

**AGREEMENT FOR INDEPENDENT CONTRACTOR/SERVICE CONTRACTS
PORT ARTHUR INDEPENDENT SCHOOL DISTRICT**

This Agreement for Independent Contractor Services (“Agreement”) is made and entered into on this ____ day of _____, 20____, by and between Port Arthur Independent School District (“District”), located in Port Arthur, Texas 77642, and _____ (“Independent Contractor”), located in _____, for Independent Contractor to provide services to the District, in accordance with the terms and conditions specified herein.

Recitals

The District is a political subdivision of the State of Texas, established to promote education in Jefferson County, Texas. Both the District and Independent Contractor desire to set forth in writing the terms and conditions of their agreement for the Independent Contractor to provide certain services to the District, which services are in support of the District’s educational objectives. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

1. **Purpose.** The District agrees to retain Independent Contractor and Independent Contractor agrees to provide services to the District as Independent Contractor and to perform the duties and provide all necessary labor and resources needed to provide the services set forth in Paragraph 2 – Scope of Work. Independent Contractor shall also perform such other related services and duties as are customarily performed by an Independent Contractor in a similar position.

2. **Scope of Work.** Exhibit A includes a detailed Scope of Work that sets out the services (hereinafter “Services”) Independent Contractor agrees to provide, as needed and authorized in writing by the District.

3. **Term.** This Agreement is for services beginning _____ and ending _____ (“Term”), unless terminated as provided herein. All extensions of this Agreement shall be subject to the terms and conditions specified herein. This Agreement may be extended by mutual written consent of the parties, contingent upon approval of the District’s Board of Trustees, as may be required.

4. **Compensation.** The District will pay Independent Contractor an amount not to exceed \$_____ plus expenses of \$_____ per day, for Services provided in Exhibit A. Any expenses submitted will be calculated according to quoted pricing attached as Exhibit A and are subject to approval by the District’s Purchasing Manager. The District shall not reimburse Independent Contractor for mileage expenses. Independent Contractor will invoice the District periodically throughout the Term of the Agreement in accordance with Section 7 of this Agreement. The District is Texas sales and use tax exempt and will not reimburse Independent Contractor for any Texas sales taxes incurred by Independent Contractor. In the event that any payment(s) to Independent Contractor under this Agreement are subsequently disallowed by a state or federal grant awarding agency or in the event that the District is required to refund any funding received from a state or federal grant awarding agency relating to Independent Contractor’s work, to the maximum extent permitted by applicable law, Independent Contractor shall repay to the District, on demand, the amount of any such disallowed costs and/or refund(s). The District may, in its sole discretion, deduct the amount(s) of any such disallowed costs and/or refund(s) from subsequent payments to Independent Contractor under this Agreement.

5. **Review of Progress.** Independent Contractor will work diligently to meet all timelines mutually established by Independent Contractor and the District. The District reserves the right to monitor the progress of Independent Contractor. Upon request by the District, Independent Contractor shall provide periodic status reports to the District with approximate timelines for completion of the Services, and other information reasonably requested by the District.

6. **Inspection and Acceptance of Service.** The District reserves the right to inspect the Services provided under this Agreement at all reasonable times and places during the Term. If any of the Services do not conform to the requirements set forth in this Agreement, the District may elect, in the District’s sole discretion, to: (i) require Independent Contractor to perform the Services again in conformity with such requirements, with no additional charge to the District; or (ii) equitably reduce payment due Independent Contractor to reflect the reduced value of the Services performed. These remedies do not limit other remedies available to the District in this Agreement or otherwise available by law.

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7. ***Billing and Payment/ Invoices.*** Independent Contractor shall submit original invoices to the District, Attn: Accounts Payable Department, as statements of services rendered. Independent Contractor shall submit invoices within a timely manner during the District's fiscal year in which the good(s) and/or services are purchased. The invoices shall include the following: date of invoice, billing period, dates of service, list of services provided daily including dates and amount of time spent performing each service, detailed descriptions of the services provided on each of the dates listed including location where services were provided, invoice number, contact information, deliverables under the Agreement, and certification of service provided through a signature by a company representative. Invoices shall be mailed to the District at the following address:

Port Arthur ISD
Attn: Accounts Payable Department
P. O. Box 1388
Port Arthur, TX 77641

Independent Contractor is required to submit to the District a completed IRS Form W-9 for the current tax year, Criminal History Certification, Felony Conviction Notice, Conflict of Interest Questionnaire, and other forms required by the District before payment is rendered. Payment to Independent Contractor shall be made only after Services are performed and not before. Advance payment to Independent Contractor is strictly prohibited.

