



CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT (“Agreement”) is made and entered into as of the 10th day of January, 2022 and is by and between School District 27J (“District”), having a principal place of business at 1850 Egbert St., Suite 140, Brighton, Colorado 80601, and Consultant (“Contractor”), having a principal place of business at Address for Project Description (“Project”).

RECITALS

WHEREAS, the District has determined that there is a need for the Contractor’s services specified in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Agreement; and

WHEREAS, the District has determined that the Contractor is qualified to provide services to the District, and will agree to perform and carry out the services in a good and professional manner as outlined in this Agreement.

THEREFORE, in consideration of the foregoing recitals, incorporated by this reference, and their mutual promises, the parties agree as follows:

1. **Scope of Services.** The Contractor shall perform the scope of services as specifically set forth in Exhibit A (“Services”).

2. **Term.** Subject to earlier termination by the District as provided herein, the time period to be covered by this Agreement shall begin on Date, or the date the parties execute this Agreement, whichever is later, and shall continue through the successful completion of the Services.

3. **Contract Price, Payment and Retainage.** The Contractor shall perform the Services for a contract price not to exceed Amount (“Contract Price”) as set forth on Exhibit B, attached hereto and incorporated herein. Unless otherwise expressly stated in this section, all necessary labor, mileage, reproduction expenses, licenses, materials, supplies, equipment, reimbursables, and all other items necessary to complete the Services shall be part of and not in addition to the Contract Price. Unless otherwise agreed by the District, payments shall be made in the full value of the Services performed, less five percent (5%) of such value and less the aggregate of any previous payments which amount shall be retained until completion and acceptance of all Services. Final payment to Contractor will be made after publication of notice of final settlement in accordance with the provisions of C.R.S. §38-26-107. Incorrect payments to



the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent payment under this Agreement or other agreements between the District and the Contractor, or by the District as a debt due to the District.

Invoices shall be sent to 27J Schools Construction and Planning Department, 1850 Egbert St., Suite 140, Brighton, Colorado, 80601, Attention: Accounts Payable

Colorado law and regulations provide that vendors will be paid within forty-five (45) days after acceptance of goods and/or services and a correct notice of amount due, unless otherwise agreed to by contract. A District liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth (46) day at a rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the District's obligation to pay all or a portion of the liability. The Contractor shall invoice the District separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate.

4. Independent Contractor. The Contractor understands and acknowledges that this Agreement is a contract for services and that an employee-employer relationship does not exist between the Contractor and the District. The Contractor shall perform all Services, using independent judgment and expertise, as an independent Contractor and not as an employee of the District. Neither the Contractor nor any agent, employee or subcontractor of the Contractor shall be an agent or employee of the District nor shall any of them have any authority, express or implied, to bind the District to any agreement or incur any liability or obligation attributable to the District. **The Contractor acknowledges that it is not entitled to workers' compensation or other benefits from the District and that the Contractor is obligated to pay federal and state income tax on any monies earned from the District pursuant to this Agreement.**

5. Surety Bonds. Pursuant to C.R.S. §§ 38-26-105, in any contract exceeding fifty thousand dollars, the Contractor shall, within ten (10) days of execution of this Agreement, furnish payment and performance surety bonds to the District in the full amount of the Contract Price, covering both the faithful performance of the Agreement and the payment of all obligations for labor and materials arising thereunder, on such forms as the District may prescribe and with such sureties as the District may approve. Such bonds shall be duly executed by a qualified surety, conditioned upon the true and faithful performance of the Agreement, and shall provide that if Contractor or his subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or his subcontractors in the performance of the work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, as adjusted by approved change orders, and together with interest as provided by law. The Performance Bond shall additionally guarantee that Contractor shall remedy any omissions,



correct any and all defects, and adjust and make operable all component parts of the work falling under the requirements of this Agreement during the warranty period.

