Contract Number C2023-0055

Independent Consulting Agreement
Between
Colorado Springs School District 11 ("District")
And
Air Tutors, LLC

THIS AGREEMENT is made and entered into as of February 1, 2023 by and between Colorado Springs School District 11, 1115 N. El Paso Street, Colorado Springs, CO 80903, hereinafter referred to as the "District" and Air Tutors, LLC, 2830 Sebastian Lane, Stockton, CA 95212 hereinafter referred to as the "Provider." This contract agreement covers services starting February 1, 2023 and to be completed no later than June 30, 2023 for the initial period.

BACKGROUND: Colorado Springs School District 11 services approximately 23,000 students and employs approximately 3,300 full and part-time employees, both instructional and operations. The District has thirty-four elementary schools, ten middle schools (grades 6-8), four traditional high schools, one consolidated alternative/early colleges/vocational campus, and six District-authorized charter schools in their portfolio.

WHEREAS, the District is in need of math tutoring services on an urgent basis due to learning loss from the pandemic. This is evident through the district-wide STAR-Renaissance assessment and can be addressed through this intervention based on national and vendor specific data demonstrating the effectiveness of addressing student learning loss through these services.

WHEREAS, the District 11 is committed to the success of all students and is implementing high dosage tutoring in mathematics to ensure gains in math proficiency for students grades 4 and 5 and 6 - 8 scoring at Level II and III on the STAR Renaissance district benchmark test. This service will support improving student performance.

WHEREAS, Air Tutor, LLC is determined based on market research and reference checks to be the best company to provide this service to the District and agrees to perform and carryout the services in a good and professional manner as outlined in this agreement.

THEREFORE: The parties agree as follows:

I. Type and Term of Agreement:
Outcomes Based Contract (OBC)

Air Tutors is entering into an Outcomes Based Contract with the District, wherein 50% of the overall contract value will be contingent on meeting the agreed-upon student outcomes as measured by adequate or exceeding growth 50-65 and >65 and projected percentile rank of 70 or greater for 4th grade and 71 or greater for 5th grade on the end of year STAR-Renaissance assessment, reference *Attachment A-Outcomes Based Contract Rate Card Payment Schedule*.

Term:
The Initial term of the Contract is February 1, 2023 – June 30, 2023

This Agreement has one (4) option terms; if all options below are exercised, the Agreement end date will be June 30, 2027.

Initial Period: February 1, 2023 – June 30, 2023
Option Year 1: September 25, 2023 – June 30, 2024
Option Year 2: August 1, 2024 – June 30, 2025
Option Year 3: August 1, 2025 – June 30, 2026
Option Year 4: August 1, 2026 – June 30, 2027

The District shall have the right to extend the Term of this Agreement up to one (4) additional option years, upon presenting the Provider with written notice of the District's election to extend 30 days prior to the expiration date.

Any extension of this Agreement is subject to availability and appropriation of funds and District 11 Board of Education approval, when required. Extensions are not guaranteed beyond the initial period of performance. The Contracting Officer's Technical Representative (COTR) will provide extension authority to the Contracting Officer (CO) as soon as it is known that funding and approvals are in place.

II. Outcomes-Based Contracting Definitions

The Outcomes-Based Contracting terms below will be referenced throughout this contract.

Payment Outcomes: Indicators of student success that are *tied to payment.*

Process Outcomes: Indicators of student success that are used to inform ongoing learning and continuous improvement but are *not tied to payment.*

Base Payment: The maximum contract amounts available for minimum service delivery.

Contingent Outcomes Payment: The maximum contract amount that will be available, contingent upon payment outcomes achievement.

Price per Outcome: The amount that will be paid *per student* for each payment outcome achieved.

Outcome Payment Cap: The maximum possible amount paid for each achieved payment outcome in aggregate.

III. Scope of Services:
District 11 is committed to the success of all students and is implementing high dosage tutoring in mathematics to ensure gains in math proficiency for students grades 4-5 and 6-8 scoring at Level II and III on the STAR Renaissance district benchmark test. This service will support improving student performance for up to 510 students for the initial term. The math tutoring services are needed on an urgent basis due to learning loss from the pandemic. This is evident through the district-wide STAR-Renaissance assessment and can be addressed through this intervention based on national data demonstrating the effectiveness of addressing student learning loss through high dosage, high impact virtual tutoring services.

IV. Provider Shall Perform the Following Services:
Air Tutors will create small online learning communities throughout the District that are designed to accelerate learning through a highly innovative small-group, high-dosage tutoring program. Using

District provided student academic histories, the goal of this partnership is to fill in the gaps of student proficiencies, move students to grade level, and bring students beyond grade level content as determined by student end-of-year adaptive diagnostic scores. Groups will be meticulously tailored by placing students together based on proficiencies, personalities, and needs. As much as possible, students will be grouped together based on their enrolled school site, teacher, classroom, and shared language proficiencies.

Air Tutors will provide special attention to English Learning students. Reclassified Fluent English Proficient and English Learning students will be grouped together with educators that can speak their native language and that have academic expertise in the subject area of focus. Students with special needs and learning differences will be placed with educators that have a track record of boosting outcomes with their unique needs.

Teachers, Counselors, and site administrators will help increase awareness about the Air Tutors program to students and parents while also specifically recommending those that would benefit most. Air Tutors will bolster their efforts through parent and student outreach with engagement occurring in each student's native language. Air Tutors will get to know each student's unique needs, create groupings, and provide wrap-around support for parents, teachers, and administrators. Text messages, emails, and phone calls will increase student participation, and session reminders will encourage students to submit assignments to their tutors before their session starts.

