



**DESOTO INDEPENDENT SCHOOL DISTRICT**

## **Request for Proposals**

### **Food Services Point of Sale & Management System -24-007**

Issued by:

Desoto Independent School District

**Closing: January 15, 2024 @ 2:00 p.m.**

# TABLE OF CONTENTS

<b>KEY DATE .....</b>	<b>3</b>
<b>INTRODUCTION .....</b>	<b>4-6</b>
<b>RFP SCHEDULE OF EVENTS.....</b>	<b>7</b>
<b>EVALUATION PROCESS .....</b>	<b>8-10</b>
<b>PROJECT SCOPE AND DOCUMENTATION .....</b>	<b>12-16</b>
<b>SAMPLE CONTRACT AND DOCUMENTATION .....</b>	<b>17-31</b>

## KEY DATES AND INFORMATION

**PROJECT NAME:** **FOOD SERVICES POINT OF SALE MANAGEMENT SYSTEM**

**PROPOSAL DUE DATE & TIME:** **January 15, 2024, NO LATER THAN 2:00 p.m.**

**DELIVERY LOCATION:** Desoto ISD  
Procurement Department  
Administration Building  
200 E. Beltline Road  
Desoto, Texas 75115

**AWARD BY**  
**BOARD OF TRUSTEES:** \_\_\_\_\_, \_\_\_\_\_ [Optional]

**NOTICE: DESOTO ISD WILL BE CLOSED FOR WINTER BREAK: DECEMBER 20 – JANUARY 5, 2024**

## INTRODUCTION

### 1. Background

- 1.1. The Desoto ISD operates eleven (11) campuses and other facilities, all located in Dallas County, Texas. This request for proposal (“RFP”) invites competitive qualified suppliers with experience and expertise in providing a Food Service Point of Sale Management System Service in accordance with the required/specifications, instructions, terms and conditions in this solicitation document as specified herein.
- 1.2. Desoto ISD is an equal opportunity employer and does not discriminate in awarding of contracts or employment of persons because of their race, color, age, national origin, religion, sex, disability, sexual orientation, or any other characteristic protected by law. Desoto ISD requires companies with which it conducts business to be equal opportunity employers and comply with all applicable federal, state and municipal laws and regulations regarding contracting and employment practices.

### 2. Statement of Purpose

- 2.1. Through this RFP, Desoto ISD seeks to procure the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are small, minority, service-disabled, or women-owned an opportunity to do business with Desoto ISD as contractors and subcontractors. Proposers must complete the Diversity Business Program Form (see attachment Business Diversity Form and classification definitions).
- 2.2. Desoto ISD has issued this RFP to define Desoto ISD minimum service requirements; solicit proposals; detail proposal requirements; and, outline Desoto ISD process for evaluating proposals and selecting the contractor.
- 2.3. Desoto ISD intends to secure the best qualified, experienced and expert supplier for **[Food Services – Point of Sales Management System at all 11 DeSoto campuses and other locations.]**

### 3. Scope of Service, Contract Period, and Required Terms and Conditions

- 3.1. The Sample Desoto ISD Contract/Agreement/Agreement details Desoto ISD required:
  - Agreement; and,
  - Terms and Conditions;
- 3.2. Desoto ISD Contract/Agreement/Agreement substantially represents the contract document that the Proposer selected by Desoto ISD will agree to and sign. A Proposal that limits or changes any of the terms or conditions contained in Desoto ISD Contract/Agreement must be approved by Desoto ISD or else may be considered non-responsive.

### 4. Contract Term

- 4.1. The term of the contract is three years with two **(1) year extension** from date of award or the Effective Date, whichever is later.

### 5. RFP Communications

- 5.1. Interested Parties shall direct all communications regarding this RFP-24-007 to the following, who is Desoto ISD’s only official point of contact for this RFP. -24-007

**Michael Smith**  
Desoto ISD  
Purchasing Department  
200 E. Beltline Road  
Desoto, Texas 75115  
**972-223-6666 Ext. 8702**  
[Michael.smith02@desotoisd.org](mailto:Michael.smith02@desotoisd.org)

- 5.2. Unauthorized contact regarding this RFP with employees or officials of Desoto ISD other than the named above may result in disqualification from this procurement process.
- 5.3. Desoto ISD has assigned the following RFP identification number that must be referenced in all communications regarding the **RFP: 24-007**
- 5.4. Any oral communications shall be considered unofficial and non-binding with regard to this RFP.
- 5.5. Each Proposer shall assume the risk of the method of dispatching any communication or proposal to Desoto ISD. Desoto ISD assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to Desoto ISD by a deadline date shall not substitute for actual receipt of a communication or proposal by Desoto ISD.
- 5.6. All written comments, including questions and requests for clarification, must be received no later than the Written Comments Deadline included in RFP Schedule of Events.
- 5.7. Desoto ISD reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. Desoto ISD's official responses and other official communications pursuant to this RFP shall constitute an addendum to this RFP.
- 5.8. Desoto ISD will convey all official responses and communications pursuant to this RFP to the potential Proposers to whom Desoto ISD mailed or sent a RFP.
- 5.9. Only Desoto ISD's official, written responses and communications shall be considered binding with regard to this RFP.

## **6. RFP Definition of Terms**

- 6.1. **District** refers to the Desoto ISD, a political subdivision of the State of Texas. Desoto ISD may be used to refer collectively or individually, as applicable, to the campuses and other facilities that comprise the Desoto ISD.
- 6.2. **District Representative** refers to the persons named in the contract to give approval or render a decision, at the district level, regarding various aspects of: (a) use of the facilities or (b) the providing of Services as specified in the signed contract.
- 6.3. **Company, Proposer or Bidder** refers to a company that chooses to submit a Proposal to provide Services for Desoto ISD as specified in this RFP.
- 6.4. **Contractor** refers to the company awarded the contract to provide products and services for Desoto ISD as specified in this RFP.
- 6.5. **M/WBE** refers to a Company that is certified by an entity acceptable to Desoto ISD as being at least 51% owned, controlled, and operate by a person(s) that is an Anglo-American woman or Black/African American, Hispanic American, American Indian/Alaskan Native, American Asian, or American Asian Pacific. Certification must be by the North Central Texas Regional Certification Agency ("NCTRCA"), the

State of Texas or other College-approved certifying entity on the date when Proposals are publicly opened, only the name of each Company will be read aloud.

6.6. **Proposal Documents** refer collectively to this RFP and all addenda, Company's proposal, and all plans, specifications, schedules and the like attached hereto, or incorporated herein as if attached hereto.

6.7. **Services Requirements:** refers to the comprehensive maintenance and repairs of all labor, travel, parts, and materials needed to restore and/or keep Equipment and Software in proper operating condition to meet all equipment specifications required for efficient operations.

## 7. Proposal Deadline

7.1. Proposals must be submitted no later than the Proposal Deadline detailed in RFP Schedule of Events. A proposal must respond to the written RFP and any RFP exhibits, attachments, or addendums. Late proposals will not be accepted.

