures.

Contractor shall not use DISD's name, logo or other likeness in any press release, marketing material or other announcement without DISD's prior written approval. All work product, including any concepts, products, software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Agreement will be deemed works for hire and the exclusive property of DISD. Contractor shall deliver all such materials to DISD upon completion, termination or cancellation of this Agreement. Any programs, data or other materials furnished by DISD for use by Contractor in connection with the Services performed under this Agreement will remain DISD's property.

Each party acknowledges that this Professional Services Agreement has been appropriately authorized. If Contractor is a business entity, it represents that: (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) it is authorized and in good standing to conduct business in the State of Texas; (iii) it has all necessary power and has received all necessary approvals to execute and perform its obligations in this Agreement; and (iv) the individual executing this Agreement on behalf of Contractor is authorized to do so.

Neither this Professional Services Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any party not in signatory hereof.

Execution of this Agreement constitutes Contractor's acceptance of the authority of DISD's internal and external auditors, the Texas Education Agency, the Comptroller General of the United States, or any of their duly authorized representatives (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Contractor agrees to cooperate with the Auditor conducting such audits or investigations and to provide the Auditor access to any books, documents, papers, and records of

Contractor which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts, and transcriptions. Contractor agrees to maintain all records pertinent to this Agreement for five years after DISD has made final payment and all other pending matters related to this Agreement are closed.

This Professional Services Agreement does not constitute an employment agreement and the contracted service provider understands he/she must provide his/her own insurance coverage; including, but not limited to, worker's compensation coverage. In performing the Services, Contractor will be deemed an independent contractor and not DISD's agent or employee. This Agreement will not be construed to create any partnership, joint venture or other similar relationship between the Parties. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the Services and shall furnish all tools, materials, transportation and personal incidentals necessary in the performance of the Services. Contractor shall be responsible for any and all applicable social security and personal income taxes which may become due as a result of any payments made by DISD hereunder and Contractor shall indemnify and hold DISD harmless in this regard. Before invoicing DISD for Services, Contractor will complete and submit an Internal Revenue Service ("IRS") Form W-9. Contractor shall perform the Services in strict accordance with this Agreement and in accordance with the highest standards of care, skill, diligence and professional competence applicable to contractors engaged in providing similar services.

Contractor agrees to observe and abide by all applicable local ordinances and state and federal laws, including but not limited to, the Americans with Disabilities Act; Section 504 of the 1973 Rehabilitation Act; Executive Orders 11246 and 11375 regarding Equal Employment Opportunity, as supplemented in Department of Labor Regulations; the Family Educational Rights & Privacy Act; and Title IX of the Education Amendments of 1972. Contractor further agrees to observe and abide by all DISD policies and procedures, which can be accessed online at the District's website.

Contractor and each of the Contractor's employees must agree to abide by the confidentiality provisions surrounding the use and dissemination of student educational records and information as contained in the federal Family Educational Rights & Privacy Act (FERPA). Contractor also agrees that he/she may be held professionally and personally liable for violation of this Act. Subject to the Texas Public Information Act (TPIA) and any similar legal requirements which may require DISD to release documents and other information, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. As applicable, Contractor shall maintain and process all information it receives in compliance with all applicable data protection/privacy laws and regulations and DISD policies.

Contractor acknowledges that DISD is subject to the TPIA. As such, upon receipt of a request under the TPIA, DISD is required to comply with the requirements of the TPIA. In the event that the request involves documentation that Contractor has clearly marked as confidential and/or proprietary, DISD will provide Contractor with the required notices under the TPIA. Contractor acknowledges that it has the responsibility to brief the Texas Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

Contractor agrees that they and/or their employee's do not currently boycott Israel and will not boycott Israel during the term of this contract. Contractor agrees that they and/or their employees do not and will not do business with Iran, Sudan or any foreign terrorist organization listed on the Texas Comptroller's during this contract. See House Bill 89 Chapter 2270 and Senate Bill 252 Chapter 2252, Subchapter F.