Program Design:

- Number of Weeks of Tutoring Sessions: 10-12
- Number of Sessions per Week: 5
- Length of Sessions: 45-minutes
- Number of Students per group:

Air Tutors agrees that it will only provide licensed tutors.

V. Data and Reporting:

Air Tutors will host monthly check-in meetings and data review sessions with all sites in the fourth week of each month. Air Tutors will prepare attendance, behavior, and curriculum progress data by the fourth week of the month and share it with school sites and District 11 High Impact Tutoring liaisons. This will allow for an additional progress monitoring data point for participating students to inform core instruction.

Timeline for STAR Assessment Administration and Data Validation for Outcomes Based Payment

Milestone	Persons/Party Responsible	Timeline Fall 2023	Timeline Spring 2024
Sites administer MOY/EOY STAR math testing (separate testing window to accommodate week 60 sessions)	District 11 Ed Insights team and School Sites	Week of December 5-8, 2023	TBD based on start date

Data validation of MOY/EOY STAR math data	District 11 Ed Insights team	December 12, 2023	TBD based on start date
Outcomes from rate and MOY/EOY STAR math data reviewed and validated by both parties to determine outcomes-based payment	D11 Ed Insights, District 11 High Impact Tutoring liaisons, and Air Tutors	December 18, 2023	TBD based on start date
Payment administered based on rate card and validated data	District 11 Finance Office	On or about January, 2024	TBD based on start date

VI. Contingencies and Parameters for Rate Card
Outcomes-based payments outlined in the rate card are contingent upon a 70% > attendance parameter. Payment rates for students participating in the tutoring intervention with Air Tutors who do not attend 70% of the sessions or complete 60 sessions will be determined by Air Tutors and District 11.

VII. District provided Cooperation, Services, Supplies, and Equipment: District shall ensure that it complies with all reasonable requests and timelines in the provision of data or other materials required by the Provider to perform its obligations. Should the Provider be unable to serve students based on a 70% attendance rate for a total of 60 sessions effectively due to a lack of district compliance with reasonable requests, the District will be responsible for making the outcome-based payments for all students affected up to the outcomes caps articulated in the rate card. Should the District be unable to continue to ensure the attendance of specific active students despite rigorous attempts, the District and Provider may mutually agree to substitute alternative students in place of non-attending students.

VIII. Payment Provisions:

The District agrees to compensate the Provider as follows:

1. **Initial Year:** The total agreement was funded for total amount of $231,252.50 for 185 students. This amount was paid according to the provisions of the Rate Card.

2. **Option Year 1**: This total agreement is funded for a not to exceed (NTE) amount $721,632 for 534 students.

    - The full Base Payment available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. This amount will not exceed $175,000 (Fall 2023) and $169,610 (Spring 2024). This amount will be paid at a per student rate of $675 (Fall 2023 and Spring 2024) for every student who attends tutoring according to the provisions in the Rate Card. Base Payments will be made within 30 days upon receipt of an invoice and District approval that the minimum payment terms have been met during the billing period, e.g., tutoring services were delivered.
    - The invoicing will be recorded and submitted by the Provider based on the agreed upon base payment of up to $675 per student.

3. Provider shall send an invoice to *Rosa Garcia, Procurement and Contracting, Colorado Springs School District 11, 1115 N. El Paso St., Colorado Springs, CO 80903 or* emailed to rosa.garcia@d11.org.

4. The full Contingent Outcomes Payments and associated outcomes caps available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. These payments will be based on the achievement of student outcomes (see rate card in Attachment A for more details). The D11 Education Insights Team will leverage EOY STAR math data to validate outcomes achievement and provide reporting data to the vendor by approximately June 1 of each school year. The vendor will invoice D11 for the contingent payments according to the reports provided by the Education Insights team. The D11 Finance Office will administer payment based on the rate card and validated data and per the invoice provided by the vendor within 30 days of receipt. In order for the Provider to obtain an outcome payment for a student at the end of the program term, Provider must meet the following minimum service requirements for that student:
5. The student has the same tutor for a minimum of 80% of tutoring sessions.

6. The student's tutor is prepared and on time for at least 57 of the 60 sessions.

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IX. Special and General Provisions

☑ **Cyber Liability Insurance** with coverage limits of no less than $2 million, and proof of such insurance coverage to include declaration page or copy of the full insurance policy.

☑ **Workers' Compensation Insurance** to comply with Colorado Statutory Provisions. Including any required flow down, employer's liability must have limits of at least: $100,000 per accident, $100,000 disease each employee and $500,000 accident/disease policy limit.

☑ **Professional Liability Insurance** coverage part aggregate limit each occurrence $2,000,000.

☑ **Comprehensive General Liability Insurance** covering Bodily Injury of at least $1,000,000/person, $1,000,000/accident; and $1,000,000/Property Damage.

☑ **Comprehensive Automobile Liability Insurance** including coverage for all power mobile equipment used by contractor on district property, $1,000,000/person, $1,000,000/accident; and $1,000,000/Property Damage.

☑ **Certificate of Insurance** must be submitted to the District before starting work on site. Insurance Certificates must show coverage of all checked insurance requirements, must contain an endorsement naming the District as an Additional Insured and must provide coverage until final completion of the contract. If the expiration date of the insurance certificate is prior to final completion, the Contractor shall provide a new certificate of insurance prior to 30 days from the expiration of the current policy.