6. Insurance.

a. The Contractor shall purchase and maintain in effect at all times throughout the duration of the Agreement, including the warranty period, the policies of insurance with the applicable coverages described below. The Contractor shall submit certificates of insurance to the District within ten (10) days of mutual execution of this Agreement. Such coverages shall be procured and maintained with forms and insurers acceptable to the District. Receipt, review or acceptance by the District of any insurance policies or certificates of insurance required by this Agreement shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements. All coverages shall be continuously maintained through the Term of this Agreement to cover all liability, claims, demands, and other obligations assumed by Contractor pursuant to Section 10 of this Agreement. In case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. If the expiration date of the insurance certificate is prior to final completion, the Contractor shall provide a new certificate of insurance prior to thirty (30) days from the expiration of the current policy. Contractor shall require that all of its agents and subcontractors also comply with these insurance requirements.

i. Workers' Compensation Insurance. Contractor shall purchase and maintain worker's compensation insurance to comply with Colorado statutory provisions, including any required flow down, during the term of this Agreement, including occupational disease provisions for all employees per statutory requirements, and 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. Such policy shall contain a waiver of subrogation in favor of the District. The Contractor shall also require each subcontractor to furnish workers' compensation insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for subcontractors' employees.

ii. Professional Liability Insurance. Contractor shall purchase and maintain professional liability insurance with coverage limits for each occurrence or claim of \$2,000,000, if professional services are provided under this Agreement.

iii. Commercial General Liability Insurance. Contractor shall purchase and maintain commercial general liability insurance to protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property, including loss of use therefrom, arising out of or in connection with any acts or omissions in performance of the Services under this Agreement, whether such acts or omissions be by the



Contractor or by any subcontractor under it or anyone directly or indirectly employed by the Contractor or by a subcontractor. Such insurance shall contain a waiver of subrogation in favor of the District. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form:

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000

iv. **Comprehensive Automobile Liability Insurance.** Contractor shall purchase and maintain comprehensive automobile liability insurance for liability arising out of any auto (including owner, hired, and non-owned autos), and including coverage for all power mobile equipment used by the Contractor on District property, with a combined single limit of \$1,000,000/person, \$1,000,000/accident, and \$1,000,000/property damage. Such insurance shall include a waiver of subrogation in favor of the District.

b. The policies required by subparagraphs (iii) and (iv), above shall be endorsed to include the District, the District's officers, board members and employees, as additional insureds. The policies required by subparagraphs (iii) and (iv) shall be primary insurance, and any insurance carried by the District, its officers, or its employees, or carried by or provided through any insurance pool of the District, shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall be solely responsible for any deductible losses under any policy required above.

c. Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

d. Notwithstanding any other portion of this Agreement, failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which the District may immediately terminate this Agreement, or, at its discretion, the District may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all money so paid by the District shall be repaid by the Contractor to the District upon demand, or the District may offset the cost of the premiums against any money due to the Contractor from the District.

7. **Sales and Use Taxes.** The District is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance of Services. The Contractor shall not include any of these taxes in any charges or invoices to the District.



8. Representations.

a. Contractor represents that Contractor will perform the Services in a diligent, safe, and workmanlike manner and Contractor shall use its best skill and judgment pursuant to the standards of the profession for such Services in furthering the District's best interests. If Contractor's performance does not conform to such standards and District notifies Contractor of same, Contractor agrees to immediately take all action necessary to remedy the nonconformance. Any costs incurred by Contractor to correct such nonconformance shall be at the Contractor's sole expense.

b. The Contractor represents that it understands the nature, location, and scope of the Services, the character of the equipment and facilities needed prior to and during the performance of the Services, the general and local conditions, and all other matters which can in any way affect the Services and is not relying on any representations or promises by the District except as set forth in this Agreement.

c. The Contractor shall cooperate with and shall not in any way interfere with the other contractors, if any, on the site or any work or employees of the District.

d. The Contractor represents that it has full authority under applicable law to execute and deliver this Agreement and to perform all of the obligations under this Agreement.

9. Termination.

a. Termination for Convenience. Upon written notice, the District may terminate this Agreement in whole or in part if it determines, in its sole discretion, that termination is in the District's best interest. After notice of termination has been given, the Contractor shall promptly stop work on the cancellation date specified in the notice. The District will determine Contractor's reasonable fees expended through the date of cancellation or termination based on the scope of work completed as of the date of termination. The Contractor will not be reimbursed for any anticipated profit.

b. Termination for Cause. This Agreement may be terminated by the District upon not less than five (5) days' written notice should the Contractor fail to perform in accordance with the terms of this Agreement through no fault of the District. The Contractor shall not terminate this Agreement without the written consent of the District, other than for nonpayment as provided below in this Section. In the event of termination for convenience or cause, the Contractor shall deliver to the District all drawings, plans, reports, data, and similar materials relating to the Services prepared by or in the possession of the Contractor. If the District fails to make payment when due, the Contractor may, upon ten (10) days' written notice to the District, suspend performance of Services. Unless payment is received by the Contractor within ten (10) days of the date of the notice, the suspension shall take effect without further notice. If after notice



of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

10. Indemnification. Contractor shall indemnify and hold District, and its board members, employees, and agents harmless from and against all claims, liabilities, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the Services provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the work performed and including the loss of use resulting therefrom, and only to the extent that it is proximately caused in whole or in part by any negligent or intentional act or omission or breach of contract of Contractor, any sub-consultant, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. This provision shall survive the termination of this Agreement.

