



1.0 Introduction and Background

1.1 Introduction

This RFP is to solicit proposals from suppliers capable of satisfying the needs of the District as stated herein. This document provides information to assist suppliers in preparing their responses and facilitates the subsequent evaluation process. This RFP, and the selected proposal in response to this RFP, will be incorporated into the contract resulting from this solicitation; provided, however, that the contract may contain terms different from, or in addition to, this RFP.

1.2 Summary of Project Objective

Cherry Creek School District is seeking a General Contractor (GC) partner to construct interior improvements to several elementary schools within Cherry Creek School District. The four projects are located at Trails West Elementary, Creekside Elementary, Cherry Hills Elementary, and I-Team Ranch. These improvements will help departments better utilize their existing space. The project objective is further identified in Exhibit A – Scope of Work/Schedule of Items as well as the project description provided in the RFP solicitation supplemental attachments.

1.3 About Cherry Creek School District No. 5

The District is one of the highest-achieving school districts in the State. Our Vision, Mission, and Values describe the culture of the District, who we are, what we believe, and how we go about providing and excellent education for the children of Cherry Creek.

CCSD is located in the Southeast Metropolitan Denver area. We educate more than 55,000 children and serve over 300,000 residents in 108 square miles spread across eight (8) municipalities including Cherry Hills Village, Glendale, Foxfield as well as portions of Aurora, Centennial, Greenwood Village, Englewood and Denver. There are presently seven (7) High, ten (10) Middle, and forty two (42) Elementary schools as well as one (1) Magnet and three (3) Charter schools. To learn more about CCSD please visit www.cherrycreekschools.org.

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2.0 Instructions to Suppliers

2.1 Schedule of Events

The following RFP Schedule of Events represents the best estimate of the schedule the District will follow, which is subject to change at the District's discretion. The District has performed extensive planning work and plans to meet the dates described below. The District reserves the right to add or delete events as may be necessary.

Event	Date
RFP Posted on BidNet (https://www.bidnetdirect.com/)	January 24, 2024
Pre-Proposal Conference/Site Visit	February 1, 2024 @ 2:30 – 5:30 PM MST (Details to Follow)
Written Inquiry Deadline	February 2, 2024 @ 5:00 PM MST
Response to Written Inquiries	February 5, 2024 @ 5:00 PM MST Estimated
RFP Due Date	February 14, 2024 @ 5:00 PM MST

2.2 Administrative Information

- a) During the Solicitation process, all official communication with suppliers will be via the Rocky Mountain E-Purchasing System (BidNet) at <https://www.BidNetdirect.com/colorado> unless otherwise specified. Notices may include RFP amendments, questions and answers, clarifications to requirements, and award announcements. It is incumbent upon suppliers to monitor BidNet for any such notices.
- b) CCSD is requesting firm proposals for the items and/or services described herein. All proposals must be clear, concise, accurate, and legible so that there is no doubt as to the intent and scope of the proposal. Proposals must be uploaded and submitted through Rocky Mountain E-Purchasing (BidNet) EBS portal by or before the due date and time. Please ensure that your submission is complete and accurate, and includes all proposal content, descriptions, pricing, and signatures.
- c) Late Offers. Offers received after the date and time set for the opening may be considered non-responsive and returned to the Supplier.
- d) Proposals may be withdrawn, in writing, at any time prior to the time and date set for receipt.
- e) In accordance with the Uniform Commercial Code, offers may not be withdrawn after the time and date set for the opening for a period of 90 calendar days. If an offer is withdrawn by the Supplier during this 90-day period, the District may, at its option, suspend the Supplier from the bid List and May not Accept any offer from the Supplier for a six (6) month period following the withdrawal.



2.3 Proprietary/Confidential Information

Any restrictions of the use or inspection of material contained within the proposal shall be clearly stated in the proposal itself. Written requests for confidentiality shall be submitted by the supplier with the proposal. The supplier must state specifically what elements of the proposal are to be considered confidential/proprietary and must state the statutory basis for the request under the Public (open) Records Act. (Section 24-72-201 *et seq.*, C.R.S).

Confidential/Proprietary information must be readily identified/marked. Neither a proposal in its entirety, nor price information will be considered confidential and proprietary. Any information that will be included in any resulting contract cannot be considered confidential and/or proprietary.

Supplier acknowledges that they may come into contact with confidential information contained in the records or files of the District in Connection with any resulting contract or in connection with the performance of its obligations under any resulting contract. The successful supplier shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such records to the same extent as such laws and regulations apply to the District. The successful supplier shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data. Successful supplier(s) shall provide and maintain a secure environment that ensures confidentiality. The confidentiality of all information will be respected, and no confidential information shall be distributed or sold to any third party nor used by the successful supplier(s) or its assignees and/or subcontractors in any way except as authorized by any resultant award. Confidential information shall not be retained in any files or otherwise by the successful supplier(s).

2.4 All proposals must be valid for a minimum of 365 calendar days from the date proposals are due unless otherwise stated in the proposal. All responses and accompanying documentation will become the property of the District at the time of proposals are open.

2.5 CCSD reserves the right to award without discussions or to conduct discussions with one, some, or all suppliers as it deems in its best interests.

2.6 Any person, firm, corporation, or association submitting a proposal shall be deemed to have read and understood all the terms, conditions, and requirements in the RRP.

2.7 CCSD reserves the right to cancel this RFP in whole or in part, at any time, without penalty.

2.8 Suppliers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities and NO phone calls will be accepted.

The District requires that all inquiries be sent through BidNet, responses to inquiries may be published as an amendment on BidNet in accordance with the Schedule of Activities. Suppliers



should not rely on any other statements, either written or oral, that alter any specification or other term or condition of the RFP during the open solicitation period. Suppliers should not contact any other District office or individual regarding this RFP. Suppliers are responsible for monitoring BidNet for amendments/modifications of this RFP. Suppliers are required to acknowledge receipt of all amendments in the cover letter of their proposal.

When asking questions through BidNet you must ask one question at a time and are not allowed to ask multiple questions in one entry. Asking multiple questions with one entry may result in your questions not being answered

2.9 A Pre-proposal conference may be held in accordance with the Schedule of Events. While the conference, if held, is not mandatory, participation is highly encouraged. The format of the conference will be an overview of the RFP. Following the overview suppliers will be able to ask questions related to the RFP or the overall process. The District will attempt to answer all questions at that time, but answers provide shall not be binding. Following the conference, the District may post questions and answers on BidNet.

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3.0 Master Services Agreement

3.0 Proposer agrees to all terms and conditions as set forth in the Master Services Agreement (“MSA”) below. By signing below, supplier acknowledges that in the event of contract award the proposer agrees to sign the MSA with no redlines or negotiations required. The contents of the Statement of Work will be created and issued as part of final negotiations; an award is not included in this statement.

Signature of Official: _____

Name (typed): _____

Title: _____

Firm: _____

Date: _____

-OR-

If supplier is not in agreement with the MSA as attached, please check the box below and a redlined MSA is required at the time of proposal. MSA redlines will be considered as part of the evaluation criteria and scored in accordance to the volume and nature of the redlines received.