Should any provision of this Agreement be declared or determined to be invalid or illegal, the validity of the remaining parts, terms or provisions shall not be affected thereby, and the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement. Either Party's failure to perform its obligations hereunder shall not be deemed a breach of this Agreement if such failure is due to fire, war, civil unrest, terrorist action, governmental regulations, acts of Nature, or other causes beyond the reasonable control of the Party claiming force majeure.

### **CRIMINAL BACKGROUND CHECK**

Contractor affirms that it has complied or will comply prior to the performance of any work for/at the District, with any and all the requirements regarding criminal background checks as provided under Texas Education Code, Chapter 22. This law requires the Contractor to obtain all criminal history record information on all persons to whom the law applies through the Texas Department of Public Safety (DPS). This process includes fingerprinting in order to submit the individuals to a national check. Contractor certifies to the District that the requirements of Chapter 22 of the Texas Education Code has been met and it has received all criminal history record information on all persons servicing this Agreement and none of the persons has a disqualifying criminal history. If Contractor receives information that a person fulfilling this Agreement subsequently has a reported disqualifying criminal history, Contractor will immediately remove the person from duties with the District and notify the District in writing within three (3) business days. Upon request, Contractor will provide the District with the name and any other requested information of person(s) fulfilling this Agreement so that the District may obtain criminal history record information on the person(s). If the District objects to the assignment of a person on the basis of the person's criminal history record information, Contractor agrees to discontinue using that person(s) to provide services at the District. Contractor also certifies that it has obtained certifications from its subcontractors

(if applicable) of compliance with Education Code, Chapter 22. Noncompliance or misrepresentation regarding this certification is good cause grounds for Agreement termination.

Texas Education Code 44.034(a), Notification of Criminal History states, “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.” Subsection (b) states “a school district may terminate a contract with a person or entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.” This notice is not required of a publicly-held corporation.

**ACKNOWLEDGEMENT**

Execution and delivery of this Agreement by exchange of email or fax copy containing the signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party. Each party acknowledges that this Agreement is not valid until appropriately authorized and will be considered in effect when all signatures have been received.

**Appendix A. Additional Provisions for agreements paid with Federal Funds.**

1. DISD makes every effort to be in full compliance with provisions as outlined in the Education Department General Administrative Regulations (EDGAR) which became effective December 26, 2014.
2. The Texas Education Agency requires all professional services contracts paid for with federal grants be effective only during the period of availability of the funds identified in the Notice of Grant Award (NOGA). [IDEA – July 1 to September 30].
3. This agreement will be executed after the NOGA is issued.
4. District signatures on this agreement confirm that the District’s procurement procedures reflect applicable State, local, and tribal laws and regulations and the procurements conform to applicable Federal law and the standards identified in this part pursuant to the regulations for procurement in 2 CFR §§200.318-323
5. All professional services provided under this agreement will follow the provisions of 2 CFR 200.459 professional service costs.
6. Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-federal entities from contracting with or making subawards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all nonprocurement transactions (e.g., subawards to subrecipients). Contractors receiving individual awards of \$25,000 or more and all subrecipients must certify that their organization and its principals are not suspended or debarred by a federal agency.
7. This agreement identifies and lists only reasonable, necessary, and allocable services to be provided during the period of availability of the funding sources listed in the contract.
8. The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable).

<b>X</b>	
<b>Contractor</b>	<b>Date</b>

**DISTRICT USE ONLY****DIRECTOR USE****IRS GUIDELINES FOR CONTRACTOR VERSUS EMPLOYEE**

The IRS has compiled a list of 20 factors, which it reviews in making determination regarding common law employees' status. The determination for whether a provider is an 'employee' or a 'contractor' is based on the totality of circumstances, rather than just one controlling factor. The following checklist has been designed to serve as a collection of relevant factors in order to aid in the decision making process.