☑ **Multiple Year Commitment** Subject to CRS 24-103-503 entitled Multiyear Contracts, any multiple year commitment beyond the current fiscal year is subject to availability of appropriated funds in future fiscal years. If funds are not available in a fiscal year to continue the contract, the contract will be terminated at no cost to the district, upon 30 days' written notice. Upon termination, any materials, supplies, or items of equipment, which have not been fully paid for by the district will be returned to the vendor at the vendor's expense. The district will not purchase similar materials, supplies, or items of equipment during the anticipated life of the terminated contract without notification of the terminated contractor and consideration of reinstating the terminated contract.

☑ **Internet Use** It has been determined that the Provider will have access to the District Internet resources in the performance of this requirement; therefore, a "Provider's Internet Use Agreement" must be signed by each individual having access to the District Network. The completed "Provider's Internet Use Agreement," will be maintained with this agreement. Misuse or inappropriate use of the District Network will be grounds for immediate termination of the agreement.

☑ **Background Investigations and Fingerprinting** Any provider and/or partner, employee or other representative of any kind whether or not in paid status must agree to be fingerprinted and submit for a background investigation if that provider and/or partner, employee or other representative of any kind will be left alone (unsupervised) with any district student at any time during the performance of this agreement.

☑ **Colorado PERA Retiree (D-11 Dec 07)** In accordance with CRS 24-51-1101, the District will notify the Association (Colorado PERA) of any Association retiree working as a consultant/contractor to the District in an individual capacity or of any entity owned or operated by a service retiree or affiliated party. PERA Rule 11.12 C defines affiliated party to include:

(1) any person who is the named beneficiary or co-beneficiary on the PERA account of the retiree, (2) any person who is a relative of the retiree by blood or adoption to and including parents, siblings, half-siblings, children and grandchildren, (3) any person who is a relative of the retiree by marriage to and including spouse, spouse's parents, stepparents, stepchildren, stepsiblings, and spouse's siblings, and (4) any person or entity with whom the retiree has an agreement to share or otherwise profit from the performance of services for a PERA employer by the retiree other than the retiree's regular salary or compensation. If as a result of an Association evaluation, it is determined by the Association that Colorado PERA withholding is required, the employer contribution rate will be paid by the District directly to Colorado PERA. The contractor shall also be responsible for submitting information directly to PERA. The required disclosure, Disclosure of Compensation for Service Provided through an Affiliated Party, and additional information for PERA retirees working after retirement can be found at www.copera.org.

☑ **Replacement by District Employee** This agreement results from a situation where the District has an urgent need to contract work that is inherently employee work, but qualified employees are not available and qualified candidates are not available to be hired to perform the work. At any time during the performance period, if the District is able to identify a current employee or able to recruit a qualified employee, this agreement will be terminated at no cost to the District.

☑ **Audit** Any labor hour, level of effort or cost reimbursement agreement may be subject to an audit. The District contracting officer, the District auditor or an independent auditor funded by the district may perform the audit.

1. GENERAL PROVISIONS

Employer-Employee Relationship The Provider is not an employee of the District and is not covered by Workers' Compensation, group life, accident or health insurance, and other benefits associated with an employer-employee relationship.

Hold and Save Harmless The Provider agrees to indemnify, save harmless, and defend the District from and against any and all claims, demands, actions, debts, liabilities, and attorney's fees arising out of, claimed on account of, or in any manner predicated on loss of or damage to the property of, and injuries to or death of any and all persons whatsoever, in any manner caused or contributed to by the Provider, his or her agents, servants, or employees. The provider further agrees to indemnify and save harmless the District from and on account of damages of any kind, which the District may suffer as the result of the acts of any Provider's agents, servants, or employees.

Licenses, Taxes, Permits, and Fees The Provider is fully cognizant that this contract is a contract for services and that an employee-employer relationship does not exist between the Provider and District. Therefore, it is the Provider's responsibility to obtain, at its own expense, all licenses and permits, and to pay all applicable taxes and fees, in the execution of the terms of this contract, including but not limited to excise tax, federal and state and local income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

Data, Documents and Computer Software or other Intellectual Property Rights All intellectual property including without limitation, databases, documents, research, as well as all reports, studies, project collected data, photographs, negatives or other documents, drawings or materials created or manufactured by the Contractor (deliverables) in the performance of its obligations under this contract, shall be the exclusive property of the District. Unless otherwise stated, all such materials shall be delivered to the District by the Contractor upon completion of this contract. Contractor shall not use, willingly allow or cause to have such materials used for

any purpose other than the performance of the Contractor's obligations under this contract without a prior written consent of the District. All right, title and interest in and to any deliverables that are prepared or developed by or for the Contractor specifically for District in connection with Purchase(s) under this Agreement shall vest in District and such program(s) shall be deemed to be works made for hire. However, to the extent that the deliverables are not considered works for hire, the Contractor assigns to District all rights, title, and interest in and to the program(s), including right to copyrights in all copyrightable materials and in and to all patents that may be issued thereon.

Nonexclusive Agreement It is expressly understood and agreed that this Agreement does not grant to the Provider any exclusive privileges or rights and District may contract with other contractor(s) for the procurement of comparable services. The District makes no commitment for any minimum or maximum amount of purchases of services hereunder except as otherwise set forth in this Agreement.