7.2. Pre-Proposal Conference [**N/A to this RFP**]

A Pre-Proposal Conference will be held at the time and date in the RFP Schedule of Events. The purpose of the conference is to discuss the RFP scope of services and allow Proposers to meet with District personnel to clarify specification requirements or to conduct site visits, as necessary. No questions will be answered prior to the pre-proposal conference. Oral responses to any question(s) at the Pre-Proposal Conference shall be considered tentative and non-binding with regard to this RFP. Additional questions, as well as any questions asked at the Pre-Proposal Conference, concerning the RFP should be submitted in writing prior to the Written Comments Deadline date in the RFP Schedule of Events. Desoto ISD response to all questions raised at pre-proposal conference will be issued as described in RFP Communications section 5.0 and by the date detailed in the RFP Schedule of Events. Pre-Proposal Conference attendance is not mandatory, and each potential Proposer may be limited to a maximum number of attendees depending upon space limitations. The walk thru -conference will start at:

## 8. Written Questions/Answer Period

8.1. Questions regarding the RFP and its scope may be submitted in writing during the Question/Answer Period. The deadline for the Question/Answer Period is detailed in RFP Schedule of Events. The purpose of the written Question/Answer Period is to allow Proposers to submit any questions they may have in regard to the scope of services requested. Desoto ISD response to questions raised during the Question/Answer Period will be issued by Desoto ISD by the date detailed in RFP Schedule of Events.

## 9. Payment/Performance Bond [**A payment/performance will not be required.**]

9.1. [Desoto ISD shall require a performance bond upon approval of a contract pursuant to this RFP. The amount of the performance bond must be in the sum of contract dollar amount. The successful Proposer shall obtain the required performance bond in the form and substance acceptable to Desoto ISD and provide it to Desoto ISD no later than the Performance Bond Deadline date detailed in RFP Schedule of Events. Failure to provide the performance bond by the Performance Bond Deadline shall result in contract termination.]

## RFP SCHEDULE OF EVENTS

The following Schedule of events represents Desoto ISD best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 5:00 p.m., (Central Time Zone)

<b>RFP SCHEDULE OF EVENTS</b>		
<b>NOTICE: Desoto ISD reserves the right, at its sole discretion, to adjust this schedule, as it deems necessary. Desoto ISD will communicate any adjustment to the Schedule of Events to potential Proposers.</b>		
EVENT	TIME	DATE ( <u>all</u> dates are District business days)
1. Advertisement Dates		December 12 & December 19, 2023
2. Pre-proposal Walk-Thru Conference		N/A
3. Written Comments Deadline		January 4, 2024
4. District Response to Written Comments		January 8, 2024
5. Proposal Deadline		January 15, 2024 @ 2:00pm central standard time
6. District Completes Proposal Evaluations		TBD
7. Board of Trustees Approval		TBD
8. Contract Effective Date (TBD)		TBD
<b>NOTE: DESOTO ISD WILL BE CLOSED FOR WINTER BREAK. DECEMBER 20 THROUGH JANUARY 5, 2024</b>		

## **1. Evaluation Process**

- Proposals will be selected by Desoto ISD in accordance with the requirement and specifications set forth in this RFP. The proposal evaluation process is designed to award the Contract/s not necessarily to the Proposer/s of least cost, but rather to the Proposer/s with the best combination of attributes based upon the evaluation criteria and who submits a proposal that is the most advantageous to Desoto ISD.
- A Proposal Evaluation Team, appropriate to the scope and nature of the RFP, will evaluate each Proposal that appears responsive to the RFP.
- Each Proposal Evaluation Team member will independently, evaluate each proposal against the evaluation criteria in this RFP, rather than against other proposals, and will score each in accordance with RFP Proposal and Evaluation Guide.
- Desoto ISD reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion shall be limited to specific sections of the proposal identified by Desoto ISD. The subject Proposer shall put any resulting clarification in writing as may be required by Desoto ISD.

## **2. Contract Award Process**

- The tabulation results of the responsive submitted proposal in the evaluation process will be forwarded to the appropriate department official who will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. Desoto ISD reserves the right to make an award without further discussion of any proposal.
- Notwithstanding the foregoing, to affect a contract award to a Proposer other than the one receiving the highest evaluation score, the requesting department/party must provide written justification for such an award and obtain the written approval of the appropriate District official.
- The Proposer with the apparent best-evaluated proposal will be required to enter into an agreement with Desoto ISD, which shall be substantially the same as the Sample Contract/Agreement.
- However, Desoto ISD reserves the right, at its sole discretion, to add terms and conditions or to revise District Contract/Agreement requirements in Desoto ISD best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.
- The Proposer with the apparent best-evaluated proposal must sign and return the Contract written by Desoto ISD pursuant to this RFP no later than the Award of Contract Date in RFP Schedule of Events. If the Proposer fails to provide the signed Contract by the Award of Contract Date, Desoto ISD may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.



- If Desoto ISD determines that the apparent best-evaluated proposal is non-responsive and rejects the proposal, Desoto ISD reserves the right, at its sole discretion to award the next best evaluated responsive proposal.

**Evaluation Factors:**

**Awarding Best Value and Evaluation Criteria:**

When deemed necessary, responses shall be evaluated by a committee designated by Desoto ISD. The district will generally award contracts on the basis of best value. Award(s) will be made to the best responsive, responsible offer, price and other factors considered. In determining the best value for the district. In awarding a contract, a district shall consider:

- Purchase price.
- The reputation of the vendor and of the vendor's goods or services.
- The quality of the vendor's goods or services.
- The extent to which the goods or services meet the district's needs.
- The vendor's past relationship with the district.
- The impact on the ability of the district to comply with laws relating to historically underutilized businesses.
- The total long-term cost to the district to acquire the goods or services.
- Evaluations may include any other relevant factor specifically listed in the request for bids or proposals.

[Texas Education Code 44.031(b)]. Although all evaluation criteria listed above may be considered by the District, the District will decide which criteria will determine the successful bidder(s) to be considered for contract award.

When an evaluation is applicable, an evaluations committee will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this RFP.

Each proposal received will be analyzed to determine overall responsiveness and completeness as defined in the scope section and in the instructions on submitting a proposal. Failure to comply with the instructions or to submit a complete proposal may deem a proposal non-responsive and may at the discretion of the Evaluation Committee be eliminated from further evaluation.

If the evaluation committee has reasonable grounds to believe that the Proposer is unable to perform the required services to the satisfaction of Desoto ISD. Desoto ISD reserves the right to make an award to another proposer. Some indicators (but not a complete list) of possible supplier/proposer performance concerns are:

- Past supplier performance.
- The proposer's financial resources and ability to perform.
- The proposer's experience or demonstrated capability and responsibility.
- The proposer's ability to provide a reliable on-going business relationship and the maintenance of on-going agreements and support.