Is this condition true for this situation?	YES	NO
<b>1. Instructions</b> Is the person required to comply with instructions as to when, where and how to work? (Note: A 'control' factor exists if the employer has the right to give instructions.)		
<b>2. Training</b> Is the person trained to perform services in a particular manner? (Note: independent contractors usually use their own methods and receive no training from those who purchase their services.)		
<b>3. Integration</b> Will this person's services be integrated into the business operations in such a way that the services are important to the success or continuation of the business? (Note: If so, then a 'control' factor potentially exists if the person is subject to direction and control.)		
<b>4. Services Rendered Personally</b> Are the services rendered personally in a way that shows the employer is interested in the methods as well as the result? (Note: if the person is not able to use self-chosen, acceptable practices at his/her discretion to deliver the intended result, then a 'control' factor potentially exists if the person is subject to direction and control.)		
<b>5. Hiring Assistants</b> In this situation, is the person able to hire assistants in order to deliver the result? (Note: An employee works for an employer who hires, supervises and pays assistants. An independent contractor hires, supervises and pays assistants under a contract that requires him/her to provide materials/labor and be responsible only for the result.)		
<b>6. Continuing Relationship</b> Is there a continuing relationship? (Note: an employee has a continuing relationship with an employer; a continuing relationship may exist where work is performed at frequently recurring, although irregular intervals.)		
<b>7. Set hours of work</b> Is this person required to work hours as established by the district? (Note: an employee has set hours of work established by the employer whereas an independent contractor determines his/her own work hours.)		
<b>8. Full-time work required</b> Is this person required to work full-time? (Note: an independent contractor can work when and for whom he/she chooses.)		

Is this condition true for this situation?	YES	NO
<b>9. Work Done on Premises</b> Is this person required to work on the premises of the employer? (Note: An independent contractor can perform work in his/her own offices.)		
<b>10. Order of sequence</b> Is this person required to perform services in a designated order or sequence? (If so, then a 'control' factor potentially exists if the person is subject to direction and control.)		
<b>11. Reports</b> Is this person required to submit reports to the employer to account for his/her actions? (If so, then a 'control' factor potentially exists if the person is subject to accountability to the employer.)		
<b>12. Payments</b> Is this person going to be paid regularly? (An independent contractor is paid as services are performed or upon completion of a specific task or project. Generally, an independent contractor submits an invoice detailing services / product provided.)		
<b>13. Expenses</b> Is the person's business and travel expenses paid by the employer? (If so, then a 'control' factor potentially exists if the person is subject to regulation and control.)		
<b>14. Tools and materials</b> Is this person responsible for providing his/her own tools, materials and other equipment? (Note: An employee is furnished with tools, materials and supplies.)		
<b>15. Investment</b> Does this person have a significant investment in the facilities he/she is using to perform services?		
<b>16. Profit and Loss</b> Is this person able to accrue a profit or suffer a loss? (Note: an independent contractor can make a profit or suffer a loss.)		
<b>17. Nonexclusivity</b> Is this person working exclusively for the employer? (Note: an independent contractor provides services to two or more unrelated persons or firms at the same time.)		
<b>18. Services Offered to General Public</b> Does this person offer his/her services only to a restricted sector? (Note: An independent contractor makes his/her services available to the general public.)		
<b>19. Right to terminate</b> Can the employer 'fire' this person? (Note: an employee can be fired by an employer, whereas an independent contractor cannot be fired, so long as he/she produces the result specified in the contract.)		

Is this condition true for this situation?		YES	NO
<b>20. Right to quit</b> Can this person quit at any time? (Note, an employee can quit at any time without incurring any liability, whereas an independent contractor usually agrees to complete a specific job and is responsible for satisfactory completion or is legally obligated to make good for his/her failure to complete the assignment.)			
<b>FUNDING</b>			
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
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Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
Budget Number:		Amount:	
<b>CAMPUS NOTIFIED</b>			<b>YES</b>
Campus Notification Attached <i>(If Applicable)</i>			

<b>X</b>	
<b>Director of Program</b>	<b>Date</b>

<b>HR USE ONLY</b>	
Is this condition true for this situation?	YES
Clear To Perform Services	
Requires Fingerprinting	

<b>X</b>	
<b>Principal</b>	<b>Date</b>
<b>X</b>	
<b>Human Resources Administrator</b>	<b>Date</b>
<b>X</b>	
<b>Superintendent or Designee</b>	<b>Date</b>