In accordance with Texas Government Code § 2251.021, payments are due to Independent Contractor within forty-five (45) days after the later of the following: (1) the date the District receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date the District receives an invoice for the goods or service. Independent Contractor agrees to pay any subcontractors, if any, the appropriate share of the payment received from the District not later than the tenth (10th) day after the date Independent Contractor receives the payment from the District. Independent Contractor shall be responsible for satisfaction of all applicable IRS standards concerning reporting of income and payments to Independent Contractors' subcontractors and/or employees, if any. The exceptions to payments made by the District and/or Independent Contractor listed in Texas Government Code § 2251.002 shall apply to this Agreement. Invoices received more than 60 days after the date the work was performed will not be paid by the District.

Failure to send the invoices to the Accounts Payable Department will delay payment. Independent Contractor certifies that no work has been performed before the Effective Date of this Agreement (as hereinafter defined). Invoices submitted by Independent Contractor for work performed prior to the Effective Date of the Agreement (as hereinafter defined) may not be honored by the District, in the District's sole discretion. The District may purchase services from the Independent Contractor through the District's Purchasing Manager using the District's purchase order process; this Agreement shall govern all conditions and service terms between Independent Contractor and the District. In the event that Independent Contractor's personnel begin work before Independent Contractor receives a valid purchase order and/or the signing of this Agreement, Independent Contractor agrees that the District is not liable for payment of such services rendered.

In addition to all other rights and remedies that the District may have, the District shall have the right to setoff, against any and all amounts due to Independent Contractor by the District, whether due under this Agreement or any other agreement between the District (including any division of the District) and Independent Contractor, any sums to which the District is entitled under this Agreement, as determined by the District in its sole discretion, including, without limitation, sums due by Independent Contractor to the District as a result of indemnification obligations and/or warranty claims.

8. ***Independent Contractor Status.*** It is the intention of the parties that Independent Contractor be an independent contractor and not an employee, agent, joint venturer, or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and either Independent Contractor or any employee or agent of Independent Contractor, nor shall anything in this Agreement be construed as creating or establishing a joint venture or business partnership between the District and either Independent Contractor or any employee or agent of Independent Contractor. Independent Contractor is not entitled to participate in any pension plans, bonus, stock, or similar benefits that the District provides for its employees. The District and Independent Contractor agree that neither Independent Contractor nor Independent Contractor's subcontractors, agents, or employees shall be covered under any District insurance policy, including but not limited to the District's liability, property and casualty, or workers' compensation insurance policies. Independent Contractor agrees that the District has no responsibility

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for any conduct of any of Independent Contractor's staff, participants, visitors, employees, agents, representatives, personnel, contractors, subcontractors, invitees, or licensees. Independent Contractor assumes full responsibility for the actions of its staff, participants, visitors, employees, agents, representatives, personnel, contractors, subcontractors, invitees, and licensees and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholdings), workers' compensation, disability benefits, and like requirements and obligations. As an independent contractor, Independent Contractor will be solely responsible for determining the means and methods for performing the Services and shall furnish all tools, materials, transportation, and personal incidentals necessary in the performance of the Services. Independent Contractor shall be responsible for any and all applicable social security and personal income taxes that may become due as a result of any payments made by the District hereunder and Independent Contractor shall indemnify and hold the District harmless in this regard. Independent Contractor will be free to contract for similar services to be performed for other entities while Independent Contractor is under contract with the District.

9. **Compliance with Applicable Law and District Rules, Regulations, and Requirements.** Independent Contractor agrees to comply and certifies compliance with all federal, state, and local laws, acts, rules, regulations, and ordinances, as applicable, including, but not limited to the Education Department General Administrative Regulations ("EDGAR"), 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81. If applicable, Independent Contractor certifies compliance with all provisions, laws, acts, regulations, rules, and ordinances as detailed in the District's Certifications form, "Required Contract Provisions for Non-Federal Entity Contracts under Federal Awards – Appendix II to 2 C.F.R. Part 200," which is incorporated by reference herein. Independent Contractor further certifies compliance with all applicable provisions, laws, acts, regulations, rules, and ordinances, including but not limited to those referenced in the District's Vendor Packet completed by Independent Contractor, which is incorporated by reference herein. Further, Independent Contractor agrees to and shall comply with all rules, regulations, and requirements of the District and the school campus(es) on which any Services are to be performed.