## EVALUATION CRITERIA

• Evaluation Criteria Score Sheet – General Procurement (Non-Construction)		Max Points	Vendor Score
1.	<b>Purchase Price:</b>		
	A. Offers a fair reasonable price for items or services to be procured by DeSoto ISD	35	
2.	<b>Quality of vendor's goods and services</b>	20	
	A. Vendor has good reputation with DeSoto ISD or other school district, or governmental entities		
3.	<b>Reputation of the Vendor and the Vendor's Goods and Services</b>	20	
	A. Vendor's experience, qualifications and capability of providing a reputable product and service		
4.	<b>The extent to which the goods or services meet the district's needs</b>	15	
5.	<b>Vendor's ability to provide service on equipment following installation</b>	10	
<b>Maximum Total Points</b>		<b>100</b>	

**The undersigned authorized representative of the vendor indicated below hereby acknowledges:**

1. That he/she is authorized to enter into contractual relationships on behalf of the company indicated below, and
2. That he/she has carefully examined this Proposal Notice, the accompanying Proposal Forms, and the General Terms and Conditions and Item Specifications associated with this RFP and
3. That he/she proposes to supply any products or services submitted under this proposal invitation at the prices quoted and in strict compliance with the General Terms and Conditions, and Item Specifications associated with this proposal invitation, unless any exceptions are noted in writing with this bid response, and
4. By submitting a bid, each bidder agrees to waive any claim it has or may have against the Desoto Independent School District and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.
5. Offeror agrees to exhaust its administrative remedies under District Policy and the Disputes Clause of any resulting contract before seeking judicial relief of any type in connection with any matter related to this solicitation, the award of any contract, and any dispute under any resulting contract.

\_\_\_\_\_  
Name of Bidding Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
City, State, Zip  
Representative

\_\_\_\_\_  
Printed name of Authorized

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
Position of Authorized Representative

\_\_\_\_\_  
Telephone Number of Contact Person

\_\_\_\_\_  
Email Address of Contact Person

## **FOOD SERVICES POINT OF SALES MANAGEMENT SYSTEM SCOPE AND DOCUMENTATION**

The DeSoto Independent School District is invites competitive qualified suppliers with experience and expertise in providing a Food Service Point of Sale Management System Service: Proposals are due at 2:00 p.m. on, January 15, 2024 at the Desoto ISD Administration Building, 200 E. Beltline Road, Desoto, Texas 75115. Please submit Required Bid Forms and Bid Documents within the proposal.

### **Scope of Work**

Desoto ISD is seeking a pool of competitive qualified suppliers, both local and nationwide who can provide product and services for food service point of sale management system for the district 11 schools and other facilities

In doing so, the vendor may provide a hosted or non-hosted solution to include the software necessary for the district to operate a student meal accounting and nutritional system capable of performing the essential functions of the current software solutions in a more efficient and effective manner. The solution should include the capability and ability, but not limited to the following services:

- Student demographic updates – (communicates with PEIMS on student information)
- Free/Reduced CEP reporting
- Lunch Money Reporting – (every 10 minutes during school day)
- Online Meal application/Income survey
- State Reporting
- Complete student audit
- Maintain 5-year history
- Daily data back-up
- Back Office reporting
- On-line POS to district central server
- Off campus meal reporting
- Verification reporting
- DC download and update
- Rollover of statuses at of start of school after 30 days
- Update & Maintain software
- Phone support: Live individual, not a machine.
- Receive and accurately record online payments utilizing a variety of payment methods in a timely manner.
- Processing and recording of all student data, including all historical meal and payment transactions.

DeSoto ISD is looking for a solution and a vendor that already has an established predominant presence with a minimum of three (3) medium school districts (preferably in the state of Texas) with a student population of at least 10,000 students, who can provide customization for our district's needs, along with all the services necessary to install the system and train district staff to become self-sufficient with the Student Meal Accounting System.

The proposed system must be centralized and customizable to the district's specifications. The system must have the ability to produce all current and future state of Texas and USDA reporting requirements.

The district does not guarantee the volume (quantity or dollar value) to be purchased annually and purchases may be made from any responding vendor. The actual dollar

amount to be purchased depends on **actual needs of the end-user and budgetary constraints.**

#### Additional Documentation

#### **REQUIRED SUBMITTAL FORMS**

1. Complete, sign and submit the following forms:

#### **FOOD SERVICE POINT OF SALES MANGEMENT SYSTEM**

Required Forms [https://drive.google.com/file/d/1f\\_9lzD5fDs7ouseGlCg6\\_tziSe22sU-K/view?usp=sharing](https://drive.google.com/file/d/1f_9lzD5fDs7ouseGlCg6_tziSe22sU-K/view?usp=sharing)

#### **Proposal Submission**

Proposal will include on the outside of the envelope/packet:

#### **FOOD SERVICE POINT OF SALES MANAGEMENT SYSTEM RFP – 24-007**

**Please provide one (1) copy marked ORIGINAL, one (1) copy marked COPY and one (1) Digital copy**

If additional information should be required questions should be submitted by email to:

[Michael.smith02@desotoisd.org](mailto:Michael.smith02@desotoisd.org)

FOOD SERVICE POINT OF SALES MANGEMENT SYSTEM

(Firm) Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Mailing Address \_\_\_\_\_

\_\_\_\_\_  
Telephone(s) \_\_\_\_\_

Fax Number(s) \_\_\_\_\_

E-mail \_\_\_\_\_

Name of Principal Contact \_\_\_\_\_

Title of Principal Contact \_\_\_\_\_

Signature of Principal Contact \_\_\_\_\_

**MAKE SURE YOU INCLUDE THE FOLLOWING:  
ALL REQUIRED FORMS ATTACHED IN URL ON PAGE 13.**

**NOTE: DISTRICT OFFICE WILL BE CLOSED FROM 12-20 TO 1-5-2024**

# RFP PRICING MATRIX FORM

Mark All that apply	Module/Services	Year 1	Year 2	Year 3	Year 4	Year 5
	POINT OF SERVICE MODULE					
	INVENTORY MODULE					
	PURCHASING MODULE					
	MENU PLANNING AND NUTRIENT ANALYSIS MODULE					
	PRODUCTION MODULE					
	FREE/REDUCED APPLICATION PROCESSING					
	ON-LINE WEB PAYMENT PROCESSING					
	MEAL ACCOUNTABILITY AND FRONT OFFICE MODULE					
	ONLINE PRE-ORDERING MODULE					
	IMPLEMENTATION/TRAINING & SET-UP COSTS					
	<b>TOTAL COST</b>					

Other Services Cost - if not included above (Add additional sheets if necessary)

Mark All that apply	Module/Services	Year 1	Year 2	Year 3	Year 4	Year 5
	<b>TOTAL COST</b>					

\_\_\_\_\_  
Name of Preparer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Preparer