☐

I do not agree with terms, see attached redline

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THIS IS A SAMPLE MASTER SERVICES AGREEMENT AND NOT TO BE FILLED OUT.

MASTER SERVICES AGREEMENT

between

Cherry Creek School District No. 5

and

[REDACTED]

THIS MASTER SERVICES AGREEMENT (the “Agreement”) is made and entered into as of the last signature below, (the “Effective Date”), by and between Cherry Creek School District No. 5 (“CCSD”), located at 4700 South Yosemite Street, Greenwood Village, Colorado 80111, and **[REDACTED]**, (“Supplier”), having a place of business at **[REDACTED]**. CCSD and Supplier are each hereinafter referred to individually as a “Party” or collectively as “Parties.”

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1.0 DEFINITIONS

Acceptance Criteria means the requirements set forth in an Statement of Work (“SOW”) used to measure the completeness or adequacy of the Deliverables.

Affiliate means, with respect to a Party, any other entity controlling, controlled by, or under common control with such Party at the time in question. For the purposes of this definition, control means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity, whether through the exercise of voting power, by contract or otherwise, or (ii) ownership of more than 50% of the equity interest of such entity.

Change Order means a written agreement and signed by the Parties’ authorized representatives, to modify the infrastructure, assets, resources, Deliverables, Fees, Service Level Agreement or other aspects of the Services set forth in an SOW.

Confidential Information means confidential and/or proprietary information related to technology and business activities, including, but not limited to, business outlooks, revenue, pricing, trade secrets, computer programs and software (including, but not limited to, code, software output, screen displays, file hierarchies, graphics and user interfaces), formulas, data, inventions, techniques, product designs, strategies, third-party confidential information, and all other information that is clearly marked or identified as confidential or proprietary when disclosed to the receiving Party or reasonably understood by the receiving Party to be confidential or proprietary.

Deliverable means any product or service item produced by Supplier and required to be delivered to CCSD pursuant to an SOW.

Fees shall mean the amounts payable by CCSD to Supplier for Deliverables.



SLA (Service Level Agreement) shall mean the operational and performance metrics (as further described in the applicable SOW) under which Supplier shall render the Services.

Services shall mean collectively, the services to be provided by Supplier to CCSD and its Affiliates, as described in an SOW.

SOW (Statement of Work) means a mutually agreed upon written work statement signed by the Parties' authorized representatives, which authorizes and specifies the terms for Supplier to provide Services, as may be modified from time to time via a Change Order.

2.0 SERVICES

2.1 Scope of Services. Supplier shall furnish Services to CCSD and CCSD's Affiliates in accordance with and subject to the terms and conditions of this Agreement and one or more consecutively numbered SOWs. The Parties understand and agree that CCSD is not obligated to engage Supplier exclusively during the term of this Agreement or any renewal thereof for the provision of Services of the type described in any SOW.

2.2 Statements of Work

2.2.1 Supplier shall not perform Services pursuant to this Agreement unless and until the performance of such Services has been authorized through CCSD's issuance of a signed SOW. Supplier shall begin to render Services to CCSD after Supplier has indicated its acceptance of the work by countersigning and returning the SOW to CCSD. Each SOW shall be deemed to incorporate all of the terms and conditions set forth in this Agreement; however, in the case of conflict between the terms of an SOW and this Agreement, the terms of the SOW shall control, but only for the duration of and only with respect to the Services performed under that particular SOW.

2.2.2 Each SOW shall contain, as applicable, the following:

- a. The term of the SOW
- b. A detailed description of the Services, including business requirements and technical specifications, as applicable
- c. The schedule for performance of the Services
- d. A description of each Party's responsibilities
- e. A description of the SLAs
- f. A schedule of Fees
- g. Acceptance Criteria

2.3 Change Order Process. Either Party may request a modification of the Services to be performed by submitting to the other a Change Order request. Upon execution of the Change Order by both Parties, the obligations of Supplier with respect to such Change Order shall be considered Services under this Agreement. Change Orders must be executed by both Parties to be effective and Supplier shall not perform Services outside the scope of any SOW unless and until the performance of such Services has been authorized through a Change Order. Supplier shall not be entitled to any compensation for services outside the scope of an SOW unless



performed pursuant to a mutually executed Change Order.

- 2.4 Required Resources and Compatibility. Except as otherwise expressly provided in an SOW, Supplier shall be responsible for providing the facilities, personnel, equipment, software, technical knowledge, and other resources necessary to provide the Services. To the extent practicable, Supplier agrees to retain personnel and resources assigned to support the Services for the duration of a specific SOW and not to reassign such personnel or resource(s) without CCSD's written consent. CCSD shall have the right to approve or reject personnel working on an SOW, provided that such rejection is provided within forty-five (45) days of the personnel assignment and is consistent with applicable laws relating to employment practices. CCSD may request in writing that Supplier reassign personnel not compatible with CCSD's expectations or who violate CCSD published policies. Supplier shall implement such personnel change request in a prompt manner to minimize any negative impact on performance of the Services. All costs incurred due to the replacement of Supplier personnel assigned to provide Services under this Agreement, including the transfer of knowledge/information necessary to provide the Services ("knowledge transfer"), shall be borne by Supplier.
- 2.5 Included Supplier Services. If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services as described in an SOW or are required for proper performance or provision of the Services in accordance with this Agreement, they shall be deemed to be included within the scope of the services to be delivered for the Fees stated within the applicable SOW, as if such services, functions or responsibilities were specifically described in this Agreement. Any Supplier services, functions or responsibilities not included in an SOW and which are not an inherent, necessary or customary part of the Services as described above will be documented in a Change Order subject to additional terms and charges.
- 2.5.1 Colo. Rev. Stat. § 22-16-101 et seq. All Supplier Services which collect, maintain, generate, or use Student Personally Identifiable Information (PII) must be in compliance with the Student Data Transparency and Security Act ("Act"), and will be required to sign a CCSD Data Privacy Addendum. In the event that PII is evident during the duration of a project, either by CCSD or Supplier, Supplier agrees to work with CCSD in accomplishing the requirements of this Act. Supplier will perform all services under applicable SOW's in accordance with such requirements.
- 2.6 Service Level Agreements
- 2.6.1 Supplier shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency and productivity set forth in the applicable SOW (including any applicable SLA). If more than one SLA applies to any particular obligation of Supplier, Supplier shall perform in accordance with the most stringent of such SLA. Supplier shall be responsible for meeting or exceeding the applicable SLA even where doing so is dependent on the provision of Services by Supplier's subcontractors.
- 2.6.2 Supplier recognizes that CCSD is paying Supplier to deliver the Services at specified SLAs. If Supplier fails to meet an SLA due to its own fault or the fault of



its subcontractors, then, in addition to other remedies available to CCSD, CCSD shall receive payment credits or payment refunds as specified in each applicable SOW in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty (each such reduction, an "SLA Credit"). The Parties agree that damages for failing to meet SLAs are difficult to determine and that the reduced payments are a reasonable calculation of the harm suffered. Under no circumstances shall the imposition of SLA Credits be construed as CCSD's sole or exclusive remedy for any failure to meet the SLAs.