11. Compliance with Laws and Policies. The Contractor shall abide by all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services, including without limitation those applicable provisions of the Occupational Safety and Health Administration ("OSHA"). Contractor shall abide by all District policies and procedures, including without limitation, those related to the prohibited use and/or possession of alcohol, tobacco or firearms on District grounds. The Contractor shall at all times strictly enforce this prohibition among its own employees, agents or subcontractors and their employees, agents or subcontractors.

12. Taxes and Fees. The Contractor shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of this Agreement, including but not limited to excise tax, federal and state 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.

13. Changes/Amendments. At any time, by written order, the District may make changes in or additions to the Services to be performed by this Agreement, issue additional instructions, require modified or additional work or services within the general scope of the Agreement, or vary the amount of District-furnished property. If the Contractor believes that any changes cause any increase or decrease in the cost of, or in the time required for, performance of Services under this Agreement, an equitable adjustment may be made in the Agreement price or term of performance, or both, and the Agreement will be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within ten (10) calendar days from the date of receipt by the Contractor of the notification of changes; provided, however, that the District, if it 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 Agreement. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the clause of this Agreement titled “Disputes.” However, nothing in this clause excuses the Contractor from proceeding with the Agreement as changed, and it is limited to proceeding with its appeal pursuant to the Section titled “Disputes,” below. Other than written change directives or orders issued pursuant to this Section, no amendment, change or modification to this Agreement shall be effective or enforceable unless it is in writing and executed by each party.

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

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

16. Illegal Aliens. The Contractor certifies that it shall comply with the provisions of C.R.S. §§ 8-17.5-101. The Contractor shall not knowingly (i) employ or contract with an illegal alien to perform work under this Agreement, (ii) enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement, or (iii) enter into a contract with a subcontractor that fails to contain a certification to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

17. Records and Audits. Contractor will maintain complete and accurate records of all charges incurred by District under this Agreement, in accordance with generally accepted accounting principles, for a period of twenty-four (24) months from the date of termination of the Agreement. District will have the right to inspect Contractor’s records upon reasonable notice and to retain copies thereof.

18. Nondisclosure of Confidential Information. The Contractor will not disclose to any third person or entity any records or writings of the District, its employees or students, regardless of the form, that are protected by state or federal law no matter how those documents come into the Contractor’s possession.

19. Use of Work Product and Infringement Claims. To the extent the Contractor creates any work product, including without limitation, Contractor’s notes, memoranda,



photographs, spreadsheets, data and designs or plans (collectively “Work Product”), said Work Product shall be delivered to the District within the time frame(s) contemplated by this Agreement or at the latest upon completion of the Services, shall become the property of the District, and may be used by the District for any purpose. The Contractor shall defend and indemnify the District from and against all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising out of District’s ownership or use of Contractor’s Work Product and shall indemnify the District from loss on account thereof and shall pay any judgments or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys’ fees.

20. Survival of Certain Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the Agreement shall survive such termination or expiration date and shall be enforceable by the District as provided herein in the event of such failure to perform or to comply by the Contractor.

21. License Requirements. As a condition of this Agreement, the Contractor shall maintain in effect all times during the term of this Agreement, a valid and appropriate license, certification, and/or registration, if and as required by federal, state and/or local laws. The Contractor shall ensure that each of its employees, subcontractors, or similar personnel who are subject to licensing, certification, and/or registration maintain in effect at all times while performing the Services, a valid and appropriate license, certification, and/or registration, if and as required by law.

22. Correction of Work After Final Payment. Neither the final estimate or payment, nor any provision in this Agreement shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, the Contractor shall remedy any defects due thereto and pay for any damage to other property resulting therefrom, which appear within a period of one (1) year from the date of final completion and acceptance. This warranty shall be in addition to and not in lieu of all other remedies available to the District.

23. Utilities. The Contractor shall take adequate precautions to protect existing utilities on and off the project site and avoid damage thereto. The Contractor shall repair or replace or have repaired or replaced at its expense any damage to streets, water, sewer, light, power, cable, or telephone lines that are damaged by the Contractor. The Contractor shall check with all public utility companies for locations and shall comply with their regulations regarding such utilities in performing the Services.