\_\_\_\_\_  
Date

## DeSoto ISD Locations

	<i>Campus</i>	<i>Street Address</i>	<i>City</i>	<i>Zip</i>	<i>Phone Number</i>
1	Administration Building	200 E. Beltline Road	DeSoto	75115	817-297-5800
2	DeSoto High School	600 Eagle Drive	DeSoto	75115	972-230-0726
3	Alternative Education Program	204 E. Beltline Road	DeSoto	75115	972-223-2242
4	McCowan Middle School	1500 Majestic Meadows Drive	Glenn Heights	75154	972-274-8090
5	West Middle School	800 N. Westmoreland Road	DeSoto	75115	972-230-1820
6	Katherine Johnson	1200 Academy	DeSoto	75115	972-274-8026
7	Ruby Young	707 Young Blvd	DeSoto	75115	972-274-8221
8	Cockrell Hill	425 S. Cockrell Hill Road	DeSoto	75115	972-230-1692
9	Frank Moates	1500 Heritage Blvd	Glen Heights	75154	972-230-2881
10	The Meadows	1016 The Meadows Pkwy	DeSoto	75115	972-224-0960
11	Woodridge Elementary	1001 Woodridge	DeSoto	75115	972-223-3800
12	Amber Terrace	224 Amber Lane	DeSoto	75115	972-223-8757



**CONTRACTOR/CONSULTANT SERVICE CONTRACT**

**STATE OF TEXAS** §  
 §  
**COUNTY OF DALLAS** §

The DeSoto Independent School District, a political subdivision of the State of Texas and a legally constituted Independent School District located within DeSoto, Dallas County, Texas (hereinafter referred to as the “District”) and the individual, contractor, or consultant defined below (hereinafter referred to as “Consultant” or “Contractor”), agree that the District will engage Contractor to provide services pursuant to the terms and conditions specified below. The “parties” will hereinafter refer to the District and Contractor collectively. “Agreement” or “Contract” will refer to this document and include only the terms and conditions found herein. Any future changes to this Agreement must be executed in writing and signed by the parties.

Individual/Firm Name:	Individual/Firm Name			
Address #1:	Street Address			
Address #2:	City	State		ZIP Code

**1. SERVICES**

**1.1.** Contractor will perform personally, in a manner satisfactory to the District, the following professional services (if Contractor’s proposal or Scope of Work has been provided, attach as **Exhibit “A”**). The District’s terms and conditions in this Agreement will govern if there is a conflict between the terms of this Agreement and any terms or conditions inserted in Contractor’s proposal or Scope of Work.

List Professional Services

**1.2.** Unless discontinued earlier by the District, or mutually agreed to by both parties, the services are to be performed at the following times and places:

Time(s) & Place(s) For Performance

**1.3.** Contractor will be responsible for delivering the following (if a description of Contractor’s deliverables has been provided, summarize the deliverables below and attach as **Exhibit “B”**), pursuant to the terms in this Agreement. The District’s terms and conditions in this Agreement will govern if there is a conflict between the terms of this Agreement and any terms or conditions inserted in Contractor’s attached deliverables.

Deliverables

**2. TERM**

**2.1.** The period of performance under this Agreement will be from Contract Start Date or date of execution, whichever is later, through Contract End Date, unless terminated at an earlier date as provided herein or extended by amendment to this Agreement. All services shall be completed during the contract term as noted above.

**3. COMPENSATION**

**3.1.** As full compensation for the services provided, the District will make payment following satisfactory completion of services in an amount **NOT TO EXCEED** \$Total Contract Amount, inclusive of all fees and allowable expenses. Compensation for services rendered must be based on the following rates or in accordance with the following terms (initial where applicable):

- FIXED FEE** of \$Fixed Fee Amount for all services performed plus reimbursable expenses of \$Reimbursable Expenses for a **total contract amount** of \$Total Contract Price; **OR**
- PER ITEM RATE** of \$Cost Per Item per item, for items identified in **Exhibit** Exhibit Label, for Item Quantity items plus reimbursable expenses of \$Reimbursable Expenses for a **total contract amount** of \$Total Contract Price; **OR**
- HOURLY RATE** of \$Hourly Rate per hour for Total Hours hour(s) plus reimbursable expenses of \$Reimbursable Expenses for a **total contract amount** of \$Total Contract Price; **OR**
- DAILY RATE** of \$Daily Rate per day for Total Days day(s), plus reimbursable expenses of \$Reimbursable Expenses for a **total contract amount** of \$Total Contract Price; **OR**
- MONTHLY RATE** of \$Monthly Rate per month for Total Months month(s) plus reimbursable expenses of \$Reimbursable Expenses for a **total contract amount** of \$Total Contract Price.

*[The compensation rate format with completed details shall be effective even if the box is not checked.]*

**3.2.** District shall not pay Consultant or Contractor travel expenses.

**3.3.** No payment in advance of or in anticipation of services to be provided under this Agreement will be made by District with the exception of a deposit amount required by Consultant or Contractor upon mutual agreement of parties.

**3.4.** In no event will the cost to the District for the services to be provided, including Reimbursable Expenses, exceed the maximum **NOT TO EXCEED** amount set forth in Section 3.1. The fees due under Agreement will be prorated in the event either party terminates this Agreement prior to the expiration date.

**3.5.** Contractor shall be paid upon presentation of an invoice that includes, but is not limited to, the professional service(s) provided, the date(s) of service, and the location(s) of service. **All payments to Contractor shall be net 30 days from the receipt of the invoice or delivery of services, whichever is later.**

**3.6.** This contract  is /  is not funded through federal grant funds (federal and state grants including entitlement funds). Fund: Fund

If yes, this contract shall be subject to the Addendum Contract Provisions for Contracts Under Federal Awards. This Addendum **must** be attached to this contract.

**4. INDEMNIFICATION**

**4.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR MUST AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE DISTRICT,**

ITS TRUSTEES, OFFICERS, DIRECTORS, OFFICIALS, CONTRACTORS, VOLUNTEERS, EMPLOYEES, SUCCESSORS AND ASSIGNEES, (COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM, AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING ATTORNEY FEES AND COURT COSTS, OF ANY NATURE, KIND, OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL, OR TORTIOUS ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE THAT CONTRACTOR CONTROLS OR EXERCISES CONTROL OVER (COLLECTIVELY, "THE LIABILITIES").

4.2. CONTRACTOR MUST PROTECT AND INDEMNIFY THE DISTRICT FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS, AND LOSSES, ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONTRACTOR, OR BY THE DISTRICT AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, THE DISTRICT MUST PROMPTLY NOTIFY CONTRACTOR, AND CONTRACTOR MUST BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF THE DISTRICT'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, THE DISTRICT AGREES TO COOPERATE REASONABLY WITH CONTRACTOR, AND PARTIES MUST BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

4.3. It is understood and agreed that this provision is subject to, and expressly limited by, the terms and conditions of the Texas Civ. Prac. & Rem. Code Ann. §§ 130.001-131.005, as amended. This section must survive the termination of Agreement.

4.4. Contractor understands and agrees that the District is prohibited from indemnifying another entity under Article III, Section 52 of the Texas Constitution.