- 2.7 Subcontractors. Subject to the prior written consent of CCSD, Supplier may delegate to subcontractors such duties as Supplier deems necessary for the successful completion of Services performed for CCSD. Supplier shall be responsible to CCSD for the completion of all work by subcontractors and full payment of all charges by such subcontractors.
- 2.8 Timeliness of Performance. Supplier acknowledges and agrees that prompt performance of the Services is required by CCSD in order for CCSD to meet its business objectives. Supplier acknowledges that time is of the essence in the performance of its obligations under this Agreement. CCSD acknowledges and agrees that communication of information to Supplier necessary for performance of the Services and timely decisions regarding issues brought to CCSD attention by Supplier is required.
- 2.9 Background Check Certification
 - 2.9.1 The Supplier shall conduct at its own expense a criminal background check for each employee in the presence of CCSD students and/or working on or reasonably likely to work on CCSD property.
 - 2.9.2 The Supplier will be responsible to adhere to any Federal, State, and Local privacy, confidentiality requirements and other laws regulations or policies governing employee background checks.
 - 2.9.3 If, between the time the Contract is executed and the day work begins, it is determined by CCSD that Supplier has not conducted background checks for each employee working on or reasonably likely to work on CCSD property, the awarding of the contract will be immediately revoked without penalty to CCSD.
 - 2.9.4 Background check report updates may be requested by CCSD or deemed necessary by Supplier. Upon any reasonable notice, the Supplier agrees to conduct and update a background check for any employee in the presence of CCSD students and/or working on or reasonably likely to work on CCSD property.
 - 2.9.5 Employees of the Supplier who have been convicted of, pled *nolo contendere* to, or received a deferred sentence or deferred prosecution for a felony, or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, will not be allowed to work on CCSD property.
 - 2.9.6 CCSD reserves the right to cancel, without penalty, at any time, this



contract if it reasonably determines that a background check was not conducted on an employee in accordance with this agreement, or if conducted, the Supplier acted unreasonably in reference to the information contained in the report.

- 2.9.7 If, in the sole discretion and judgment of CCSD or its representatives, the Supplier refuses or fails to conduct a criminal background check or acts unreasonably in reference to the information contained in the report or reports, CCSD may consider such inaction or action to constitute a default or grounds for termination of this Agreement.

2.10 Debarment and Suspension

- 2.10.1 The Supplier certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

- 2.10.2 Has not, within a three year period preceding this proposal, 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;

- 2.10.3 Is not presently indicted for or otherwise criminally or civilly charges by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (B) of this certification; and

- 2.10.4 Has not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

3.0 TERM OF AGREEMENT

- 3.1 Agreement Term. The term of this Agreement shall begin on the Effective Date and shall continue until terminated in accordance with Section 14, Termination.
- 3.2 Statement of Work Term. The term of an SOW shall be as set forth in the applicable SOW unless earlier terminated in accordance with this Agreement. In the event an SOW expires but the Parties continue to do business without any further written agreement, the SOW shall be deemed to have continued on a month-to-month basis subject to all applicable terms and conditions herein.

4.0 NON-CONFLICT OF INTEREST

CCSD expressly reserves the right to contract with others to obtain services similar or identical to those provided under this Agreement and Supplier expressly reserves the right to contract with others to provide services similar or identical to those provided under this Agreement, provided, however, that Supplier shall not engage in any work during the term of this Agreement that creates



an actual conflict of interest with CCSD.

5.0 ACCEPTANCE

CCSD may review, analyze and test any Deliverable or any performance of Services to confirm that such Deliverable or Service meets the Acceptance Criteria or other requirements set forth in this Agreement or the applicable SOW. If CCSD becomes aware of any material defects in any Deliverable or in the performance of any Service (each such defect, a "Deficiency"), CCSD will notify Supplier of such Deficiency within sixty (60) days of CCSD's discovery of such Deficiency. Supplier, at its own expense, shall re-perform such Service or modify such Deliverable to bring the Deficiency into conformance with the applicable requirements within five (5) days after receipt of CCSD's notice of such Deficiency. CCSD may perform additional review, analysis and acceptance tests following re-performance of a Service or modification to a Deliverable. If the re-performance of the Service fails to meet the requirements set forth in this Agreement and the applicable SOW, or a Deliverable is rejected again for non-compliance with such requirements, CCSD may in its sole discretion reject the Service or the Deliverable, terminate this Agreement for material breach, in whole or in part, or repeat the procedure in this paragraph as often as it determines is necessary. In the event of termination, CCSD will not be liable for payment (or any other obligation under this Agreement) to Supplier for such Deficiencies. The provisions of this Section 5 shall not limit CCSD's rights under Section 14, Termination.

6.0 RIGHT TO COVER

If, after receiving a notice of Deficiency from CCSD, and having been given the opportunity to correct such Deficiency in accordance with the procedures of Section 5 hereof, Supplier fails to correct such Deficiencies in connection with any Service or Deliverable in accordance with the requirements of this Agreement or the applicable SOW, without waiving any of its remedies under this Agreement, CCSD may, after providing Supplier with prior written notice of its intent to do so, correct such Deficiency, including contracting with any third party to perform on its behalf. In such event, CCSD may deduct from the payments then or thereafter due Supplier all costs and expenses of correcting the Deficiency in connection with any Service or Deliverable. Supplier shall compensate CCSD at cost for the Services or Deliverables of any such third party hired by CCSD to correct Supplier's Deficiency. The rights provided under this Section 6 shall be in addition to all other rights and remedies provided under this Agreement or at law or equity.

7.0 COMPENSATION

7.1 Fees for Services

7.1.1 Fees. CCSD shall pay Supplier the Fees set forth in an SOW for Services rendered. The specified Fees include all elements of cost (direct labor, overhead, general and administrative expenses and profit) incurred by Supplier in providing Services and are stated in U.S. dollars. Amounts spent by CCSD and its Affiliates will be aggregated for purposes of tier or volume pricing.

7.1.2 Monthly Rates. If Supplier is to be compensated at a flat monthly rate for a calendar month, and Supplier or its subcontractors do not provide Services for each day in such calendar month, then Supplier shall be paid a pro-rata portion of such monthly rate, based on the number of days Services were actually provided by Supplier or its subcontractors during the month. CCSD will not make any payment for days that Supplier or its subcontractors fail to provide Service



(whether due to sickness, jury duty, vacation or similar reason).

7.1.3 Holiday Work. Supplier shall only be compensated for Services performed on CCSD-recognized holidays if work on such day has been authorized in writing by CCSD prior to work commencement. The document authorizing such holiday work must be retained by Supplier and submitted with the invoice requesting payment.

7.1.4 Bonus Payments. In no event shall CCSD be obligated to pay any bonus or other performance- or incentive-based payments to Supplier or any of its employees or subcontractors, unless such payments are agreed upon in writing between Supplier and CCSD in an SOW.