10. **Subcontractors.** If the District gives written permission for Independent Contractor to subcontract any of the Services, Independent Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Independent Contractor shall require each subcontractor to maintain and to furnish Independent Contractor with satisfactory evidence of Workers Compensation, Employer's Liability, and such other forms and amounts of insurance which Independent Contractor deems reasonably adequate. Independent Contractor shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the Services.

11. **Liability.** Independent Contractor shall take all precautions necessary for the safety of and prevention of damage to the District's property and for the safety of and prevention of injury to persons, including the District's employees and students, Independent Contractor's employees, and third parties (including but not limited to guests, invitees, and the like), on the District's property. All Services are performed entirely at Independent Contractor's risk.

12. **INDEMNITY. TO THE FULLEST EXTENT PERMITTED BY LAW, INDEPENDENT CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE DISTRICT, ITS TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, EXPENSE (INCLUDING REASONABLE LITIGATION COSTS AND ATTORNEY'S FEES), AND CLAIMS FOR INJURY TO OR DEATH OF ANY PERSON, OR INJURY OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, PERFORMANCE UNDER THIS AGREEMENT (COLLECTIVELY, "CLAIM"), INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE DISTRICT, WHETHER OR NOT THE CLAIM ARISES FROM THE NEGLIGENCE, WILLFUL ACT, BREACH OF CONTRACT, OR VIOLATION OF LAW BY INDEPENDENT CONTRACTOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, OR SUBCONTRACTORS.**

Insurance. Unless the District's Purchasing Manager agrees in writing to waive the following requirements, Independent Contractor shall comply with all of the District's insurance requirements. Independent Contractor shall carry, for the duration of this Agreement, the following insurance coverages: Workers' Compensation (statutory) and Employer's Liability (\$1,000,000 per accident); Automobile Liability: Bodily Injury & Property Damage for all owned, non-owned vehicles and hired vehicles (\$1,000,000 combined single limit); Commercial General Liability (\$1,000,000 each occurrence) and with insurer(s) acceptable to the District. Independent Contractor shall maintain insurance coverage in the amounts specified by

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the District. The District shall be named as an additional insured on such insurance policies. Independent Contractor shall cause the insurance policies to: provide that any losses will be payable notwithstanding any act or negligence of the District or any other person; provide that the insurer will have no right of subrogation against the District; and be reasonably satisfactory to the District in all other respects. Certificates of Insurance on the current ACORD form shall be issued to the District showing all required insurance coverage prior to the start of work. Independent Contractor shall assure that the District will receive written notice of at least thirty (30) days in advance of the effective dates of any reduction, modification, cancellation, or termination of such insurance policies.

13. **Warranties.** All goods and/or services provided by Independent Contractor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of the District's acceptance of the product and/or service or payment of the applicable invoice. Independent Contractor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by the District. In addition, Independent Contractor warrants that all goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Independent Contractor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the procurement solicitation.

14. **Educational Records.** Independent Contractor agrees that Independent Contractor and its employees, agents, and/or representatives may receive access to student information for certain students of the District, pursuant to this Agreement. Independent Contractor shall secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations, including but not limited to all privacy laws. Independent Contractor understands that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information, and Independent Contractor agrees to abide by FERPA rules and regulations, as applicable. Pursuant to the FERPA, Independent Contractor must protect the confidentiality of District student records and shall not release any information without written consent from the District student's parent/guardian or eligible student unless required to do so by applicable law. Independent Contractor further acknowledges that to the extent Independent Contractor, including but not limited to, Independent Contractor's staff, employees, and/or representatives, receives confidential District student information during the performance of duties under this Agreement, Independent Contractor is considered a "school official" in accordance with FERPA and shall not disclose confidential student information or education records except as otherwise permitted by applicable law. Independent Contractor shall require its employees and other agents to execute written agreements requiring that such information be kept confidential. The Parties agree to enter into a Data-Sharing Addendum in the event confidential student information is to be shared, as required by applicable law. Independent Contractor and its employees/ representatives shall at all times abide by applicable laws, including FERPA and the Health Insurance Portability and Accountability Act (HIPAA). Independent Contractor shall immediately provide notice to the District of any violation of the terms of this paragraph.