24. Safety, Health and Accident Reports. The safety and health of Contractor, Contractor’s employees and agents brought on District property will be the sole responsibility of Contractor. The Contractor shall take all necessary precautions to ensure the safety of all



employees and other persons on the Project or who may be affected by the Contractor's Services. The Contractor shall also take all necessary precautions to protect all property at the Project site and adjacent thereto not designated for removal, relocation or replacement, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities. Contractor will comply with all local, state, and federal environmental, health and safety requirements, including those relating to the transportation, use and handling of hazardous material. Contractor will report all accidents, injury-inducing occurrences or property damage arising from the performance of Services as soon as reasonably practical. District will have the right to receive, at its request, copies of any reports filed with Contractor's insurer or others. Contractor's employees and agents on District property will comply with all plant rules and regulations.

26. Cleaning Up. Contractor shall at all times keep the Project site free from accumulations of waste material and rubbish caused by its employees or Services, and shall remove all rubbish as often as it deems necessary or as directed by the District. Upon completion of the Services, the Contractor shall remove all its rubbish, tools, scaffolding, and surplus materials from and about the Project site.

27. General Provisions.

a. Governing Law/Venue. The laws of the State of Colorado shall govern the performance and interpretation of the Agreement. Venue for any dispute concerning the Agreement or to enforce any provision herein shall be exclusively in the federal court located in Colorado or the state court located in Weld County, Colorado.

b. No Assignment. This Agreement may not be assigned by the Contractor without the District's prior written consent.

c. Force Majeure. The District may delay delivery, performance or acceptance occasioned by causes beyond its control. The Contractor shall hold 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 Contractor's direct additional costs in holding the goods or delaying performance of this Agreement at District's request. Causes beyond 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.

d. Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both parties.

e. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be (as elected by the person giving such notice) hand



delivered by messenger or courier service, or pre-paid first-class certified mail, return receipt requested, addressed to the respective party at the address set forth in the first paragraph of this Agreement or to such other addresses as any party may designate by notice complying with the terms of this Section. The District's representative for purposes of this Notice section is the Superintendent. Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery, (ii) on the date received if by electronic mail; or (iii) three (3) days after postmark if mailed as provided in this Section.

f. Counterparts. This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.

g. Waiver. A failure to assert any rights or remedies available to a party under the terms of this Agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

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

i. Interpretation. This Agreement shall control with respect to the Services described herein. This Agreement shall not affect the interpretation or validity of the parties' prior agreement or any other agreements referred to therein.

j. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the District.

k. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns. The Contractor represents that it has full authority under applicable law to execute and deliver this Agreement and to perform obligations under this Agreement.

l. Severability. If any provision of this Agreement is ruled to be invalid or illegal, such ruling shall have no effect upon the remaining provisions, which shall be considered legally binding and given full effect.



m. Exhibits. "Exhibits" shall mean those exhibits that are identified in this Agreement and are attached to this Agreement or will be attached to this Agreement when complete information becomes available. Exhibits are specifically made a part of this Agreement by this reference.

n. Nondiscrimination. The Contractor shall comply with all applicable State and Federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age, sex, sexual orientation, disability, or other protected status.

o. Special conditions. The Consultant shall comply with Special Conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference ("Special Conditions").

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

SCHOOL DISTRICT 27J

Signature

Signature

Name

Name

Title

Title



**EXHIBIT A
SERVICES**

SAMPLE



EXHIBIT B
Contract Price

Scope

Fees

Total

\$

SAMPLE



EXHIBIT C

Special Conditions

Special Conditions. Special Conditions are as follows:

- A. Contractor will comply with the District's and individual school access policies and procedures, including presenting a valid Colorado driver's license or other acceptable identification card to be scanned for screening against a national registered sex offender database, and for the production of a daily visitor identification badge with photo to be worn while on school premises.
- B. Contractor will inform its employees that illegal drugs, marijuana, alcohol, tobacco products, firearms and other weapons are prohibited on school district property.
- C. Contractor will not disclose confidential security information to any person or entity without the prior written consent of the District. Confidential security information includes details on school district security assets and systems including electronic access control, video surveillance, detection systems, location and function of lockout and lockdown equipment, locations and types of security assets and systems. Confidential security information also includes school floor plans, drawings, interior photographs, contingency plans and procedures, etc.