- 7.2 Pre-approved Expenses. Supplier shall invoice CCSD for any expenses incurred, at cost and without mark-up, and pre-approved in writing by CCSD, in the performance of the Services. Upon CCSD's request, Supplier shall provide supporting documentation for such expenses and a statement that Supplier has reviewed the invoice charges, and determined which charges are proper and valid in accordance with the more stringent of CCSD or Supplier's expense management policy.
- 7.3 Unauthorized Services. CCSD shall have no obligation, expressed, implied, or otherwise, to compensate Supplier except as expressly set forth in this Section 7 or an SOW.

8.0 INVOICING AND PAYMENTS

- 8.1 Invoicing. Unless an SOW specifies otherwise, Supplier shall invoice CCSD monthly for all Fees, whether billed on a fixed-fee basis or in accordance with Supplier's hourly rates. Supplier shall on the same invoice include any SLA Credits associated with the Services provided during the previous billing cycle. In addition, CCSD may require Supplier to submit the following:
- a) A detailed description of the Services rendered by Supplier.
 - b) A list of all Supplier employees and/or subcontractors performing Services under the applicable SOW.
 - c) The number of hours worked by Supplier's employees and/or subcontractors performing Services under the applicable SOW.
 - d) Documentary evidence (e.g., receipts, paid bills or copies of invoices for services rendered by subcontractors) which provide sufficient information to establish the amount, date, place, purpose and essential character of each fee or payment provided in the invoice for which Supplier seeks reimbursement from CCSD.
 - e) If applicable, a copy of a timesheet (in a form approved by CCSD), completed by each Supplier employee and/or subcontractor performing Services during the applicable time period, stating the number of hours by labor category, and a certification that such hours were the actual number of hours expended by such individual during the period for which the invoice is submitted.

- 8.2 **Payment Terms. All invoices are due and payable by CCSD net thirty (30) days**



from the date of receipt by CCSD. CCSD may discount the invoice amount by two percent (2%) for payments made net fifteen (15) days. All invoices and payments shall be in U.S. dollars.

- ☐ **Net thirty (30) days**
- ☐ **Discount invoice amount by two percent (2%) for payments made net fifteen (15) days.**

Initial: _____

8.3 Payment Types. Please select the type of payment you would like to receive. See Exhibit A if SUA is selected.

- ☐ Check
- ☐ J.P. Morgan's Single-Use Accounts (SUA) electronic card

Initial: _____

8.4 Disputed Amounts. CCSD shall review the invoices and notify Supplier in writing within forty-five (45) days of receipt of the invoice of any question, objection or dispute CCSD may have in connection with the invoice (the "Dispute Notice"). If any items are disputed, only the disputed items may be withheld from payment, and only until such dispute between the Parties is resolved. The Parties agree to negotiate in good faith to attempt to resolve such dispute. In the event such dispute is mutually agreed upon and resolved, CCSD will pay the disputed amount within twenty (20) days, or Supplier will issue a credit memo on the next invoice to CCSD (as applicable). In the event a dispute is not resolved within sixty (60) days following Supplier's receipt of the Dispute Notice despite the good faith efforts of the Parties, the Parties shall have the right to submit such dispute to the dispute resolution process set forth in Section 12, Dispute Resolution. In no event does this Section 8.3 limit CCSD's rights under Section 9, Audit.

8.5 Taxes. All taxes and similar assessments, levies and government-imposed obligations with respect to Supplier's income or gross receipts derived from its performance of Services hereunder, as well as all other taxes associated with the performance of the Services, shall be the obligation of and paid by Supplier.

8.6 Payment Retention. CCSD reserves the right to retain up to ten percent (10%) of any payment due to Supplier pursuant to the terms of this Agreement, and to make such retained payment only when and if Supplier has provided to CCSD all Deliverables required to be delivered under the applicable SOW.

9.0 AUDIT

9.1 General. During the term of this Agreement and for a period of three (3) years after work completion, Supplier shall maintain complete books and records (specifically including, without limitation, the originals or copies of documents supporting entries in the books of account and all reports provided to CCSD) relating to all Services and SOWs, and of all costs and Fees reimbursable or payable by CCSD under the terms of this Agreement. All such records shall be maintained in accordance with recognized accounting practices. CCSD and/or its authorized agents shall have the right to examine and audit such records at any reasonable time during that



period and perform procedures as considered necessary for purposes of evaluating Supplier's internal controls. The accuracy of Supplier's invoices shall be determined by such audits and Supplier shall immediately refund any overcharges to CCSD. The costs associated with any such audit shall be borne by CCSD unless such audit demonstrates that Supplier's charges exceed the proper and accurate amount of such charges by five (5%) percent or more in which case Supplier shall reimburse CCSD for all costs associated with the audit, and shall reimburse CCSD for all overpayments.

10.0 OWNERSHIP AND INTELLECTUAL PROPERTY

- 10.1 Ownership. All data products purchased or developed in the performance of the Services shall be the exclusive property of CCSD. All software previously owned by or licensed to Supplier by third parties and used in the performance of Service is and shall remain the property of Supplier.
- 10.2 Intellectual Property Rights. Supplier hereby assigns and agrees to assign to CCSD all intellectual property rights arising directly out of the performance of the Services. Supplier hereby agrees to execute any and all documents necessary to assign any such intellectual property rights to CCSD and to assist CCSD in every way to protect such intellectual property rights, including but not limited to signing patent or copyright applications and assignments in favor of CCSD, but the filing of such applications or assignments shall be at CCSD's sole expense. CCSD acknowledges Supplier's ownership of any intellectual property right whatsoever or any interest therein that has been invented, created, developed or acquired by Supplier before the commencement of Supplier's services to CCSD under this Agreement ("Supplier Property"). Supplier retains all right and title in and to the Supplier Property provided to CCSD or used by Supplier in performing services for CCSD under this Agreement, and Supplier shall not be limited in any way from using such Supplier Property in any way, including its use in other engagements with Supplier's other clients.