## **5. DISTRICT'S OBLIGATIONS UNDER STATE AND FEDERAL LAW**

5.1. Contractor acknowledges that the District is subject to the Texas Public Information Act ("TPIA"). As such, upon receipt of a request under the TPIA, the District may be required to release documents to the requestor. Contractor agrees to fully cooperate with the District in responding to public information requests involving this Agreement or the services provided herein. Contractor acknowledges that it has the responsibility to brief the Attorney General's Office on why the documents identified as confidential or proprietary fall within an exception to public disclosure.

5.2. Contractor acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, specifically the Family Educational Rights and Privacy Act ("FERPA"). Contractor will receive student information from the District in compliance with the requirements and exceptions outlined in FERPA. Contractor acknowledges and agrees to comply with said law and safeguard student information. Contractor may not redisclose student information to a third party without prior written consent from the parent or eligible student. Furthermore, Contractor must destroy any student information received from the District when no longer needed for the purposes listed in the Agreement.

## **6. LOSS OF FUNDING AND COMMITMENT OF CURRENT REVENUE**

**6.1.** Termination of this Agreement under this paragraph is to be considered Termination for Non-Appropriation of Funds. The District will have the continuing right to terminate this Agreement at the end of each fiscal year or end of the special revenue fund or grant during the term of the Agreement with regard to any services to be performed after the end of such fiscal year or end of the special revenue fund or grant, without the District incurring any liability to Contractor as a result of such termination, including early termination charges. If District terminates this Agreement pursuant to this paragraph, Contractor will have the right to collect and retain payment for services rendered to the District through termination date but will not be entitled to any early termination charges.

## **7. SPECIAL CONDITIONS**

### **7.1. Standards for Financial and Programmatic Management**

- 7.1.1.** Where applicable, Contractor must regularly assess and monitor the progress of the student receiving services pursuant to this Agreement using District-approved assessments, and periodically forward information on the student's progress to the District in a format to be determined by the District.
- 7.1.2.** Contractor agrees to participate fully in the evaluation of the effectiveness of services provided pursuant to this Agreement. Evaluation, where possible, will include, but is not limited to, the following:
- a. Pre- and Post-intervention student performance data available in district databases, including attendance, academic performance, behavior/discipline referrals, alternative placement and promotion or graduation;
  - b. Parent, teacher, counselor, and administrator surveys; and
  - c. Other measures of key performance indicators as defined by the District.
- 7.1.3.** The District's research and evaluation department will evaluate program effectiveness using methodology the District deems appropriate, which may include, but is not limited to:
- a. A comparison of outcome data of program participants with a matched control group of non-participants; and
  - b. Analysis of student outcome data in relation to program cost.
- 7.1.4.** Contractor must follow all District policies, regulations, and guidelines and work at the District's direction regarding the referral of those students that are to receive services from Contractor. Contractor must accept all students referred for services by District personnel. In the event that referrals exceed Contractor's capacity to provide services, the District will determine which students are to receive services.
- 7.1.5.** Contractor is solely responsible for the provision of all appropriate supplies, equipment, and facilities necessary to provide services pursuant to this Agreement.
- 7.1.6.** The District will have the right to inspect and audit Contractor's records and to observe services being rendered. Contractor must provide access to all records, reports, logs, or other matters relating to this Contract for the current school year immediately upon request by the District. Fiscal records created pursuant to this Contract and records related to prior school years relating to services provided pursuant to this Contract must be maintained by Contractor for five (5) years and must be

available for audit upon twenty-four (24) hours' notice. Contractor must not attempt to, purport to, or actually lend the faith and credit of the District to any third person or entity.

**7.1.7.** Contractor must furnish to the District a valid copy of its most recently adopted organizational documents (partnership agreements, bylaws, etc.), a complete and accurate list of the Governing Board of Directors (or Trustees or Partners), and timely update said information as changes occur. Contractor must avoid any actual or potential conflict of interest on behalf of itself or its employees providing services hereunder, including but not limited to, employment with the District. Any employees of Contractor that are also employees of the District must be immediately disclosed to the District in writing. The employment of District employees by Contractor must be in accordance with District Policy DBF (Local).

**7.1.8.** Upon request by the District, Contractor must furnish to the District copies of the current résumés of each of its employees providing services pursuant to this Agreement.

## **7.2. Insurance**

**7.2.1.** At all times during the Contract Term, Contractor must, at its sole cost and expense, procure and maintain in full force and effect, with insurance carriers duly authorized to do business in the State of Texas, with a general Best's rating of "A" or better according to the A.M. Best Rating Guide and acceptable to the District, the following types of insurance:

a. **Commercial General Liability Insurance:** Contractor must maintain throughout the term of this Contract Commercial General Liability Insurance for bodily injury and property damage arising from Contractor's services to be performed pursuant to this Contract on an occurrence basis with coverage based on the classes of risk as outlined below. The insurance policy must name the District as an additional insured. The policy must also be written as a primary policy which does not contribute to any policies which may be carried by the District, and must contain a provision that the District, although named as an insured, will nevertheless be entitled to recover under said policy for any loss occasioned to it, its trustees, employees, agents, and representatives, by reason of the negligence of Contractor, its employees, agents, representatives, or Contractors.

**Class C Risk**—jobs with moderate hazards and moderate size from \$25,000.00 to \$3,000,000.00.

<b>Bodily Injury</b>	\$500,000.00 combined single limits
<b>Property Damage</b>	\$1,000,000.00 aggregate

**Class D Risk**—large construction or service contracts above \$3,000,000.00.

<b>Bodily Injury</b>	\$1,000,000.00 combined single limits
<b>Property Damage</b>	\$2,000,000.00 aggregate

b. **Automobile Liability Insurance:** Contractor must maintain in force throughout the term of this Contract comprehensive Automobile Liability Insurance covering Contractor and the District against all claims for injuries to members of the public and damage to the property of others arising from the use of motor vehicles, and must cover the operation of all motor vehicles, whether they are owned, non-owned, or hired. The liability coverage must not be less than \$1,000,000.00 combined single limit.

c. **Workers' Compensation/Employers' Liability:** Contractor shall carry Workers' Compensation/Employers' Liability Insurance in amounts sufficient to meet the requirements

of the State of Texas, without restrictive endorsements. In addition to coverage for the Texas Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable federal or state law. Self-insurance is not acceptable.

d. **Professional Liability Insurance:** The Professional Liability Insurance provided by Contractor must conform to the following requirements:

- Contractor's Professional Liability Insurance must be in a form acceptable to the District and must cover those sources of liability typically insured by a Professional Liability Insurance, arising out of the rendering or failure to render professional services in the performance of this Agreement, including all provisions of indemnification which are part of this Agreement.
- If on a claims-made basis, Contractor must maintain without interruption, the Professional Liability Insurance until three (3) years after the termination of this Agreement.
- The minimum limits to be maintained by the Contractor are, as follows:

**Class C Risk**—for jobs with moderate hazards and moderate size from \$25,000.00 to \$3,000,000.00 the minimum limits must be \$1,000,000.00 per claim/annual aggregate.