Nondisclosure Of Confidential Information If a party to this agreement requires confidential information from the other party in the performance of this agreement, the party receiving the Confidential Information agrees as follows:
A. To maintain and use the Confidential Information only for the purposes of this Agreement and only as permitted herein. To only make copies as specifically authorized and with the same confidential or proprietary notices as are on the original.
B. To restrict access and disclosure of Confidential Information to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality according to this provision.
C. To treat Confidential Information as confidential for a period of five (5) years from the effective date of receipt.
Confidential Information shall at all times remain the property of the disclosing party. Upon request, Confidential Information shall be returned or certified destroyed to the disclosing party within thirty (30) days from termination or expiration of this Agreement.

Except as may be required by applicable law, regulations, legal or agency order, demand or process, neither party shall disclose to a third party any Confidential Information without the prior written consent of the other party. The obligations of this provision shall be satisfied by handling Confidential Information with the same degree of care which the receiving party applies to its own similar confidential information but in no event less than reasonable care.

Order Of Precedence Any inconsistency in the resulting Contract shall be resolved by giving precedence in the following order: (a) This Contract Terms and Conditions (b) Statement of Work (c) Attachments A, B and C.

Changes The Contracting Officer, at any time, by written order, may make changes in or additions to the services to be performed by this contract, issue additional instructions, require modified or additional work or services within the general scope of the contract, or vary the amount of District furnished property. If any of said changes cause any increase or decrease in the cost of, or in the time required for, performance of this contract, an equitable adjustment will be made in the contract price or term of performance, or both, and the contract will be modified in writing accordingly. Any claim by the Provider for adjustment under this clause must be asserted within thirty calendar days from the date of receipt by the Provider of the notification of changes provided, however, that the Contracting Officer, if he or she decides that the facts justify such action, may receive and act on any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the clause of this contract titled "Disputes." However, nothing in this clause excuses the Provider from proceeding with the contract as changed, and it is limited to proceeding with its appeal pursuant to the provision titled "Disputes."

Payment Rates Payment for services performed by the Provider, as set forth in this Contract, will be made at the rates prescribed hereto, upon submission by the Provider of proper invoices to the District designated herein and at the time provided for herein.

Disputes This contract is subject to the Contract Disputes under Colorado Revised Statutes (CRS) Title 24 Article 109; but, only to the extent provisions from such statutes are specifically cited herein and within the District Contract Regulation (DAR) Part 7. Except as provided in the CRS, all disputes arising under or relating to this contract shall be resolved under this clause. *"Claim,"* as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides.

for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim until certified as required by this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six months after accrual of the claim to the Contracting Officer for a written decision. A claim by the District against the Contractor shall be subject to a written decision by the Contracting Officer. The contractor shall provide the certification specified in this clause when submitting any claim exceeding $50,000.

The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the District is liable; and that I am duly authorized to certify the claim on behalf of the Contractor." The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim. For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made. The Contracting Officer's decision shall be final unless the Contractor appeals to the Head of the Purchasing Agency or Executive Director, or files a suit as provided in the CRS. As defined in CRS 24-101-301: The Head of the Purchasing Agency is the Deputy Superintendent/Chief Financial Officer; The Executive Director is the Superintendent.

If the claim by the Contractor is submitted to the Contracting Officer or a claim by the District is presented to the Contractor, the parties agree first to attempt to resolve the dispute through alternative dispute resolution (ADR), as defined in DAR 7.201. The parties agree not to discuss any dispute(s) with the press/media during the resolution process. Interest will be computed in accordance with CRS 24-109-301, except interest shall be calculated at a rate of eight percent. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

Immunities The District retains all of its rights and immunities under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. This Agreement shall not be construed to create any right or benefit for any person who is not a party to this Agreement. The relationship between the District and the Provider is contractual. It is not intended in any way to create a legal agency, partnership, joint venture or employment relationship. The Provider shall

at all times maintain its independent status and both parties acknowledge that neither is an agent, partner, joint venture, or employee of the other for any purpose.

Termination for Convenience The District may terminate performance of this contract in whole, or in part if the District determines that a termination is in the District's interest with written notice. The Contractor, after receipt of a Notice of Termination, shall stop work on the cancellation date specified in the Notice. The District will conduct an audit of the Contractor's costs to determine reasonable costs expended to date of cancellation, or the District may determine the contractor's cost based on the schedule of values or exact cost of any work performed. The contractor will not be reimbursed for any anticipated profit. If this agreement is terminated by either party, the District shall pay for the value of all tutoring services rendered up through the date of termination.

Termination for Cause If either party is in default under this contract, it shall have an opportunity to cure the default within 30 days after it is given written notice of default by the other party, specifying the nature of the default. If the default is not cured within 30 days after notice of default has been given; the non-defaulting party shall have the right, in addition to all other remedies at law or equity, to immediately terminate this contract. Failure to complain of any action, non-action or default under this Agreement shall not constitute a waiver of any of the parties' rights hereunder.

The District may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the District, upon request, with adequate assurances of future performance. In the event of termination for cause, the District shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the District for any and all rights and remedies provided by law. If it is determined that the District improperly terminated this contract by default, such termination shall be deemed a termination for convenience.