11.0 CONFIDENTIALITY

- 11.1 Permitted Use. All information shall be governed by the following terms unless subject to the Colorado Open Records Act. The receiving Party shall handle, use, treat and utilize the disclosing Party's Confidential Information as follows: (a) hold all such Confidential Information in strict confidence; (b) use such Confidential Information only for the purpose of (i) evaluating the possibility of forming a joint business relationship or other commercial arrangement between the Parties, and (ii) if and when such relationship is formed by a written agreement, furthering the purpose and intent expressly stated in such written agreement; (c) reproduce such Confidential Information only to the extent necessary for permitted purposes; (d) restrict disclosure of such Confidential Information to its officers, directors and employees, the officers, directors and employees of its Affiliates, and their representatives having a need to know (and advise such persons of the obligations assumed herein); and (e) not disclose such Confidential Information to any third party, including, but not limited to any manufacturer or independent contractor, without prior written approval of such disclosing Party, except as set forth in Section 11.2 below. In addition, with respect to any equipment, component, software, or other items delivered to the receiving Party by the disclosing Party,



the receiving Party shall not reverse engineer, disassemble, decompile, or otherwise analyze the physical construction of, any such items. The restrictions on the receiving Party's use and disclosure of Confidential Information as set forth above shall not apply to any Confidential Information which the receiving Party can demonstrate:

- a) is wholly and independently developed by the receiving Party without the use of Confidential Information of the disclosing Party; or
- b) is or has become generally available to the public without breach of this Agreement by the receiving Party; or
- c) at the time of disclosure to the receiving Party, was known to such receiving Party to be free of restriction and evidenced by documentation in the receiving Party's possession; or
- d) is approved for release by written authorization of the disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or
- e) is disclosed in response to a valid order of a court or other governmental body in the United States or any political subdivision thereof, but only to the extent of and for the purposes of such order; provided, however, that the receiving Party shall first notify the disclosing Party in writing of the order and permit the disclosing Party to seek an appropriate protective order.

11.2 Subcontractors. The receiving Party shall ensure that its subcontractors in connection with this Agreement shall owe the same obligations with respect to Confidential Information developed, acquired, disclosed to or learned by such subcontractor as the receiving Party owes the disclosing Party.

11.3 Obligations and Return of Confidential Information. The receiving Party's obligation hereunder shall survive for a period of five (5) years following termination of this Agreement; provided however, any confidential obligations with respect to protected CCSD information shall survive indefinitely to the extent required to comply with applicable law. All Confidential Information shall remain the sole property of the disclosing Party, and all materials containing any such Confidential Information (including all copies made by the receiving Party) shall be returned to the disclosing Party or destroyed immediately upon termination or expiration of this Agreement, or upon the receiving Party's determination that it no longer has a need for such Confidential Information. Upon the request of the disclosing Party, the receiving Party shall certify in writing that all materials containing such Confidential Information (including all copies thereof) have been returned to the disclosing Party or have been destroyed.

11.4 Publicity. Except for materials already made public, neither Party will distribute any news releases, articles, brochures, speeches or advertisements concerning this Agreement or any SOW, nor use the other Party's name (or any variation thereof), without such Party's prior written consent.

11.5 Injunctive Relief. Because legal remedies may be insufficient for a breach of this Section 11, the Parties agree that an injured Party shall be entitled to seek injunctive relief in addition to any other legal or equitable remedies.

12.0 DISPUTE RESOLUTION



In the event that any dispute between the Parties arises out of this Agreement, the Parties shall meet and confer in a good faith effort to resolve such dispute. In the event such efforts do not resolve the dispute within fifteen (15) days from the date the dispute arises, the Parties may elect to submit the dispute to mediation before the Judicial Arbitrator Group or other independent mediation service. This provision shall survive termination of this Agreement. This provision shall not be considered an election of remedies. The parties may elect to pursue litigation for any dispute arising under this Agreement at any time.

13.0 GOVERNING LAW

- 13.1 Governing Law. This Agreement is governed by the laws of the State of Colorado, without regard to principles of conflict of laws. This Agreement shall be deemed to be made and executed in the State of Colorado.
- 13.2 Forum. Supplier (i) hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Colorado located in Colorado or the state courts of Arapahoe County, State of Colorado, for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof, (ii) hereby waives, to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby agrees not to commence any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise.
- 13.3 Service of Process. Supplier consents to service of process in any such proceeding in any manner permitted by Colorado law, and consents to service of process by registered or certified mail, return receipt requested, at its address specified herein.

14.0 TERMINATION

- 14.1 Termination for Convenience by CCSD. CCSD may terminate this Agreement or any SOW for convenience upon giving Supplier thirty (30) days prior written notice. In such event, Supplier shall be entitled to payment as described in Section 14.4.2, but shall be obligated to mitigate its costs and damages arising from such termination for convenience. In no event will CCSD be liable for any exit or termination fee.
- 14.2 Termination for Breach. Either Party may terminate this Agreement immediately



upon written notice to the other Party under any of the following circumstances, each of which shall constitute a material breach of this Agreement: (i) the other Party defaults on any of its obligations under this Agreement, (ii) the other Party becomes unable to pay its debts as they become due; or (iii) the other Party becomes the subject of a proceeding, whether voluntary or involuntary, under the bankruptcy or insolvency laws of the United States or any other jurisdiction, unless, in the case of an involuntary proceeding, such proceeding is dismissed or withdrawn within forty-five (45) days of the date it is initiated.

- 14.3 Termination for Non-Appropriation of Funds. As CCSD is bound by Art. X, Section 20(4)(b) of the Colorado Constitution ("TABOR"), payments under this Agreement are currently budgeted expenditures and no term of this Agreement may be construed to constitute or give rise to a multiple fiscal year direct or indirect debt or other financial obligation. The District's obligations to pay any amount under this Agreement shall not constitute a mandatory charge against nor require liability or obligation of the District in any ensuing fiscal year beyond the then-current fiscal year. The District shall not incur any obligation nor liability in any form under this Agreement beyond the revenues budgeted and appropriated to pay the amount due for a specified fiscal year. This Agreement shall not directly nor indirectly obligate the District to make any payments beyond the funds legally available to the District and designated for payment under this Agreement for the then-current fiscal year, nor impose any obligation to make an appropriation for a succeeding fiscal year. CCSD may terminate this Agreement if funds are not allotted for the next fiscal year to continue with the Services under this Agreement. CCSD may effect such termination by giving the Supplier written notice of its intention to terminate not less than thirty (30) days prior to the end of the then current fiscal period, of CCSD's decision not to appropriate monies to fund the Agreement for a succeeding fiscal year. Upon termination of this agreement as provided in this paragraph, CCSD shall not be responsible for the payment of any services received which occur after the end of the current period. Under this appropriations clause, CCSD may terminate without any penalty, charge, or claim arising from such termination.

14.4 Procedure upon Termination.

- 14.4.1 Upon termination of this Agreement, Supplier shall promptly return to CCSD, or destroy, as CCSD may direct, all CCSD property in Supplier's possession.
- 14.4.2 Except as described in Section 14.3, if CCSD terminates this Agreement or any Services to be performed hereunder for any reason other than Supplier's breach of any terms or conditions of this Agreement which has not been cured within the applicable cure period, Supplier shall be entitled to payment for its Services rendered and reasonable expenses incurred in connection with the SOWs up until the date of such termination. If the Services are compensated on an hourly basis, then CCSD shall compensate Supplier for all Services performed in accordance with the agreed hourly rate payment provisions. If the Services are compensated on a fixed fee basis, then CCSD shall compensate Supplier for: (a) any completed milestones in accordance with the payment terms for such Services; and (b) payment for Services relating to a milestone that has not



been completed shall be paid on a pro-rata basis.

14.4.3 Upon the termination of this Agreement for any reason whatsoever, CCSD shall be forthwith entitled to all documentation specified in this Agreement.