**Class D Risk**—for large construction or service contracts above \$3,000,000.00, the minimum limits must be \$2,000,000.00 per claim/annual aggregate.

e. **Umbrella Insurance Policy:** Contractor must maintain throughout the term of this Contract an Umbrella Liability Policy to provide additional commercial general liability, automobile liability, and professional liability limits for services to be performed pursuant to this Contract on an occurrence basis with coverage based on the classes of risk as outlined below. The insurance policy must name the District as an additional insured.

**Class C Risk**—for jobs with moderate hazards and moderate size from \$25,000.00 to \$3,000,000.00, the minimum limits must be \$1,000,000.00 per claim/annual aggregate.

**Class D Risk**—for large construction or service contracts above \$3,000,001.00, the minimum limits must be \$2,000,000.00 per claim/annual aggregate.

7.2.2. Each insurance policy evidencing the insurance required hereunder must bear the appropriate endorsements whereby the insurance carrier waives any rights of subrogation acquired against the District and its students by reason of any payment under such policy and must provide that such insurance carriers must notify the District in writing at least thirty (30) days prior to any cancellation (except for non-payment, in which case notice shall be ten (10) days), termination, non-renewal or modification to Contractor's Policy(ies) required under this Agreement.

7.2.3. Upon District's request, Contractor must furnish the District with certificates of insurance evidencing Contractor's insurance coverage is consistent with the terms of this Agreement. Contractor must renew or replace Certificates of Insurance no less than thirty (30) days prior to cancellation, termination, or modification. Failure to obtain the necessary coverage must be a material breach of this agreement and the District may terminate this agreement without further liability to Contractor. Additionally, Contractor must be liable to the District for any and all damages incurred due to Contractor's failure to perform the agreement terms. Contractor must name the District as an additional insured.



### **7.3. Student Records**

- 7.3.1.** All student records must be kept in a secure location preventing access by unauthorized individuals. Contractor will maintain an access log delineating date, time, agency, and identity of any individual accessing student records that is in the direct employ of Contractor. The District will have the right to inspect and audit Contractor's use of student records at any time upon twenty-four (24) hours' notice. Contractor agrees to provide access to and copies of student records to the District and/or the parents/guardians of the student. Contractor must not forward to any other person other than the parents/guardians or the District any student record without the written consent of the parent/guardian and the District, as required by FERPA and all other state or federal privacy laws. Upon completion or termination of this agreement, Contractor must turn over to the District all student records for the District's eligible students to whom Contractor has provided services under this agreement.
- 7.3.2.** Contractor agrees to comply with all applicable Protection of Pupils' Rights Amendment provisions, as found in 20 U.S.C.S. § 1232h, and applicable Code of Federal Regulations sections promulgated by the United States Department of Education.
- 7.3.3.** Contractor may collect, use, and disclose "personal information," as defined in the Children's Online Privacy Protection Act ("COPPA"), from students under the age of thirteen (13) only to the extent permitted by COPPA. Contractor must comply with other applicable provisions of COPPA and all other state or federal privacy laws.

### **7.4. Criminal Background Check**

- 7.4.1.** Contractor must conduct a criminal background check of its employees and volunteers, and, upon receipt of those checks, certify to the District that no employee or volunteer of Contractor working with the students of the District has a conviction for a felony, a crime against people, an offense that poses a risk to children, a job-related crime, repeated arrests, or any other criminal activity judged by the District to be inappropriate for someone working with its students. Contractor must supply the District with a list of names of those employees or volunteers who are cleared to work with students of the District. The cost of the criminal background check will be borne by Contractor. If Contractor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review and must submit original evidence acceptable to the District with this Agreement showing compliance.
- 7.4.2.** Contractor must certify to the District before beginning work, and at no less than an annual basis thereafter, that criminal history record information has been obtained regarding all employees and volunteers working with students of the District. Contractor must immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District property or other location where students are regularly present. District must be the final judge of what constitutes a "location where students are regularly present." A photographic identification badge, issued by a District-approved third-party company at Contractor's expense, must identify Contractor's employees, agents, and subcontractors. The third-party company must verify the criminal record history information and may be used to verify compliance with the federal Drug Free Workplace Act of 1988 or its successor, and the federal Education Department General Administrative Regulations, current edition, in its testing and review process. Contractor's violation of any portion of this section constitutes a breach of contract.
- 7.4.3.** Contractor agrees that its employees and volunteers will not work with the District's students prior to the receipt of acceptable results of the employees' or volunteers' criminal background check.

- 7.4.4.** Contractor must give notice to the District prior to performing services under this Contract if Contractor or an owner or 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. The District may terminate this Contract if the District determines that the person or business entity failed to give notice as required by this paragraph or misrepresented the conduct resulting in the conviction. Subsection 7.4.4 does not apply to a publicly held corporation.
- 7.4.5.** If Contractor has direct contact with students, verification of FAS fingerprinting compliance is required. Legal name and birthdate are required to conduct the verification.

Legal Name:           Legal Name  
Birthdate:            Birthdate

## **7.5. Inappropriate Behavior**

- 7.5.1.** Sexual harassment of employees of Contractor, employees of District, or students of District by Contractor or Contractor's employees is strictly forbidden. Any employee of Contractor who is found to have engaged in such conduct is subject to immediate removal from District property.
- 7.5.2.** Contractor and all individuals under its control must comply with District Board Policies, which are available at the following web address: <https://pol.tasb.org/PolicyOnline?key=362>. In the event that Contractor or an individual under its control violate a District Board Policy, the District may terminate this Contract without penalty, or otherwise require Contractor to exclude the violating individual from performing services under this Agreement.
- 7.5.3.** Contractor will be responsible to the District for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of Contractor. It is understood and agreed that the relationship of Contractor to District will be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the District, or (2) to create any partnership, joint venture, or other association between District and Contractor. Any direction or instruction by any of the District's authorized representatives in respect to the work being done under this Agreement will relate to the results the District desires to obtain from Contractor and must not affect Contractor's independent contractor status described herein.
- 7.5.4.** Contractor must enforce the District's alcohol-free, drug-free, tobacco-free, harassment-free, and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Agreement. Contractor must also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out work under this Agreement. When the goods or services contracted for are to be provided at a District campus or facility where students are present, Contractor must further ensure that no on-site fraternization will occur between personnel under Contractor's supervision and District's students, employees, or the general public. Failure of an individual to adhere to these standards of conduct will result in immediate removal from the site.



## **7.6. Applicable Laws**

- 7.6.1.** Contractor agrees to be bound by any amendments to any Federal, State, or County laws, regulations, or ordinances referenced in this Contract, or which affect the services described herein upon the effective date of such amendments.