Force Majeure District may delay delivery, performance or acceptance occasioned by causes beyond its control. Providers shall hold such goods or delay performance at the direction of the District and shall deliver goods or perform services when the cause affecting the delay has been removed. The District shall be responsible only for Provider's direct additional costs in holding the goods or delaying performance of this agreement at District's request. Causes beyond the District's control shall include government action or failure of the government to act where such action is required, strike or labor disputes, fire or unusually severe weather.

Inspection and Acceptance The District's Requirement office through the Contracting Officer's Technical Representative (COTR) is responsible for performing inspection and acceptance of services rendered, including inspection of any records maintained by the Provider.

Execution of Contract This contract contains the entire understanding of the parties and supersedes all prior understandings, agreements, or representations by or between the parties, whether oral or written, which in any way relate to the subject matter of this agreement. The execution of this contract constitutes a representation by the Provider that to the best of the Provider's knowledge no conflict of interest exists between the District representatives and the Provider or its employees and agents.

Worker Without Authorization If Provider has any employees or subcontractors, Provider shall comply with § 8-17.5, C.R.S. regarding Worker without authorization – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:
A. Provider shall not:

(i) Knowingly employ or contract with workers without authorization to perform work under this Agreement; or
(ii) Enter into a contract with a subcontractor that fails to certify to Provider that the subcontractor shall not knowingly employ or contract with workers without authorization to perform work under this Agreement.
B. Provider has verified or attempted to verify that Provider does not employ any workers without authorization and, will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.
C. Provider will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
D. If Provider obtains actual knowledge that a subcontractor performing work under this Agreement E. knowingly employs or contracts with a worker without authorization, Provider shall: (i) Notify the subcontractor and the District within three days that Provider has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and
(ii) Terminate the subcontract with the subcontractor if within three days of receiving the notice under d(i), the subcontractor does not stop employing or contracting with workers without authorization. However, the Provider shall not terminate the contract with the subcontractor if during this three-day period the subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with a worker without authorization.
F. Provider shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.
G. If Provider violates this provision, the District may terminate the Agreement for a breach of contract. If the Agreement is terminated, the Provider shall be liable for actual and consequential damages.

Payment
All payments by the District for this contract's financial obligations shall be made by electronic fund transfer (EFT).

Method of Payment
A. All payments by the District under this contract shall be made by direct deposit using electronic funds transfer (EFT) except as provided in paragraph (B)(i). The term "EFT" refers to the funds transfer and may also include the payment information transfer. The term "Contractor" is understood to mean "Vendor" as indicated on the District 11 Direct Deposit Form
B. In the event the District is unable to release one or more payments by EFT, the Contractor agrees to either:
(i) Accept payment by check or some other mutually agreeable method of payment; or (ii) Request the District to extend payment due dates until such time as the District makes payment by EFT.

Submission of Contractor's EFT Information
A. The Contractor is required to provide the District with the information required to make payment by EFT. The Contractor shall provide this information directly to the designated payment office (see last paragraph of this section). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office.
B. EFT information supplied to the District shall be applicable only to contracts that identify the District as the payment office.

Mechanisms for EFT payment
The District may make payments directly through electronic means to the indicated financial

account provided by the vendor.

Suspension of Payment
A. The District is not required to make any payment under this contract until after receipt, by the designated District payment office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. B. If the EFT information changes after submission of correct EFT information, the District shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

Liability for Uncompleted or Erroneous Transfers
A. If an uncompleted or erroneous transfer occurs because the District used the Contractor's EFT information incorrectly, the District remains responsible for:
(i) Making a correct payment; and
(ii) Recovering any erroneously directed funds.
B. If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of District release of the EFT payment transaction instruction to the Federal Reserve System, and:
(i) If the funds are no longer under the control of the payment office, the District is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
(ii) If the funds remain under the control of the payment office, the District shall not make payment and the provisions of paragraph (d) shall apply.

EFT and Prompt Payment
A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment requirements if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

EFT and Assignment of Claims
If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) to the designated office and shall be paid by EFT in accordance with the terms provided herein. In all respects, the requirements
shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the District, is incorrect EFT information within the meaning of paragraph (d).

Liability for Change of EFT Information by Financial Agent
The District is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

Payment information
Payment information will be provided via e-mail to the designated e-mail address provided by the Contractor.

EFT information
The Contractor shall complete the required information regarding the financial institution and account and obtain the signature of an authorized agent on a District 11 Direct Deposit Form which can be obtained from the Contracting Officer of the Designated Payment Office. The completed form may be returned by mail or facsimile to the Designated Payment Office and a copy provided to the designated Contracting Officer.

Designated Payment Office
The designated payment office for this contract is:
Colorado Springs School District 11
Accounts Payable Department
1115 N El Paso Street
Colorado Springs, CO 80903

Contact: Maria McComb
Phone: 719-520-2060
E-Mail address: maria.mccomb@d11.org

The following special provisions apply only if the Agreement specifies "This purchase is funded with federal "(name of grant)" funds.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage

determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient

wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award

exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

X. IN WITNESS WHEREOFF, the undersigned agree to be bound by the terms and conditions of this agreement:

Colorado Springs School District 11:

By: _____
Rosa Garcia, Contracting Officer

Date: 10/12/2023

By: _____
Tamara Acevedo, Chief Academic Officer

Date: 10/12/2023

Air Tutors, LLC:

By: _____

Title: Founder, CEO

Print Name: Hasan Ali

Date: 10/02/2023

ATTACHMENTS

A. Outcomes Based Contract Rate Card and Payment Schedule
   1. Rate Card and Payment Schedule for Initial Year: February 1, 2023 – June 30, 2023
   2. Rate Card and Payment Schedule for Option Year 1: September 25, 2023 – June 30, 2024
B. Electronic Resources District 11 Statutory Terms and Conditions
C. Representations and Certifications submitted and signed on February 22,2023 with the original contract are here by incorporated by reference.

