

Douglas County School District

PROFESSIONAL SERVICES CONTRACT

This Contract, made and entered into between _____ (hereinafter called “Contractor”), and Douglas County School District (hereinafter called “DCSD”) is based upon the following recitals:

WITNESSETH:

WHEREAS, NRS 332.115 authorizes a Public Entity to enter into contracts for Professional Services without going to competitive bid; and

WHEREAS, it is deemed that the services of Contractor specified herein are both necessary and desirable and in the best interests of DCSD; and

WHEREAS, Contractor represents that he/she is duly qualified and able to render the services described in Exhibit A: Scope of Services to be Rendered.

NOW, THEREFORE, in consideration of the aforesaid recitals, which are incorporated by reference into the Contract, the parties mutually agree as follows:

1. This Contract shall not become effective until and unless approved by either the Superintendent or Chief Financial Officer of DCSD.
2. This contract shall be effective from MONTH DAY, YEAR through MONTH DAY, YEAR, unless terminated by either party as set forth in Article 15 of this contract.
3. The Parties agree that the scope of work shall be specifically described. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified. This Contract incorporates the following attachments:
 - a. Exhibit A: Scope of Services to be Rendered
 - b. Exhibit B: Progress Payment schedule
4. Contractor and DCSD mutually agree to enter into a contract for services described in Exhibit A. Contractor shall report directly to DCSD’s POSITION AND NAME. In addition, Contractor will be encouraged to have direct and regular communication with DCSD’s POSITION AND NAME.
5. DCSD agrees to pay for the services of Contractor as provided by this Contract. The total amount to be expended through this Contract shall not exceed \$Dollar Amount. Payment shall be made in progress payments as follows:
 - a. Provided that an invoice is received by DCSD Accounts Payable not later than the twenty-fifth (25th) of each month, payment will be released the second Wednesday of the following month, pending Board of Trustee approval.

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- b. If the invoice or application for payment is received after the twenty-fifth (25th) of the month, then the payment shall be issued no later than forty-five days after receipt of invoice; net 45 terms.
 - c. Progress payment schedule as described in Exhibit B.
 - d. Travel / Mileage reimbursement shall not exceed \$ Dollar Amount or N/A through project completion.
 - e. DCSD does not agree to reimburse Contractor for expenses unless specifically addressed in this Contract or in the incorporated attachments.
6. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to DCSD, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by DCSD's auditor, or their authorized representative. All subcontracts shall reflect requirements of this paragraph.

All books, records, reports, and statements relevant to this Contract must be retained a minimum of three (3) years, and for five (5) years if any federal funds are used pursuant to this Contract. The retention period runs from the date of payment for the relevant goods or services by DCSD, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonable necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

7. DCSD will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both Parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any DCSD breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall no exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" values. Contractor's tort liability shall not be limited.
8. Neither Party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly

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perform in accordance with the terms of the Contract after the intervening cause ceases.

9. Contractor is associated with DCSD only for the purposes and to the extent specified in this Contract, and in respect to the performance of the contracted services pursuant to this Contract. Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for DCSD whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and DCSD shall have no obligation with respect to:
 - a. withholding of income taxes, FICA or any other taxes or fees;
 - b. industrial insurance coverage;
 - c. participation in any group insurance plans available to employees of DCSD;
 - d. participation or contributions by either Contractor or DCSD to the Public Employees Retirement System;
 - e. accumulation of vacation or sick leave; or
 - f. unemployment compensation coverage provided by DCSD.

Contractor shall indemnify and hold DCSD harmless from, and defend DCSD against any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of , incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of DCSD. DCSD and Contractor shall evaluate the nature of services and the term of the Contract negotiated in order to determine “independent contractor” status, and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows (**MUST initial under heading of yes or no**):

	<u>Contractor's Initials</u>	
	YES	NO
a. Does DCSD have the right to require control of when, where and how the independent contractor is to work?		
b. Will DCSD be providing training to the independent contractor?		
c. Will DCSD be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?		
d. Are any of the workers who assist the independent contractor in performance of his/her duties employees of DCSD?		
e. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?		

Contractor's Initials

YES NO

- f. Will DCSD incur an employment liability if the independent contractor is terminated for failure to perform?
- g. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with DCSD?

10. In the event federal funds are used for payment of all or part of this Contract, Contractor certifies by signing this Contract that the prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency. This certification is required by the federal government as defined by the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.
- b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Article (10)(b) of this certification; and
- d. Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

11. Insurance Requirements

- a. Workers Compensation
 - i. Contractor shall maintain workers compensation and employers liability insurance for all its employees who will be engaged in the performance of the contract, including special coverage extensions where applicable.

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Contractor shall maintain statutory limits of state industrial and occupational disease insurance for employees engaged on or at the site of the project in accordance with Chapters 616A to 616D, inclusive, and 617 of Nevada Revised Statutes.