## **8. MISCELLANEOUS**

- 8.1. Termination.** Either party may terminate this Agreement at any time, with or without cause. In the event of termination by either party prior to completion of the contract, compensation for services shall be prorated on the basis of actual work performed by Contractor. Contractor shall only be entitled to receive just and equitable compensation for any satisfactory work completed, and expenses incurred up to the date of termination.
- 8.2. Credentials.** In the event that this Agreement is for Professional Services, Contractor agrees that all required certifications, licensures, and credentials will be maintained at all times.
- 8.3. Conflict of Interest.** Contractor, by signing this Agreement, certifies that Contractor does not have a conflict of interest relative to the services to be rendered on behalf of the District.
- 8.4. Confidentiality.** Contractor further understands that Contractor is serving as a fiduciary of the District and hereby agrees not to divulge any proprietary or confidential information to any person without written authorization from the District. For purposes of the Family Educational Rights and Privacy Act (“FERPA”) and the Health Insurance Portability and Accountability Act (“HIPAA”), Contractor agrees to comply with all relevant confidentiality requirements regarding a student’s personally identifiable information and individually identifiable health information including entering into any additional agreements related to the care and confidentiality of such information.
- 8.5. Proprietary Rights.** With the exception of previously registered copyright or trademark materials of Contractor, Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, will remain the property of the District and must not be used or published by Contractor or any other party related to Contractor without the express prior written consent of the District. Furthermore, Contractor understands that products produced as a result of this contract are the sole property of the District and may be reused by the District at any time without further compensation and without any restrictions.
- 8.6. Independent Contractor.** It is expressly understood and agreed by both parties that the District is contracting with Contractor as an independent contractor. Each party and the officers, employees, agents, subcontractors, or other Contractors thereof will not be deemed by virtue of this contract to be the officers, agents, or employees of the other party. The District will not deduct Federal income taxes, FICA (Social Security), or any other taxes an employer is required to deduct, as this is the responsibility of Contractor.
- 8.7. Taxes.** Contractor must not require the District to pay taxes of any kind.
- 8.8. Insurance.** Contractor must carry and maintain such professional liability and errors and omissions insurance covering the services provided under this Agreement, as is acceptable to and approved by the District. The fees for such insurance will be at the expense of Contractor.
- 8.9. Hold Harmless.** The District and its employees can neither agree to hold Contractor harmless nor agree to indemnify Contractor, and any contracts or provisions to the contrary are void.

- 8.10. Waivers.** The parties expressly agree that no provision of this agreement is in any way intended to constitute a waiver by the District of any immunities from suit or from liability that the District may have by operation of state or federal law. A waiver by either of the parties of any of the covenants, conditions, or agreements hereof to be performed by the other party must not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition, or agreement herein contained.
- 8.11. Assignment.** The rights, responsibilities, and duties under this contract are personal to Contractor and must not be transferred or assigned without the express prior written approval of the District.
- 8.12. Non-Discrimination.** Contractor certifies that it is an equal opportunity employer. It conducts all business activities, including hiring, without regard to age, race, color, sex, disability, marital status, national origin, citizenship status, or other legally protected category.
- 8.13. Purchase Order.** The District is not obligated to honor the terms and conditions of this agreement until a valid purchase order is issued.
- 8.14. Boycott Israel.** Pursuant to Texas Government Code § 2271.002, to the extent that Contractor and any of its subcontractors are not sole proprietorships, have greater than ten (10) employees, and this Agreement is for an excess of \$100,000.00, Contractor and any subcontractors must not boycott Israel, and must agree not to boycott Israel during the term of the Contract.
- 8.15. Anti-Terrorism.** Pursuant to Texas Government Code § 2252.152, the District is prohibited from contracting with terrorist organizations as identified on a list published and maintained by the Texas Comptroller of Public Accounts. By signing this Agreement, Contractor affirms it does not support any of the listed terrorist organizations at the time of signing and agrees not to support any of the listed terrorist organizations at any time during the Agreement's term.
- 8.16. Retention of Contracting Information.** Pursuant to District Board Policy CH(LEGAL), the requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the Contractor agrees that the Agreement may be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 8.17. Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions hereof must be construed, interpreted, and applied, in accordance with and governed by and enforced under the laws of the State of Texas. The parties here agree that venue must be in Dallas County, Texas.
- 8.18. Alternative Dispute Resolution.** Claims and disputes associated with this Agreement will not be resolved by arbitration or other alternative dispute resolution processes unless court ordered or otherwise mutually agreed to in writing by both parties.
- 8.19. Entire Agreement Modifications.** All oral or written agreements between the parties hereto relating to the subject matter of this agreement have been reduced to writing and are contained herein. This Agreement supersedes all prior agreements, written or oral, between Contractor and District and must constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions must be binding upon the parties and may not be waived, modified, amended, or altered except by a written amendment signed by District and Contractor.
- 8.20. Binding Effect.** This Agreement must be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

**8.21. Captions.** The captions of paragraphs in this Agreement are for convenience only and must not be considered or referred to in resolving questions of interpretation or construction.

**8.22. Severability.** In case any provision hereof will, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability must not affect any other provision hereof, and this Agreement must be construed as if such invalid or unenforceable provision had not been included herein.

**8.23. Force Majeure.** Neither party will be liable to the other party hereunder or in default under this Contract for failures of performance resulting from acts or events beyond the reasonable control of such party including, by way of example and not limitation, acts of God, civil disturbances, war, and strikes.

**8.24. Notice.** All notices, consents, approvals, demands, requests, or other communications provided for or permitted to be given under any of the provisions of this Agreement must be in writing and must be deemed to have been duly given or served when delivered by delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**8.24.1. To District:** DeSoto Independent School District  
Name of District Contact: Primary District Contact  
Address: Primary District Address  
City, State ZIP Code

With Copies to: Primary District Contact  
Primary District Address  
City, State ZIP Code

**8.24.2. To Contractor:**  
Contractor Firm Name: Contractor/Individual Name  
Name of Vendor Contact: Contractor Contact Person  
Address: Street Address  
City, State ZIP Code

**ELECTRONIC SIGNATURE**

The parties agree here to execute this Agreement either in writing or by electronic signature. Pursuant to the Texas Business & Commerce Code Ann., §322.007, an electronic signature of this Agreement satisfies the legal requirements of signatures by the parties.

In witness of the Agreement above, the Board of Education of the DeSoto Independent School District and Contractor, acting by their duly assigned and authorized representatives, have executed this Agreement to be effective as of the latest date on which it is signed by the authorized representatives of the parties.