Attachment A
Outcomes Based Contract
Rate Card
Payment Schedule

District 11 and Air Tutors, LLC entered into an Outcomes Based Contract, wherein a significant portion (50%) of the overall contract will be contingent on the vendor meeting agreed-upon student outcomes as measured by adequate or exceeding growth 50-65 and >65 and projected percentile rank on the EOY STAR-Renaissance assessment.

Pricing December February 13, 2023 – April 12, 2023:
The rate card for this contract is available below. See below for the overall goals and payments for student achievement.

A. The full Base Payment available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. The full base payment will be no greater than $740 per student and $245,025 in total. The per student base payment will be paid for every student who is confirmed as an active participant as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions.

B. The full Contingent Outcomes Payments and associated outcomes caps available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. This amount will not exceed $245,025. Payments other than the Base Payment are collectively the "Contingent Outcomes Payments." The Contingent Outcome Payments will not exceed $245,025 in total.

C. The total Program fee paid shall not exceed the District Maximum $490,051. Because it is unlikely that all students will succeed fully in the outcomes below, the total eligible amount per student multiplied by the number of students will exceed the District Maximum. The total payment that the District will make for each outcome will be limited by its respective outcome payment cap.

Outcomes Rate Card – Spring 2023			
Outcome	Metric	Price Per Student	Outcome Payment Cap
Outcome 1: Mid-level Growth	SGP indicating typical growth (50-65) on STAR	$ 250	$ 73,508
Outcome 2: High-level Growth	SGP indicating high growth (66 and above) on STAR	$ 370	$ 73,508
Outcome 3: Project Performance	Projected Performance (by level) - PR of 70 or greater – 4th grade; PR of 71 or greater for 5th grade	$ 500	$ 98,010
Base Payment			
Base Payment	Paid on services rendered; $12.33 per session per active student.	$740	$ 245,025
Total		$ 1,860	$ 490,050

Pricing: September 25, 2023 – June 30, 2024:
The rate card for this contract is available below. See below for the overall goals and payments for student achievement.

A. The full Base Payment available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. The full base payment will be no greater than $675 per student and $175,000 (Fall 2023) and $169,610 (Spring 2024) in total. The per student base payment will be paid for every student who is confirmed as an active participant as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions.

B. The full Contingent Outcomes Payments and associated outcomes caps available will be calculated based on the number of active participants as agreed upon by the provider, school, and district within the first two weeks of tutoring sessions. This amount will not exceed $175,000 (Fall 2023) and $185,816 (Spring 2024). Payments other than the Base Payment are collectively the "Contingent Outcomes Payments." The Contingent Outcome Payments will not exceed $175,000 (Fall 2023) and $185,816 (Spring 2024) in total.

C. The total Program fee paid shall not exceed the District Maximum $350,000 (Fall 2023) and $371,632 (Spring 2024). Because it is unlikely that all students will succeed fully in the outcomes below, the total eligible amount per student multiplied by the number of students will exceed the District Maximum. The total payment that the District will make for each outcome will be limited by its respective outcome payment cap.

Math Outcomes Rate Card – Fall 2023			
Outcome	**Metric**	**Price Per Outcome**	**Outcome Payment Cap**
Outcome 1	SGP 50-65 (BOY-MOY)	$225	$52,500
Outcome 2	SGP >65 (BOY-MOY)	$338	$52,500
Outcome 3	Projected Proficiency Performance: Grade 4 at or above the 70th percentile; Grade 5 at or above 71st percentile	$450	$70,000
Outcome 4	Metric 4	$0	$0
Outcome 5	Metric 5	$0	$0
Base Payment			
Base Payment	Paid on Services Delivered	$675	$175,000
Total:		**$1,688**	**$350,000**

Outcomes Rate Card to Publish in your RFP and Contract			
Outcome	**Metric**	**Price Per Outcome**	**Outcome Payment Cap**
Outcome 1	SGP 50-65 (BOY-MOY)	$225	$55,745
Outcome 2	SGP >65 (BOY-MOY)	$338	$55,745
Outcome 3	Projected Proficiency Performance: Grade 4-8 at or above 71st percentile	$450	$74,326
Outcome 4	Metric 4	$0	$0
Outcome 5	Metric 5	$0	$0
Base Payment			
Base Payment	Paid on Services Delivered	$675	$185,816
Total:		**$1,688**	**$371,632**

Attachment B
To District Contract # C2023-0055

Non-Negotiable Electronic Resource Terms and Conditions

SUMMARY

THIS ATTACHMENT B to the District's Contract C2023-0055 is effective during the term of the referenced contract by and between the Contractor and Colorado Springs School District 11, a public-school district in the State of Colorado located at 1115 N. El Paso St., Colorado Springs, CO, 80903, hereinafter referred to as the "District." This Attachment B incorporates terms that shall apply to all contracts for the use or purchase of electronic resources (including those contracts for demonstration purposes) by the District and shall be assigned to include any additional components as may be needed throughout the referenced contract period for proper performance.