Independent Contractor agrees that the District's student data, including but not limited to documents and information concerning any individual student (hereinafter "District student data"), is to be held in strictest confidence and assures that procedures are in place for safeguarding, monitoring, and protecting the confidentiality of District student data. Independent Contractor shall keep all media containing District student data in a secure area. In addition, Independent Contractor agrees that any data sets or output reports generated by its employees, agents, and/or representatives with District student data are confidential. Independent Contractor shall not disclose to any unauthorized person any data sets or reports with District student data. Independent Contractor agrees to monitor and be responsible for any access to District student data by tracking access through the use of password(s). Independent Contractor shall provide the District immediate notice of any security and/or data breaches and shall comply with any and all requirements to notify users of such security and/or data breaches as required by federal law or the laws of the state of Texas. The District or its designee shall have access to all education records and other documents in the possession of Independent Contractor concerning students served by the District for purposes of monitoring student progress, conducting evaluations, and making reports.

Upon termination of this Agreement for any reason, Independent Contractor shall return to the District within ten (10) calendar days all District student data delivered to or collected by the Independent Contractor during the course of this

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Agreement, together with the Independent Contractor's written certification that all copies of the District student data stored by the Independent Contractor or in the Independent Contractor's possession (including but not limited to on servers, backup servers, backup media, or other media including paper copies) have been returned to the District, and/or permanently erased or destroyed using industry best practices to assure complete destruction.

Independent Contractor shall be responsible for ensuring compliance with the obligations of this section by each of its employees, agents, representatives, and subcontractors providing services pursuant to this Agreement, including but not limited to informing those persons and entities of these obligations and exercising adequate supervision and oversight over said persons and entities to ensure their compliance. Independent Contractor shall be solely responsible for any breach of the obligations of this section by any of its employees, agents, representatives, or subcontractors.

15. **Confidential Data of the District.** In the course of performing duties under this Agreement, Independent Contractor may view, obtain, or have access to financial, accounting, statistical, personnel, and other information of a confidential nature concerning students and schools being served by the District and employees of the District. All such information is confidential and shall not be disclosed, directly or indirectly, to any person other than authorized officials of the District, either during the Term of this Agreement or after such Term.

Independent Contractor acknowledges that the District would be irreparably injured if Independent Contractor were to disclose such information to third parties not entitled to receive such information or to misappropriate such confidential information for Independent Contractor's own purposes or benefit and that money damages would not compensate the District for such irreparable injury.

16. **Records Requests.** The Parties acknowledge that the District is obligated to strictly comply with the Texas Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon the written request of the District, Independent Contractor will promptly provide specified contracting information exchanged or created under this Agreement. Independent Contractor waives any claim against and releases from liability the District, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by either Party and determined by the District, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code.

Independent Contractor shall immediately notify the District if Independent Contractor receives from any third-party a request for information (including, but not limited to, a subpoena), which pertains to the documentation and records maintained by Independent Contractor on behalf of the District pursuant to this Agreement. Independent Contractor shall provide a copy of such request to the District, unless otherwise prohibited by law.

17. **General.**

a. **Termination.** Either party may terminate this Agreement for any reason, with or without cause, by giving thirty (30) calendar days' written notice to the other party. In the event of such early termination, the District will make payment only for services rendered through the effective date of the Agreement's termination. The District will be responsible for payment for only those Services that have been accepted by the District up to the termination date. The District is entitled to a pro-rata refund for any Services for which the District has paid but which have not yet been provided by Independent Contractor or accepted by the District. Upon breach of this Agreement by the District, Independent Contractor may terminate this Agreement by giving thirty (30) days' advance written notice to the District, with the District having the right to cure the breach within such notice period. The District may, by written notice, immediately terminate this Agreement if Independent Contractor has defaulted in whole or in part, refuses or fails to comply with the provisions of this Agreement, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to perform the Services within the same time period specified or any written extension thereof. In such event, the District may obtain comparable services elsewhere and either deduct the costs of obtaining such services from any amount owed Independent Contractor or Independent Contractor shall reimburse the District for such costs

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incurred by the District. In the event this Agreement is terminated because of a violation or breach of the Agreement's terms by the Independent Contractor, the District shall be entitled to all administrative, contractual, and legal remedies, including sanctions and penalties.