14.5 Termination Assistance. Supplier shall provide to CCSD or its designee at no cost such termination assistance services as may reasonably be requested by CCSD or its designee upon the termination or expiration of an SOW. Supplier shall cooperate in good faith in all transition related matters. The termination assistance services shall be performed in accordance with the terms and specifications set forth in an SOW for the applicable Services being transitioned.

15.0 INSURANCE

Commencing on the Effective Date and throughout the term of this Agreement, Supplier shall maintain insurance policies in the amounts and types described below (the "Insurance"), at its own expense, and shall provide CCSD with evidence thereof in the form of a certificate of insurance within fifteen (15) days of the Effective Date of this Agreement. Furthermore, Supplier is responsible for ensuring that any subcontractor provides similar Insurance for the activities arising out of such subcontract. The Insurance shall be issued by companies that have a rating of A-, Class VII or better in the most recently published edition of Best's Reports.

- a. Commercial General Liability Insurance - Supplier shall procure and maintain commercial general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence/\$2,000,000 aggregate. This insurance shall have a products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured (cross liability) condition. These insurance policies shall name CCSD, its officers, directors, board of education, and employees as additional insureds and shall provide for written notice to CCSD before cancellation or non-renewal of such insurance.
- b. Automobile Liability Insurance – Supplier shall procure and maintain comprehensive automobile liability insurance for owned, hired, and non-owned vehicles, including coverage for all power mobile equipment used by the Supplier on District property, with a combined single limit of \$1,000,000/person, \$1,000,000/accident, and \$1,000,000/property damage. Such insurance shall contain a waiver of subrogation in favor of CCSD. These policies shall name CCSD, its officers, directors, board of education and employees as additional insureds.
- c. Worker's Compensation Coverage - Supplier shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Supplier shall procure and maintain worker's compensation coverage with a limit of no less than \$1,000,000 per each occurrence. CCSD will not be held responsible in any way for claims filed by Supplier, its employees or subcontractors for the Services.
- d. Professional Liability Insurance - Supplier shall procure and maintain professional liability insurance with a retroactive date equivalent to the Effective Date. Such



coverage shall cover the Supplier's errors and/or omissions, in an amount not less than \$1,000,000 per each occurrence/\$2,000,000 aggregate on a "claims-made" basis, and shall remain in effect for a period of one (1) year following the completion of the Services. Supplier shall be responsible for all deductibles.

16.0 INDEMNITY

Supplier agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend CCSD, its parent company, subsidiaries and affiliates, and all their members, directors, officers, employees, agents and representatives, from and against any liability, claims, demands, penalties, fines, lawsuits, judgments, losses and expenses, including reasonable attorneys' fees and court costs, arising in favor of any party (including, but not limited to, personnel furnished by Supplier) (i) on account of bodily injuries, deaths, or damage to property directly caused by the fault, negligent act or omission, or willful misconduct, in each case, in connection with performance of the Services, of Supplier, or its employees, officers, directors, agents, subcontractors, or suppliers, or their respective directors, officers, agents, or employees, (ii) directly caused by the breach of this Agreement by Supplier or its subcontractors and (iii) resulting in any way from any allegation of infringement or misappropriation of any patent, copyright, trade secret, trademark or other intellectual property right by the services provided by Supplier pursuant to this Agreement.

17.0 SOLICITATION OF EMPLOYEES

Supplier agrees that during the term of this Agreement and for one (1) year thereafter, it shall not directly solicit for employment any employee of CCSD without first obtaining express written consent from CCSD. CCSD agrees that during the term of any SOW hereunder, and for one (1) year following termination or expiration of such SOW, it shall not directly solicit for employment any employee of Supplier who had worked on CCSD projects related to such SOW without first obtaining express written consent from Supplier. The foregoing prohibitions do not apply to individuals responding to general solicitations for employment.

18.0 BUSINESS CONTINUITY PLAN

During the term of this Agreement, Supplier shall have in place a plan designed to ensure the continuing availability of the Products upon the occurrence of a business disruption ("Business Continuity Plan") and provide CCSD with a copy upon request. Without limiting the generality of the foregoing, such Business Continuity Plan shall include (i) the preparation and regular reasonable testing and updating of the Business Continuity Plan (including plans for data, backups, storage management, and contingency operations), (ii) the reservation of capacity at alternate site facilities, and (iii) disaster recovery services in the event a Force Majeure Event has occurred. Supplier will provide CCSD with a summary of the results of any Business Continuity Plan testing. Supplier will correct any and all deficiencies discovered by such testing, and will resolve all issues revealed by such testing. All material corrections and resolutions must be completed no later than the date of the next test. Supplier shall update and reasonably test all Business Continuity Plan procedures not less frequently than once annually, shall certify to CCSD in writing following each such update and test that the Business Continuity Plan is fully operational, and in the event that a Force Majeure Event has occurred, shall immediately implement the Business Continuity Plan; in each case in consultation and coordination with CCSD.

**19.0 FORCE MAJEURE**

Neither Party shall be liable for any delay or failure in performing its obligations hereunder that is due to an act of God, act of governmental body or military authority, fire, explosion, flood, pandemic, epidemic, riot or civil disturbance, war, act of terrorism, sabotage, accidents, insurrections, blockades, embargoes, storms, or similar event beyond the reasonable control of the non-performing Party ("Force Majeure Event"). Notwithstanding the foregoing, Force Majeure Event expressly excludes the following: (a) any event that Supplier could reasonably have prevented by quality assurance, disaster recovery or other testing, either required to be performed pursuant to the Services, or necessary to provide the Services; and (b) any event where Supplier could have prevented a degradation of Services by implementing a reasonable work-around. Upon the occurrence of a Force Majeure Event, the Party whose performance is affected shall give written notice to the other Party describing the affected performance. The Parties shall promptly confer, in good faith, to agree upon equitable and reasonable action to minimize the impact of the condition on both Parties. The Parties agree that the Party whose performance is affected shall use commercially reasonable efforts to minimize the delay caused by the Force Majeure Event and recommence the affected performance. If a Force Majeure Event prevents, hinders or delays Supplier's ability to perform the Services for five (5) consecutive days or more, thereby adversely impacting CCSD's business operations, CCSD may terminate this Agreement in whole or in part immediately upon written notice.

20.0 REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants that it is fully competent, experienced, and trained to provide all Services herein. Supplier represents that Supplier will perform the Services in a diligent, safe, and workmanlike manner and Supplier will use its best skill and judgement pursuant to the generally accepted standards of the profession for such Services and in reasonable accordance with the District's best interest. If Supplier's performance does not conform to such standards and District notifies Supplier of same, Supplier agrees to immediately take all action necessary to remedy the nonconformance.

21.0 IMMUNITIES

Notwithstanding anything herein to the contrary, no term or condition shall be deemed a waiver, express or implied, of any provision of the Colorado Governmental Immunity Act 24-10-101, et seq., C.R.S., as hereafter amended.

22.0 FUND AVAILABILITY

Pursuant to Section 22-44-115, C.R.S., any obligation of a contract which requires expenditures contrary to subsection (1) of Section 22-44-115, C.R.S., shall be null and void, and no school district monies shall be paid thereon.