BY SIGNING, THE PARTIES AGREE UNDER PENALTY OF PERJURY UNDER THE LAWS OF TEXAS THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

**FOR DISTRICT:**

*Signed:* \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Req. #: \_\_\_\_\_

**FOR CONTRACTOR:**

*Signed:* \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUPERINTENDENT APPROVAL**

*Signed:* \_\_\_\_\_

Dr. Usamah Rodgers  
Superintendent of Schools

Date: \_\_\_\_\_

**Business Organization: (Check one)**

Corporation

Partnership

Individual/Sole Proprietor

Limited Liability Company (LLC)

Other Entity Type:

**APPROVED AS TO FORM:**

*Signed:* \_\_\_\_\_

Legal Counsel for District

Date: \_\_\_\_\_

**Contractor Employer ID #:** \_\_\_\_\_

**CRIMINAL BACKGROUND CHECK AND FELONY CONVICTION NOTIFICATION**

**(a) CRIMINAL BACKGROUND CHECK**

The Contractor listed below will obtain history record information that relates to an employee, applicant for employment, or agent of Contractor ("servant") if the servant has or will have continuing duties related to the contracted services and the duties are or will be performed on school property, or at another location where students are regularly present. Contractor certifies to DISD that before beginning work, and at least once per year thereafter, criminal history record information will be obtained. Contractor shall assume all expenses associated with the background checks and shall immediately remove any servant who was convicted of any felony, or a misdemeanor involving moral turpitude, as defined by Texas law, from DISD's property or other location where students are regularly present. DISD shall be the final decider of what constitutes a "location where students are regularly present." Contractor's violation of this section shall constitute a substantial failure.

If Contractor is the person, owner, or operator of the business entity, Contractor may not self-certify regarding the criminal history record information and its review and must submit original evidence acceptable to the District with this Agreement showing compliance.

**(b) FELONY CONVICTION NOTIFICATION**

Section 44.034(a) of the Texas Education Code 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 owner or 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) further provides, "a school district may terminate a contract with a person or business 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."

**THE FELONY CONVICTION NOTICE IS NOT REQUIRED OF A PUBLICLY HELD CORPORATION**

*If the Contractor is a publicly held corporation, proceed to Section A, below.*

I, the undersigned agent for the Contractor named below, certify that: (1) the information concerning criminal background check and notification of felony convictions has been reviewed by me; (2) the following information furnished is true to the best of my knowledge; and (3) I acknowledge compliance with this section.

Contractor's Name: \_\_\_\_\_

Authorized Company Official's Name: \_\_\_\_\_

A. The Contractor is a publicly held corporation; therefore, this reporting requirement is not applicable:

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

B. The Contractor is not owned nor operated by anyone who has been convicted of a felony:

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

C. The Contractor is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): \_\_\_\_\_ [Name of Felon(s)]

Details of Conviction(s): \_\_\_\_\_ [Details of Conviction(s)]

Company Official's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Note: Name & Signature of Company Official should be the same as on the Affidavit (Form C)**

Contractor is responsible for the performance of the persons, employees, and sub-contractors Contractor assigns to provide services for DeSoto ISD pursuant to this RFP on any and all DeSoto ISD campuses or facilities. Contractor will not assign individuals to provide services at a DeSoto ISD campus or facility who have a felony conviction or a history of violent, unacceptable, or grossly negligent behavior, without the prior written consent of the DeSoto ISD Purchasing Department.

**Model SB 9 Contractor Certification Form**

**Criminal History Record Information Review of Certain Contract Employees**

**Introduction:** Chapter 22 of the Texas Education Code requires service contractors to obtain criminal history record information regarding covered employees and to certify to the District that they have done so. Covered employees with disqualifying convictions are prohibited from serving at a school district.

Definitions:

*Covered employees:* Includes all employees of a contractor (including subcontractors and independent contractors) who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

*Disqualifying conviction:* One of the following offenses, if at the time of the offense: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of [Contractor's Name], I, with the contact information provided below:

Individual's Full Name:	[Individual's Full Name]
Street Address:	[Individual's Street Address], [City], [State], [ZIP Code]
Telephone Number:	[Individual's Telephone Number]
Fax Number:	[Individual's Fax Number]
E-Mail Address:	[Individual's E-Mail Address]

Certify that (check one of the following):

- None of Contractor's employees are *covered employees*, as defined above; **OR**
- Some or all of the Contractor's employees are *covered employees*. If this box is selected, I further testify that:
- Contractor has obtained all required criminal history record information, through the Texas Department of Public Safety, regarding its covered employees.
  - None of the covered employees has a disqualifying conviction.
  - Contractor has taken reasonable steps to ensure that its employees who are not covered employees do not have continuing duties related to the contract services or direct contact with students.

If Contractor receives information that a covered employee has a disqualifying conviction, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within three (3) business days.

Upon request, Contractor will make available for the District's inspection the criminal history record information of any covered employee. If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District. The District reserves the right to conduct its own criminal background check of Contractor and its covered employees.

Noncompliance by the Contractor with this certification may be grounds for contract termination.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DESOTO ISD**  
**ADDENDUM CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS**  
**(Only return if funded by Federal & State Grants, including Entitlement Funds)**

All contracts under federal awards must meet federal, state, and local requirements. State requirements for all contracts under federal awards include the following:

- The contract is only effective upon receipt by the District of the Notice of Grant Award (NOGA) from the federal/state awarding agency.
- The contract period is aligned to the grant period of availability as stated on the NOGA from the federal/state awarding agency (period of availability).
- All services will be completed during the effective dates of the contract.
- All services will be invoiced monthly after services are received (rather than paid lump sum at the beginning of the period of availability before services are rendered) and paid upon verification of receipt of services.
- The regulations for procurement in 2 CFR §§ 200.318-323 are followed in issuing the contract.
- All professional services provided under the contract will follow the provisions of 2 CFR § 200.459 Professional service costs.
- The contract identifies the funding sources that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
- The contract 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.
- The administrative costs charged to the grant in the contract must comply with any limitations for administrative costs for funding sources (if applicable).
- The contract specifies that the invoice provided by the contractor will include the list of service(s) provided, date(s) of services, and location(s) where services were provided during the billing period.

Federal requirements for all contracts under federal awards may include the following, as indicated below:

- Contracts over \$10,000 must address termination for cause and for convenience by the District, including the manner by which it will be effected and the basis for settlement.
- Contracts over \$150,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties.
- Equal Employment Opportunity clause
- Davis-Bacon Act clause for construction contracts, including compliance with prevailing wages. (The District must place a copy of the current prevailing wage determination used by the Department of Labor with each solicitation.)
- Contract Work Hours and Safety Standards Act clause related to the computation of wages of every mechanic and laborer on the basis of a standard work week of 40 hours.
- Rights to Inventions Made Under a Contract or Agreement clause if the federal award meets the definition of “funding agreement.”
- The Clean Air Act and Federal Water Pollution Contract Act clauses if the contract is in excess of \$150,000.
- Debarment and Suspension clause which prohibits awarding a contract to a contractor who has been debarred, suspended, or otherwise excluded from federal awards.
- Byrd Anti-Lobbying Amendment clause which applies to contractors that apply or bid for an award exceeding \$100,000 who must file the required certification.
- Procurement of recovered materials (§ 200.322) clause
- The Buy American provision for Child Nutrition Program purchases. Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC § 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product.

CONTRACTOR

DESOTO ISD

By: \_\_\_\_\_

By: \_\_\_\_\_  
*Superintendent*

Date: \_\_\_\_\_

Date: \_\_\_\_\_