- b. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.
- c. Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
- d. Authorized Signatory.** By signing this Agreement, the undersigned representative for Independent Contractor represents and warrants that s/he has authority to enter into this Agreement on behalf of Independent Contractor.
- e. No Waiver of Immunity.** The execution of this Agreement and the performance by the District of any of its obligations hereunder do not, and are not intended to, waive or relinquish, and the District shall not waive or relinquish, any governmental, sovereign immunity or defense from or to liability or prosecution available to the District, its trustees, officers, employees, or agents under federal or Texas laws.
- f. No Waiver of Breach.** No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.
- g. Non-Discrimination.** Independent Contractor will not discriminate because of race, color, religion, national origin, sex, age, disability, or any other characteristic protected under applicable federal, state, or local laws.
- h. Entire Agreement.** This Agreement, including any attached and incorporated addenda, exhibits, attachments, and documents/forms; Independent Contractor's proposal submitted in response to the District's request for quotes; and the Independent Contractor's completed District Vendor Packet (including all certifications therein) contain the entire agreement of the parties relative to the purpose(s) of this Agreement and supersede any other representations, agreements, arrangements, negotiations, or understandings, oral or written, between the parties to this Agreement. In the event of a conflict between or among the contract documents, the following hierarchy shall prevail: (1) the terms and conditions of this Agreement; (2) addenda, exhibits, attachments, and documents/forms attached to this Agreement; (3) the Independent Contractor's completed District Vendor Packet; (4) the Independent Contractor's proposal. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, Independent Contractor contracts, Independent Contractor terms of use, or similar commercial documents relating hereto and which may be issued by Independent Contractor after the Effective Date of this Agreement (as hereinafter defined).
- i. No Third-Party Beneficiaries.** Nothing in this Agreement shall be deemed or construed to create any third-party beneficiaries or otherwise give any third party any claim or right of action against any party to this Agreement.
- j. Changes and Amendments.** During the Term of the Agreement, the District reserves the right to make changes to the Services the Independent Contractor is required to provide pursuant to this Agreement. This Agreement may be amended only by the mutual agreement of the parties, in writing to be attached to and incorporated in this Agreement.
- k. Notice.** Any notice provided under the terms of this Agreement by either party to the other shall be in writing and may be effected by certified mail, return receipt requested. Notice to either party shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Each party may change the address at which notice is to be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.
- l. Attorneys' Fees.** The prevailing party in any adjudication relating to or arising out of this Agreement shall be awarded all reasonable and necessary attorneys' fees and costs.
- m. Non-appropriation of Funds.** The Term of this Agreement is a commitment of the District's current revenue only. Notwithstanding anything to the contrary in this Agreement, the District is obligated to make payments only as approved each year by the District's Board of Trustees. The District's Board of Trustees retains the

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right to terminate the Agreement at the expiration of each budget period of the District. To the extent that the District will use federal grant funds to fulfill its obligations under this Agreement, Independent Contractor acknowledges that federal funds will be used to pay for all or a portion of funds due under this Agreement and that this Agreement is only effective upon receipt of the Notice of Grant Award (“NOGA”) by the District from the awarding agency. As such, if the District does not receive sufficient funding for the services provided in this Agreement, the District may terminate this Agreement without penalty or further obligation to Independent Contractor, at any time upon written notice to Independent Contractor.