23.0 FOREIGN CORRUPT PRACTICES ACT

Supplier will perform under this Agreement in a manner consistent with and comply with all requirements of the Foreign Corrupt Practices Act ("FCPA"). The FCPA prohibits CCSD from paying or offering anything of value to a government official or political party or candidate for the purpose of corrupting the exercise of an individual's duties and attempting to influence that individual to provide business to or retain CCSD's business. Supplier will not make or cause to



be made any payment or offer of anything of value to any government official or political party or candidate on behalf of CCSD or in connection with this Agreement unless such payment or offer is approved in writing in advance by CCSD's Law Department. In that regard, Supplier will provide all information requested by CCSD with respect to the proposed offer or payment.

CCSD may, from time to time, in its sole discretion, require that Supplier sign a certification statement providing that, in performing Services pursuant to this Agreement, Supplier has: (a) complied with and will continue to comply with the FCPA; (b) not made or caused to be made any offer or payment, directly or indirectly, to any government official or political party or candidate, except as authorized in writing in advance by CCSD; and (c) not otherwise engaged in any activity that could result in a violation by CCSD of the FCPA; and that will include such other representations as CCSD deems necessary or appropriate to ensure compliance with the FCPA. If Supplier does not comply with this provision, CCSD may unilaterally terminate this Agreement and may take such other action, as CCSD deems necessary and appropriate.

24.0 EXPORTS

The Parties acknowledge that software, Services and/or Confidential Information ("Exports") provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations. Each Party will comply with all applicable U.S. and foreign export laws and regulations and anti-boycott laws. All orders or commitments of any kind to purchase Exports under this Agreement are expressly conditioned upon CCSD receiving from any appropriate governments or agencies the grant of all applicable franchises, permits, licenses or authorizations of any kind ("Authorization") required by such governments or agencies. In the event that such Authorization is not received within a reasonable amount of time, CCSD may terminate any affected Services without further obligation.

25.0 WAIVERS AND AMENDMENTS

Waiver by either Party of any default hereunder by the other Party shall not be deemed a waiver of any other default. No provision of this Agreement shall be deemed waived, amended or modified by either Party, unless such waiver, amendment or modification is in writing and signed by the authorized representative of each Party.

26.0 SEVERABILITY

If any provision or any part of a provision of this Agreement shall be held invalid or unenforceable, then the remaining portions of that provision and the remainder of the Agreement shall be construed as if not containing the particular invalid or unenforceable provision or portion thereof, and the rights and obligations of each Party shall be construed and enforced accordingly.

27.0 SURVIVAL

The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive; including, without limitation, the provisions of Sections 9, Audit; 10, Ownership and Intellectual Property; 11, Confidentiality; 13, Governing Law; 14, Termination; 16, Indemnity; 17, Solicitation of Employees; 20, Representations and Warranties; 21, Limitation of Liability; 23, Exports; 26, Survival; and 33, Compliance with Laws.

**28.0 ASSIGNMENT**

This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. Neither Party may assign its rights and/or delegate its duties under this Agreement to any third party without the prior written consent of the other Party, except that either Party may assign this Agreement and its rights and obligations hereunder, in whole or in part, upon written notice to the other Party in connection with a merger or acquisition or sale of substantially all of its assets. Any assignment of rights or delegation of duties under this Agreement by Supplier will not release Supplier from its obligations hereunder.

29.0 ENTIRE AGREEMENT; MODIFICATIONS

This Agreement, and any executed CCSD Data Privacy Addendum constitutes the entire agreement between the Parties with respect to the subject matter hereof as of the Effective Date with respect to the Services. All prior and contemporaneous agreements, representations, statements, negotiations, understandings and undertakings, whether written or oral, are superseded by this Agreement. This Agreement may be modified only in a written document signed by both Parties.

30.0 HEADINGS AND CONSTRUCTION

The headings of the paragraphs of this Agreement are inserted for convenience only and are not intended to affect its meaning or interpretation. Throughout this Agreement, the singular shall apply to the plural and the plural to the singular, unless the context clearly indicates otherwise.

31.0 FURTHER ASSURANCE

The Parties shall execute and deliver such further documents and instruments and perform such further acts as may be reasonably required to carry out the intent and purposes of this Agreement.

32.0 JOINTLY DRAFTED; COUNSEL

This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, shall not be construed against either Party. Each Party acknowledges that it has had the opportunity to consult with counsel of its own choosing prior to entering into this Agreement.

33.0 RIGHT OF ACCESS; COOPERATION

Subject to the terms and conditions of this Agreement, each Party shall permit reasonable access to the other's facilities in connection with work under this Agreement. Supplier agrees to comply with all requirements of any CCSD facility use policies, regulations and guidelines as provided by CCSD. No charge shall be made for such visits. Prior notification will be given when access is required. Waivers or releases of any personal rights from representatives of either Party in connection with visits to the other's premises will be analyzed and either permitted or denied on a case-by-case basis.

34.0 COMPLIANCE WITH LAWS

Supplier shall comply with all federal, state and local laws, ordinances, rules, regulations and orders applicable to Supplier with respect to its performance of the Services, and obligations under this Agreement. CCSD will comply with all federal, state and local laws, ordinances, rules, regulations and orders applicable to CCSD with respect to its obligations under this Agreement. Each Party shall advise the other Party of any laws or regulations or changes in laws or regulations affecting CCSD's business as they may relate to the Services or the provision of the Services by Supplier.

**35.0 NOTICES**

Except as otherwise provided herein, all notices or other communications to be given or that may be given by either Party to the other shall be deemed to have been duly given when made in writing and delivered in person or when deposited in the United States mail, postage prepaid, certified, return receipt requested or sent via facsimile with confirmation of receipt, and addressed as follows:

Notice to Supplier:

Supplier Name:	
Attention:	
Title:	
Telephone:	
Address:	
City, State, Zip:	
Email:	

Notice to CCSD:

Name:	Cherry Creek Schools No.5
Attention:	Strategic Sourcing & Supplier Management
Telephone:	720-886-5800
Address:	4350 S. Pitkin St.
City, State, Zip:	Aurora, CO 80015
Email:	StrategicSourcing@cherrycreekschools.org

The notice addresses may be changed by written notice given by one Party to the other in accordance with this Section.