Background

The District, as a public-funded entity, is regulated by policies on Federal, State, and local levels. Thus, all contracts for services and/or products must include terms that adhere to those policies at the risk of loss of funding or other penalties as deemed appropriate by those groups.

Definition of Electronic Resource

The term "Electronic Resource" shall be used to encompass all programs, products, and services that are electronically accessed by the District to communicate information. For the purpose of this Agreement, Electronic Resource shall include the following:

1. Any software application loaded onto District, student, or teacher resources – such as systems, productivity programs, or
2. Any program, product, or service that is accessed through any means of portable data storage such as thumb drives, hard disks, CD's, and DVDs, or
3. Any program, product, or service that the District accesses at the Contractor hosted site or through a "cloud-based" environment or software as a service (SAAS);

Any of these programs, products, or services can be accessed at cost (as a purchase or as a subscription by District-authorized users) or freely distributed by the Contractor. Method of transmission does not change the definition of the term.

Purpose

The primary purpose of this Attachment is to provide contractors, vendors, and any other associated stakeholders with the terms that shall take precedence over all District and Vendor contract terms and conditions wherein product or services are purchased with public funds by the District. Policy references will be given so that all parties will be able to affirm that these terms and conditions shall not be challenged.

Thus, in accordance with the requirements, provisions, conditions, promises and obligations set forth in the referenced Contract, Contractor and the District hereby agree to the additional following clauses:

1. Order of Precedence

In case of any inconsistency, the clauses in this Attachment shall take precedence over all other contractual documents regarding the referenced contract, including District Terms and Conditions, any Statement of Work, all Vendor program terms (which includes (but is not limited to) any End User License Agreements, Privacy Policies or other vendor stipulations or click throughs for program use).

CONTRACTOR'S PROGRAM TERMS

As a public, governmental entity, regardless of any terms as may be posted in any contractor's program terms (including privacy policy, EULA etc.) now *or in future* versions of the program, and regardless of subsequent acceptance by a district user in the process of loading and/or future use of contractor's program, the terms as approved by both parties to this Agreement shall take precedence. This Agreement may be amended as approved in writing by both parties only, and only insofar as the amendment continues to follow applicable statutes. Furthermore, in case of conflicting terms between this Agreement and any of Contractor's program terms, this Agreement, as authenticated by laws governing the District, shall prevail. This clause shall override any dictate by the contractor to modify the originally approved terms in this contract.

2. Student Records

Contractors shall take all necessary precautions in the protection of the District's students' personally identifiable information. Contractors working with the District shall be familiar with, and agree to, the following Federal and State regulations:

a. **FERPA** - Federal Policy: The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. Under Federal Law 20 U.S.C. § 1232g; 34 CFR Part 99, Family Education Rights and Privacy Act (FERPA), and Board of Education Policy JRA-JRC, school officials and others acting on behalf of the District shall not share information gleaned from student records with anyone except within the context of District educational efforts. (Policy JRA-JRC may be reviewed at http://www.d11.org/BOE/Policies/Pages/SectionJ.aspx). The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA prohibits the disclosure of a student's "protected information" to a third party. All District employees, volunteers, and all Contractor staff, aides, and subcontractors or sub-consultants are to be aware that sensitive student records shall not be shared.

b. **COPPA** – Federal Policy: The Children's Online Privacy Protection Act (COPPA) is a law created to protect the privacy of children under 13. The COPPA Rule, 16 CFR part 312, issued pursuant to the Children's Online Privacy Protection Act ("COPPA" or "COPPA statute"), 15 U.S.C. 6501 et seq., became effective on April 21, 2000. COPPA requires that commercial web sites obtain parental consent (under most circumstances) prior to the collection of any personally identifiable information from children whom they know to be under the age of 13. COPPA also limits the amount of personal information a web site can collect from a child. Web sites may not collect any more personal information than is necessary to participate in a given game or activity.

c. **CIPA** The Children's Internet Protection Act (CIPA) was enacted by Congress in 2000 and codified at 47 U.S.C. § 254(h) and (l), to address concerns about children's access to obscene or harmful content over the Internet. In order to continue to receive funds from the Federal e-Rate program, technology purchases must include recognition of responsibility by the District, as well as by any contractors that provide programs to the District, to assure actions are being taken to educate and prevent minors from attaining access to inappropriate and/or harmful matter on the Internet and World Wide Web.

d. **STUDENT DATA TRANSPARENCY AND SECURITY ACT (CO REVISED STATUTES, effective 8/10/2016)** The parties hereto agree that DISTRICT and the Contractor are jointly responsible for (i) the collection of student personal information and data, (ii) verification of the accuracy of all personal information and data, (iii) correction of any mistakes or other errors or inaccuracies to the personal information and data resident

on their respective property, (iv) compliance with the Colorado Student Data Transparency and Security Act (SDTSA – CRS 22-16-108 thru 22-16-110), if applicable, and other applicable laws, regulations and statutes and (v) the use and integrity over the dissemination of all personal information and data. Notwithstanding the above, Contractor shall have the right to use the DISTRICT data (specific to the use of this product only): (i) to provide the DISTRICT with the Services; (ii) to assess and compare the use of the Licensed Software by other licensees or purchasers of the Licensed Software; (iii) to assess and compare the use of the Licensed Software by various individual schools within the DISTRICT; (iv) to improve the Licensed Software; and (v) to share results of best practices among and across school districts. In its use of DISTRICT data, Contractor will not use or disclose any personal information particular to any student. ***IT IS THE CONTRACTOR'S RESPONSIBILITY TO BE FAMILIAR WITH, AND TO COMPLY WITH THESE LAWS.***

3. Period of Performance
This Attachment shall be effective throughout the term of the referenced contract (including any option years that may be exercised) and shall remain in force as may be required by statutes indicated.