- n. *Criminal History Certification.*** Independent Contractor shall complete the “Ch. 22 Criminal History Records Contractor Certification: Contractor/Subcontractor Employees” form regarding the criminal history of covered employees, which is incorporated by reference herein. Noncompliance or misrepresentation regarding this certification may be grounds for termination of this Agreement.
- o. *Governing Law and Venue.*** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its conflicts of laws provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of or relating to this Agreement shall be a court of competent jurisdiction in Jefferson County, Texas.
- p. *Assignment.*** Neither this Agreement nor any duties or obligations under it shall be assignable by Independent Contractor without the prior written acknowledgement and authorization of the District.
- q. *Non-Exclusivity.*** Nothing in this Agreement may be construed to imply that Independent Contractor has the exclusive right to provide the District Services. During the Term of this Agreement, the District reserves the right to use all available resources to procure other services as needed and doing so will not violate any rights of Independent Contractor. In addition, nothing in this Agreement may be construed to require that the District purchase any specific amount, quantity, or quota of services from Independent Contractor.
- r. *Performance.*** Independent Contractor represents and warrants that Independent Contractor has the experience, qualifications, licenses, and certifications required to provide the Services. Further, Independent Contractor agrees that Independent Contractor’s Services will be performed with reasonable care, skill, judgment, and experience in a professional business-like manner, with no direct supervision from the District. If Independent Contractor is unable to complete the work in this manner based on the mutually agreed upon timeline, Independent Contractor shall notify the District’s Purchasing Manager in writing.
- s. *Intellectual Property.*** Independent Contractor represents and warrants that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement.
- t. *Ownership of Work Product.*** All work product, including any concepts, products, software, research, reports, studies, data, photographs, negatives, or other documents, drawings or materials prepared by Independent Contractor in the performance of its obligations under this Agreement will be deemed works for hire and the exclusive property of the District, the Texas Education Agency, the State of Texas, and/or the federal government, as applicable. Independent Contractor shall deliver all such materials to the District upon completion, termination, or cancellation of this Agreement. Any programs, data, or other materials furnished by the District for use by Independent Contractor in connection with the Services performed under this Agreement will remain the District’s property. Any pre-existing programs, data, or other materials furnished and owned by Independent Contractor for use by Independent Contractor in connection with the Services performed under this Agreement will remain Independent Contractor’s property.
- u. *Professional Services.*** This Agreement (check applicable box) is / is not for professional services and governed by the Professional Services Procurement Act, TEX. GOV’T CODE Chp. 2254. Independent Contractor represents and warrants that Independent Contractor has demonstrated competence and possesses qualifications to perform the Services and is performing the Services for a fair and reasonable price. Independent Contractor further represents and warrants that the professional fees under the Agreement do not exceed any maximum provided by law.
- v. *Conflict of Interest.*** During the Term of Independent Contractor’s service to the District, Independent Contractor shall not, directly or indirectly, whether for Independent Contractor’s own account or for or with any other person or entity whatsoever, employ, solicit, or endeavor to entice away any person who is employed by the District.
- w. *Force Majeure.*** The parties to this Agreement may be excused from performance hereunder during the time and to the extent that they are prevented from performance due to an act of God, fire, strike or lockout, when satisfactory evidence thereof is presented to the other party and provided that such non-performance is not due

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to the fault of the non-performing party. Due to the current and ongoing COVID-19 pandemic, the safety and health of all involved are of the utmost concern to the parties. As such, the parties may mutually agree, in writing, to: conduct any in-person activities contemplated by this Agreement virtually, reschedule any such activities, and/or issue a refund for activities that are not able to be rescheduled.

- x. **Indebtedness.** Independent Contractor represents that to the best of its knowledge it is not indebted to the District. Indebtedness to the District may be grounds for termination of this Agreement.
- y. **Non-Collusion.** The undersigned affirms that Independent Contractor has not prepared its submission in collusion with any other company, corporation, firm, partnership or individual, and that the contents of Independent Contractor’s submission as to prices, terms or conditions of said submission have not been communicated by the undersigned nor by any employee or agent of Independent Contractor to any other person engaged in this type of business prior to the official opening of Independent Contractor’s submission.

In witness whereof, the District and Independent Contractor have executed this Agreement to be effective as of the date of the last signature below (“Effective Date”).

Notice to Independent Contractor: Any change(s) made to the provisions above will nullify this Agreement.

Agreed to by Independent Contractor: _____

Date: _____ By: _____

Printed Name: _____

Title: _____

Address: _____

Agreed to by the District: PORT ARTHUR INDEPENDENT SCHOOL DISTRICT _____

Date: _____ By: _____
Requestor (If using Special Revenue Funds, approval must be obtained before any approvals below)

Date: _____ By: _____
Administrator with Signature Authority (School and Department Budgets Only)

Date: _____ By: _____
Asst. Superintendent

Date: _____ By: _____
Comptroller

Date: _____ By: _____
Superintendent

FINANCIAL CODING – PORT ARTHUR ISD

Purchase Order Number: _____

Fund	Function	Object	Sub-Obj	Org	Fisc	PIC	Local Opt Codes 3,4,5

Special Revenue? Yes No

Grant Manager: _____

This box is for PAISD personnel only and should not be changed by Independent Contractor.