The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

- ii. Waiver of Subrogation: Contractor waives all rights against DCSD and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to Section 11 of this agreement.

The policy shall include an endorsement waiving the insurance company's rights of subrogation against the DCSD. This endorsement shall be at least as broad as National Council on Compensation Insurance (NCCI) Waiver of Our Right to Recover from Others Endorsement form WC 00 03 13.

- b. Contractor shall provide DCSD a Certificate of Liability Insurance naming DCSD as ***Additional Insured*** and must include an ***Additional Insured Endorsement*** with the following amounts specified as noted below:

- i. General Liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with total limits of not less than \$1,000,000 each occurrence.

If such CGL insurance contains a general aggregate limit, it shall apply separately to this project.

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

For any services involving contact with students, coverage shall not exclude sexual misconduct, abuse or molestation. If coverage is sub-limited, the minimum limit required is \$1,000,000.

This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor's limit liability.

DCSD shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 04/2013 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall

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apply as primary insurance with respect to any other insurance or self-insurance programs afforded to DCSD.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to DCSD.

There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

1. Waiver of Subrogation: Contractor waives all rights against DCSD and its agents, officers, directors, employees and immune contractors as defined in NRS 41.0307 for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to Article (11)(b)(i) of this agreement.

Insurer shall endorse CGL policy as required in Article (11)(b)(i) to waive subrogation against DCSD with respect to any loss paid under the policy.

2. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
3. Each Occurrence –
 - a. Damage to Rented Premises \$100,000
 - b. Medical Expenses (Any one person) \$5,000
 - c. Personal and Adv Injury \$1,000,000
 - d. General Aggregate \$2,000,000
 - e. Products – Comp / Op Agg \$2,000,000
- ii. Automobile Liability (any Auto) \$1,000,000 – Contractor shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident.

Such insurance shall cover liability arising out of a motor vehicle including owned, hired, or non-owned motor vehicles.

Coverage as required above shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage.

Contractor waives all rights against DCSD and its agents, officers, directors and employees for recovery of damages to the extent these damages are

covered by the automobile liability or commercial umbrella liability insurance obtained by Tenant pursuant to Article (11)(b)(i) of this Agreement.

Insurer shall endorse the Automobile policy as required in paragraph Article (11)(b)(ii) to waive subrogation against DCSD with respect to any loss paid under the policy.

- iii. Professional Liability Insurance (PLI) \$1,000,000 – **Required when DCSD is the beneficiary of the Contractor’s service or advice.** This coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service or product sold by the Contractor. These are potential causes for legal action that would not be covered by a more general liability insurance policy which addresses more direct forms of harm.

Contractor shall maintain professional liability (errors & omissions) insurance with total limits of not less than \$1,000,000 each claim or wrongful act.

Professional liability insurance shall cover liability arising out of wrongful acts, including any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission committed solely in connection with the contractor’s professional services.

For any services involving contact with students, coverage shall not exclude sexual misconduct, abuse or molestation. If coverage is sub-limited, the minimum limit required is \$1,000,000.

If professional liability insurance is written on a claims-made or claims-made and reported coverage form, any Retroactive or Pending & Prior Exclusion Dates shall be prior to the effective date of any services provided under this Agreement.

Contractor shall maintain professional liability insurance during the term of this Agreement and for a period of three (3) years from the date of completion of the project.

In the event that the Contractor goes out of business during the term of this Agreement or the three (3) year period described above or if coverage is not renewed within the three (3) year period, the contractor shall make an offer to DCSD to purchase an Extended Reporting Coverage for claims arising out of the contractor’s acts, errors and omissions committed during the term of the professional liability coverage.

- c. Deductibles: Any deductibles shall apply only to the Contractor and not to DCSD as additional insured.

12. Evidence of Insurance and Contractor Responsibilities –

- a. Prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage, Contractor shall furnish Owner with a certificate(s) of

insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

- i. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to DCSD to evidence the insurance policies and coverages required of Contractor. The certificate must name DCSD, its board of trustees, officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized insurer to bind coverage on its behalf. The description and contract effective dates shall be noted on the certificate, and upon renewal of policies listed Contractor shall furnish DCSD with replacement certificates as required above.
- ii. Review and Approval – Documents specified above must be submitted for review and approval by DCSD prior to the commencement of work by Contractor. Neither approval by DCSD nor failure to disapprove insurance furnished by Contractor shall relieve Contractor of Contractor’s full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to DCSD or others, and shall be in addition to and not in lieu of any other remedy available to DCSD under this Contract or otherwise.