4. Contract Extensions and Renewals
Any extension of this Contract is subject to availability and appropriation of funds and District 11 Board of Education approval, when required as per District Policy DJ, III. (Procurements and Contracts Requiring Board Approval Extensions) and Colorado Revised Statutes - CRS 24-103-503 entitled Multi-year Contracts. Extensions are not guaranteed beyond the initial period of performance.

Furthermore, the District's obligations hereunder shall be interpreted and limited in such a manner as to avoid creation of a multiple fiscal year debt or other obligation under the terms of Article X, Section 20, and Paragraph 4(b) of the Colorado Constitution. Renewal modifications must be generated in writing for any periods of performance beyond the first contract term. Automatic renewals are expressly prohibited.

If funds are not available in a fiscal year to renew the contract, the contract will be terminated at no cost to the District. Upon termination, any materials, supplies, or items of equipment, which have not been fully paid for by the District will be returned to the vendor at the vendor's expense. The District will not purchase similar materials, supplies, or items of equipment during the anticipated life of the terminated contract without notification of the terminated contractor and consideration of reinstating the terminated contract at a cost that can be appropriated.

5. Governing Law
The Contractor shall comply with all Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this Contract. This Contract shall be construed in accordance with and governed by the laws of the State of Colorado. Exclusive venue and jurisdiction over any dispute relating in any way to the Contract shall be in the District Court, El Paso County, and State of Colorado.

6. Colorado Governmental Immunity Act
Except as expressly provided herein, Colorado Springs School District 11 retains all of its rights under the Colorado Governmental Immunity Act, Section 24-10-101, et. Seq., C.R.S. This Contract shall not be construed to create any right or benefit for any person who is not a party to this Contract.

7. Indemnification and Hold Harmless
In accordance with the Colorado Constitution, Article XI, Public Indebtedness, the District is unauthorized to indemnify the Contractor.

8. Sales Tax Exemption
Colorado Springs School District 11 is a public governmental non-profit entity that is tax exempt under Section 115 of the Internal Revenue Code. The District's Federal tax number is FIN 84-6001179, and the State of Colorado tax number is 98-02922-0000. Federal and State taxes shall not be assessed on purchases for District projects.

9. Anti-Kickback
Reference the Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act): The Anti-Kickback Act shall apply to this Contract, as set forth herein. The Act prohibits any person from: providing or attempting to provide or offering to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the District or in the Contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

10. Continuity of Services

a) The Contractor recognizes that the services under this contract are vital and must be continued without interruption and that, upon contract expiration, a successor, or another Contractor, may continue them. The Contractor agrees to (a) furnish phase-in training, and (b) exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.
b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to ninety (90) days after this contract expires, and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficiently experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract.
d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a negotiated fee, not to exceed a pro rata portion of the fee under this contract.

11. Background Checks of Employees (Reserve if Contractor is not on site) The Colorado Department of Education (CDE) is clear in its requirements and intent that the Contractor is required to ensure all its employees (and/or subcontractors) who will interact with students will be fingerprinted and background-checked pursuant to CDE licensure procedures. Contractor (at Contractor's expense) shall ensure that all assigned staff have undergone background checks with the Colorado Bureau of Investigation and have been fingerprinted and are approved to work with children. The District relies on the Contractor to properly utilize the data it receives from background investigations and fingerprinting and expects the Contractor to use that information in its decisions to hire staff to provide services under this contract. The Contractor is also responsible for informing the District if any negative information surfaces that may be detrimental to the conduct and performance under this contract.

a) The Contractor shall not utilize, in the performance of this contract, any laborer or employee who has been convicted of a violent crime or a crime of such nature (i.e., child related offenses) as to categorize the person as being unsuitable for working around school children, or has engaged in such conduct, in the last five years, as to be similarly categorized. Suitability shall be determined by performance of security/background checks (as are necessary in light of the potential of contact with District students, staff, property, or sensitive records maintained at District sites) by the contractor on all laborers and employees utilized in the performance of the work.
b) When there is reasonable doubt regarding a particular person's suitability, a request may be made through the District Contracting Officer for an approval/opinion prior to the individual beginning work. The Contractor shall submit copies of all security/background checks performed within twenty-four (24) hours of a request by the District for such information. The District may request copies of these security/background checks up to twelve (12) months after completion of the specific project (site work). Failure to complete or submit any required security/background check requested by the District, may result in immediate cancellation of work in process and/or removal from the active vendor and Offerors list for up to one year.
c) The Contractor, its laborers and employees shall not fraternize or otherwise communicate with the students except in cases of safety and like necessities.

12. Worker Without Authorization
If Provider has any employees or subcontractors, Provider shall comply with § 8-17.5, C.R.S. regarding Worker Without Authorization – Public Contracts for Services.

13.Travel Expenses
Travel expenses, if approved, will be reimbursed only as per GSA per diem rates for Colorado Springs and coach airfare. GSA rates may be obtained online at http://www.gsa.gov/portal/category/21287.

ATTACHMENT C
REPRESENTATIONS AND CERTIFICATIONS

Representations and Certifications submitted and signed on February 22,2023 with the original contract are here by incorporated by reference.