Ch. 22 Criminal History Records Contractor Certification: Contractor/Subcontractor Employees

Background: Texas Education Code Chapter 22 requires that criminal history records be obtained regarding covered employees of entities that contract with school districts (“Contractors”) and entities that contract with school district contractors (“Subcontractors”). Covered employees with disqualifying criminal histories are prohibited from serving at a school district. Contractors shall (1) complete this form certifying compliance with the requirements of Texas Education Code Chapter 22 to PAISD; and (2) provide a copy of this form to each subcontractor for completion certifying compliance with the requirements of Texas Education Code Chapter 22 to PAISD and Contractor.

Criminal history records will be obtained by either the Contractor/Subcontractor or PAISD, as follows:

- (1) **Contractor/Subcontractor:** Pursuant to guidance from the Texas Education Agency, the only contractors/subcontractors who will be granted access to fingerprint criminal history are those who qualify for access under the National Child Protection Act (NCPA), specifically, those contractors/subcontractors who provide “care or care placement services” and are based in Texas. All entities qualifying for access under the NCPA are required to obtain their covered employees’ criminal histories, certify compliance to PAISD (and, in the case of a Subcontractor, certify compliance to Contractor), and obtain similar certifications from their subcontractors. For more information or to set up an account, a contractor/subcontractor should contact the Texas Department of Public Safety’s Crime Records Service at 512.424.2474.
- (2) **PAISD:** All entities who do not qualify for access to fingerprint criminal history under the NCPA (in other words, all contractors/subcontractors who do not provide “care or care placement services” or are not based in Texas) are required to submit the necessary information listed below regarding their covered employees, so that PAISD may obtain those employees’ criminal histories, as applicable. **Contractor/Subcontractor is responsible for the payment of all fingerprinting costs and agrees to reimburse PAISD for such costs; in the event Contractor/Subcontractor fails to reimburse PAISD for the costs of fingerprinting Contractor/Subcontractor employees, Contractor agrees that PAISD may deduct such costs from any payment due and owing by PAISD to Contractor.**

Definitions:

Covered employees: Employees of a contractor/subcontractor who have or will have continuing duties related to the service to be performed at a school district and have or will have direct contact with students. PAISD will be the final arbiter of what constitutes *continuing duties* and *direct contact* with students.

Continuing duties related to contracted services: Work duties that are performed pursuant to a contract to provide services to a school entity on a regular, repeated basis rather than infrequently or one-time only. *See* 19 TEX. ADMIN. CODE §153.1101(2).

Direct contact with students: The contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students. *See* 19 TEX. ADMIN. CODE §153.1101(7).

Public Works Exception to Covered Employees: Covered employees do not include employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work if: (1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Texas Education Code Section 46.001; (2) the employee’s duties will be completed more than seven (7) days before a new instructional facility will be used for instruction; or (3) for an existing instructional facility, the work area contains sanitary facilities separated from all areas used by students by a fence at least six (6) feet high, and the Contractor adopts, informs employees of, and enforces a policy prohibiting employees and any subcontractor’s employees from interacting with students or entering areas used by students.

Disqualifying criminal history:

- For employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work: (1) a conviction or other criminal history information designated by PAISD; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.08341(d), that is: if at the time of the offense, the victim was under 18 or was enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b).
- For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by PAISD; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b).

Types of Criminal History Record Information:

- For employees hired by Contractor/Subcontractor before January 1, 2008—Any law enforcement or criminal justice agency.
- For employees hired by Contractor/Subcontractor on or after January 1, 2008—National criminal history information from the Texas Department of Public Safety criminal history clearinghouse.

On behalf of _____ (“Contractor/Subcontractor”), I, the undersigned authorized signatory for Contractor/Subcontractor, certify to Port Arthur Independent School District (“PAISD”) (and, in the case of a Subcontractor, certify to Contractor and PAISD) that [checkone]:

None of the employees of Contractor/Subcontractor are *covered employees*, as defined above. If this box is checked, I further certify that Contractor/Subcontractor has taken precautions or imposed conditions to ensure that its employees will not become *covered employees*. Contractor/Subcontractor will maintain these precautions or conditions throughout the time the contracted services are provided. If PAISD, in its sole discretion, determines that employees of Contractor/Subcontractor are *covered employees*, as defined above, Contractor/Subcontractor will provide PAISD with the name, date of birth, and any other requested information of such covered employees so that PAISD may obtain criminal history record information on the covered employees, upon request of PAISD.