[Signatures Continue on Next Page]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CHERRY CREEK SCHOOL DISTRICT No.5

Signature: _____

Name: _____

Title: _____

Date: _____

SUPPLIER

Signature: _____

Name: _____

Title: _____

Date: _____



Exhibit A SUA Enrollment Form



Dedicated to Excellence
Cherry Creek Schools

To enroll in J.P. Morgan's SUA payment solution, please email this completed form to Mary MacDonald at mmacdonald7@cherrycreekschools.org

Company Name:	
Accounts Receivable Contact Information:	
Name and Title:	
Phone Number:	
Payment Notification Email Address:	

**An email address is required for the payment notification. We recommend a central email address, such as accountsreceivable@vendorname.com.*

Thank you for your assistance,

Mary MacDonald

Payroll/AP Manager

720-554-4611



4.0 Proposal Evaluation

4.1 The District will conduct a fair and impartial evaluation of the proposals received in response to this RFP. The objective of the evaluation is to determine the proposal that most effectively meets the District's needs. Award will be made to the responsible supplier(s) whose proposal, conforming to the RFP, will be most advantageous to the District taking into consideration, among other things, price, past performance, financial stability, and technical capability. Suppliers should not assume they will have an opportunity for oral presentations or revisions of proposals, so they should submit their most favorable proposal as the initial proposal. Suppliers may be provided an opportunity to make an oral presentation as part of the evaluation process in the District's sole discretion.

4.2 Evaluation Process

While a numerical rating system may be used as part of the evaluation process, the award decision ultimately is a business judgement reflecting an assessment of the relative merits of the proposals as judged by the District, in its sole discretion, which represents the best value for the District. A brief overview of the evaluation process is as follows, and may be modified at the District's discretion.

- Review of all the proposals received for compliance with the RFP
- Numerical scoring and/or ranking of all proposals based on the technical proposal, company experience, qualifications, etc.
- Requests for clarification may be made. One, some, or all suppliers may be asked for clarification. Such requests may be made at any time during the evaluation process.
- Suppliers may be invited to present an oral presentation as determined by the District, in its sole discretion.
- Suppliers may be given an opportunity to submit a best and final offer (BAFO) after the conclusion of the oral presentations, clarifications, and or other discussions/negotiations.

Clarifying questions, oral presentations and BAFOs may require revisions to original proposals. If so, suppliers will be given a reasonable time frame in which to formulate and submit written responses to the questions and to provide any related revisions to their initial proposal. Such revisions will be at the option of the supplier. Adjustments to pricing may also be allowed, but only to the extent related to and consistent with the necessary revisions.

4.3 The District reserves the right to negotiate the final terms and conditions of any one or more contracts to be executed. In the event the district and a supplier are unable to agree upon all contract provisions, the District reserves the right to cease negotiations and negotiate with one or more other suppliers, or to reject all proposals with no obligations.



4.4 Dissemination of Information

During the solicitation and evaluation process and up and to award, no information will be publicly provided concerning proposals received. Any information requested after award must be submitted directly to Communication Services through a Colorado Open Records Act (CORA) request. Please visit <https://www.cherrycreekschools.org/site/Default.aspx?PageID=3987> for further information.

5.0 Proposal Response Requirements

5.1 Submission Letter and Executive Summary

The Proposal must include a submission letter with an executive summary. The Submission letter shall be signed by an authorized representative of the supplier such as the owner, partner, or in the case of a corporation, the president, vice president, or other corporate officer(s) responsible for binding the supplier.

The Submission letter must provide the supplier's primary contact information, including the following:

1. Name of the Supplier representative
2. Title
3. Name of Company
4. Address
5. Telephone number
6. Email address
7. Signature of authorized officer of the firm (in some cases your acknowledgement signature will be requested through BidNet.)

A signature on the submission letter provides the District with the supplier's acknowledgement and acceptance of the RFP and execution of it during the discharge of any subsequent contract. It shall be clearly understood that by submitting a proposal in response to this solicitation the supplier shall be deemed to have accepted all specifications, terms, general conditions, and requirements set forth unless otherwise clearly noted and explained in the supplier's proposal. Any exceptions or exclusions may render the proposal non-responsive.

The executive summary may be incorporated as part of the Submission letter and should include the following:

1. A brief summary of the proposal contents
2. Discussion of unique aspects, strengths, or value-added components being offered



5.2 Company Background and References

The proposal shall include company background information and client references. Suppliers should identify and include client references that may be contacted by the District for evaluation purposes. Suppliers shall provide at least three (3) references of similar clients with whom the supplier has worked during the past five (5) years that are of similar size and scope to this requirement. The District reserves the right to contact any reference, whether provided by the supplier or obtained by the District, in connection with evaluation of this RFP.

5.3 Proposed Product(s) and Services

The proposal must include a summarized narrative description of the capabilities for each requirement presented throughout the RFP, for the purpose for providing the District with a high-level understanding of the proposed solution. The Narrative should be written for an audience of the end-user community. Descriptions should include all products proposed by third parties to meet the District's Functional and Technical Requirements identified in this RFP.

5.4 Proposed Team Resources

The proposal should include the project and implementation team organizational structure, project roles and responsibilities, and key team member resumes of the proposed project personnel resources. The implementation team as well as the personnel involved in live operation and ongoing support and maintenance shall be included as necessary/required.

A clear distinction shall be made to identify supplier resources, sub-contractor/third party resources, and district resources roles and responsibilities.

5.5 Price Proposal

The supplier's price proposal shall be provided separate technical proposal. Pricing information/proposal shall be in sufficient detail to allow an appropriate evaluation.

5.6 Additional Required Documents

1. Current IRS W-9
2. Historically Underutilized Businesses (HUB) certificate, if applicable
3. Certificate of Insurance (COI) if applicable: supplier is not coming on property or in presence of students a COI is not required.

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EXHIBIT A- SCOPE OF WORK/SCHEDULE OF ITEMS

1.1 **Project Name:**

CCSD Interior Renovation Projects

1.2 **Project Location(s):**

Trails West Elementary School
5400 S Waco St, Centennial, CO 80015

Creekside Elementary School
19993 E Long Ave, Centennial, CO
80016

Cherry Hills Elementary School
2400 E Quincy Ave, Englewood, CO 80110

I-Team Ranch
7250 S Gartrell Rd, Aurora, CO 80016

1.3 **Project Description/Scope:**

Cherry Creek School District is seeking a General Contractor (GC) partner to construct interior improvements to the schools listed above. These improvements will help departments better utilize their current space.

The GC will provide a hard bid for all four projects based on the design documentation provided as **one** lump sum bid. The GC will contract directly with subcontractors and will be responsible for the delivery of the project in the most expeditious, safe, and economical manner consistent with the best interest of Cherry Creek Schools. Please ensure all four projects are priced and presented in the proposal as **one** lump sum bid. Please refer to the attached Construction Documents and Project Manual for a detailed description of Project Scope.

1.4 **Project Schedule:**

- Construction Document Issuances: Complete
- Permitting: Complete
- Construction Start: Estimated May 28, 2024.
- Final Completion: August 2, 2024
- Close Out Documentation Due: 30 days after Final Completion

1.5 **Project Administration:**

The Owner intends to execute an AIA Document A101-2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum. The Contract will define the project scope, schedule, budget, and fees to be paid to the contractor, and any other terms and conditions which are specific to the project.

1.6 **Project Team:**



A Project Team will be assembled for the Project. The Contractor will be a member of the Project Team, consisting of the following representatives:

Architect: Tim Habben, LOA Architecture

Owner's Representative: Wes Farmer, CBRE

Owner: Cherry Creek School District

- David Henderson, Deputy Chief of Operations