DCSD reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements. Failure of DCSD to demand such certificate or other evidence of full compliance with these insurance requirements or failure of DCSD to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

- b. Coverage Term: Coverage will be in force for complete term of contract. If insurance expires during the term of the contract, Contractor shall furnish to DCSD the renewal certificates for the required insurance within ten (10) calendar days of renewal. The renewed insurance must still meet the terms of the original contract.
- c. Cancellation: Each insurance policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered for the duration of the contract. However, in the event of any material change, suspension, voiding or reduction in coverage or in limits of any insurance policy which provides coverage required by this Contract, Contractor shall provide written notice to DCSD within ten (10) calendar days of change, suspension, voiding or reduction in coverage or in limits. This notice requirement does not waive the insurance requirements contained herein.
- d. Contract Termination: In the event Contractor fails to keep in effect at all times the specified insurance coverage, DCSD may, in addition to any other remedies it may have, terminate the contact upon the occurrence of such event, subject to the provisions of this contract.

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- e. Adequate Coverage: By requiring insurance herein, DCSD does not represent that coverage and limits will necessarily be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Buildings in this contract.
 - f. Subcontractors' Insurance: Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. The Contractor shall maintain copies of certificates of insurance evidencing coverage for each subcontractor and shall make them available to DCSD upon written request.
13. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract. DCSD may set-off against consideration due any delinquent government obligation in accordance with NRS 353C.190.
14. The Parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying, influencing or attempting to lobby or influence for any purpose the following: any federal, state, county or local agency, legislature, commission, counsel or board, or any member, elected official, officer or employee of any federal, state, county or local agency, legislature, commission, counsel or board.
15. DCSD may terminate this Contract with fourteen (14) days written notice should Contractor fail to perform as herein specified. In the event of such termination, DCSD shall be relieved of the obligation to make any payment to Contractor and may proceed with the work in any manner DCSD deems appropriate. In such an occurrence, Contractor shall only be paid for the work satisfactorily completed. In the event of termination of this Contract for any reason, the Parties agree that the provisions of this section survive termination: the parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination.
16. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by DCSD, such offending portion of the assignment shall be void, and shall be a breach of Contract. Contractor shall not assign benefits or delegate duties under this Contract in whole or in part without prior written consent of DCSD. No such assignment or subcontract shall relieve

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Contractor from his/her responsibility for performance of any of his/her other obligations under this Contract.

17. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.
18. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless, not excluding DCSD's right to participate, DCSD, its board of trustees, officers, agents, servants and employees from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of or resulting from any intentional or negligent act or omission by Contractor, or any of its officers, agents, servants, employees or volunteers in the operation and supervision of this project as permitted under this Contract. However, Contractor shall in no event be obligated to defend or indemnify DCSD to the extent that any injury or damage is caused by the negligence of DCSD. However, Contractor warrants that the services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specification set for in the incorporated attachments.
19. The Contract shall be administered and interpreted under the laws of the State of Nevada. This Contract shall not be construed for or against any party by reason of who drafted the provisions set forth herein. If any part of this Contract is found to be in conflict with applicable law as, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Contract shall remain in full force and effect. Any action at law, suit in equity or judicial proceeding for the enforcement of this Contract or any provision thereof shall be instituted only in the district courts of the State of Nevada.
20. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
21. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. DCSD has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interest. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend DCSD for honoring such a designation. The failure to so label any document that is released by DCSD shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

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22. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.
23. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulations this Contract is effective only after approved by DCSD's Superintendent or Chief Financial Officer, and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.
24. Contractor irrevocably assigns to DCSD any claim for relief or cause of action which the Contractor has or which may accrue to Contractor in the future by reason of any violation of state of Nevada or federal antitrust laws in connection with any goods or services provided to Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at DCSD's option, the right to control any such litigation on such claim for relief for cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's obligations under this Contract to irrevocably assign to DCSD, as third party beneficiary, any right, title or laws in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to Contractor in pursuance of this Contract, including, at DCSD's option, the right to control any such litigation on such claim or relief or cause of action.
25. No variation of the terms of this Contract shall be valid unless made in writing and signed by both parties. Oral understandings and other agreements shall not be incorporated herein, and shall not be binding. All notices, requests, demands and other communications which are required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given upon the delivery by registered or certified mail, return receipt requested, as follows:

DCSD:

Attn: Carolyn Moore

**1638 Mono Avenue
Minden, Nevada 89423
Phone: (775) 782-5135**

Contractor:

Name or DBA

Attn: Specific Contact

**Address
City, State Zip Code**

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Phone: (XXX) XXX-XXXX

IN WITNESS WHEREOF, the parties have caused this Contract to be executed this _____th of _____
20_____.

_____	_____	_____	_____
DCSD Representative	Date	Contractor	Date

<p align="center">Special Permissions: Superintendent to initial each area granted to this specific consultant/contractor.</p> <p>District I.D. Badge _____ (special background color)</p> <p>Email Account _____(Must review and Sign AUP)</p> <p>SIS _____(Requires annual MOU with superintendent)</p>
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EXHIBIT A: SCOPE OF WORK

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EXHIBIT B: PROGRESS PAYMENT SCHEDULE

All figures specified below are “Not To Exceed” allowances