Or

Some or all of the employees of Contractor/Subcontractor are *covered employees*, and Contractor/ Subcontractor qualifies for access to fingerprint criminal history under the National Child Protection Act. If this box is checked, I further certify that:

- (1) Contractor/Subcontractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
- (2) If Contractor/Subcontractor receives information that a covered employee subsequently has a reported criminal history, Contractor/Subcontractor will immediately remove the covered employee from contract duties and notify PAISD in writing within 3 business days.
- (3) Upon request, Contractor/Subcontractor will provide PAISD with the name, date of birth, and any other requested information of covered employees so that PAISD may obtain criminal history record information on the covered employees.

Or

Some or all of the employees of Contractor/Subcontractor are *covered employees*, and Contractor/Subcontractor does not qualify for access to fingerprint criminal history under the National Child Protection Act. If this box is checked, I further certify that:

- (1) For all covered employees hired by Contractor/Subcontractor before January 1, 2008, Contractor/Subcontractor has obtained all required criminal history record information. None of the covered employees has a disqualifying criminal history. If Contractor/Subcontractor receives information

that a covered employee subsequently has a reported criminal history, Contractor/Subcontractor will immediately remove the covered employee from contract duties and notify PAISD in writing within 3 business days. Upon request, Contractor/Subcontractor will provide PAISD with the name, date of birth, and any other requested information of covered employees so that PAISD may obtain criminal history record information on the covered employees.

- (2) For each covered employee hired by Contractor/Subcontractor on or after January 1, 2008, Contractor/Subcontractor has attached a separate page(s) listing the following information regarding each covered employee, so that PAISD may obtain the covered employees' criminal history record information: (a) Full name (first, middle, and last); and (b) Date of birth.
- (3) Contractor/Subcontractor shall provide the attached "Texas Fingerprint Service Code Form" document to all covered employees and ensure that they schedule fingerprinting appointments in a timely manner. Any covered employee whose criminal history record information is not received by PAISD at least ten (10) PAISD business days prior to the start of the services to be performed by Contractor/Subcontractor at PAISD is subject to exclusion from service, in PAISD's sole discretion, until his or her criminal history record information can be obtained and reviewed by PAISD. **Contractor/Subcontractor is responsible for the payment of all fingerprinting costs.** In accordance with the Texas Education Agency guidance, because Contractor/Subcontractor does not qualify for access to fingerprint criminal history under the NCPA, it will not be permitted to view the criminal history record information from DPS.
- (4) Contractor/Subcontractor agrees that PAISD will review each covered employee's criminal history record information, together with the employee's qualifications, background, and experience, based on information gathered by PAISD through the procurement and/or contracting processes, to determine, in PAISD's sole discretion, whether any covered employee(s) should be prohibited from serving at PAISD. PAISD will notify Contractor/Subcontractor of its determination.
- (5) If PAISD at any time receives information that a covered employee subsequently has a reported disqualifying criminal history or should be prohibited from serving at PAISD, in PAISD's sole discretion, for any other reason, including, but not limited to, the employee's qualifications, background, and experience, based on information gathered by PAISD through the procurement and/or contracting processes, PAISD will notify Contractor/Subcontractor of its determination. Contractor/Subcontractor will immediately remove the covered employee from contract duties.

If PAISD, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee's criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by PAISD through the procurement and/or contracting processes, Contractor/Subcontractor agrees to discontinue using that covered employee to provide services at PAISD.

I also certify to PAISD (and, in the case of a Subcontractor, certify to Contractor and PAISD) on behalf of Contractor/Subcontractor that Contractor/Subcontractor has required its subcontractors to comply with Texas Education Code, Chapter 22 and obtained certifications from its subcontractors of such compliance. Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature

Title

Date

*** *Insert PAISD's "Texas Fingerprint Service Code Form"* ***



IdentoGO®

Texas Fingerprint Service Code Form

To schedule your ten-minute fingerprint appointment, simply visit <https://uenroll.identogo.com> and enter the following Service Code

When prompted, please provide the following District ORI

Criminal History Check Authorization

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Privacy Act of 1974 (5 USC 552a). I understand my fingerprints will be searched by and against civil, criminal and latent fingerprints in the Next Generation Identification (NGI) system. I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed. If a need arises to challenge the FBI record response, you may contact the agency that submitted the information to the FBI, or you may send a written challenge request to the FBI's Criminal Justice Information Services (CJIS) Division at FBI CJIS Division, Attention: Correspondence Group, 1000 Custer Hollow Road, Clarksburg, WV 26306.



Don't have access to the Internet? You can still schedule an appointment by calling 888.467.2080