

# CONSULTANT AGREEMENT

THIS AGREEMENT, by and between COSTIN GROUP, INC. hereinafter referred to as “Consultant,” and the Duluth Public Schools, a political subdivision of the State of Minnesota, hereinafter referred to as “DPS.”

## RECITALS

WHEREAS, Consultant will provide government relations, public relations, and other related services assistance to the DPS; and

WHEREAS, DPS has asked for advice from the Consultant;

NOW, THEREFORE, DPS and Consultant, for good and valuable mutual consideration and with the intent of being legally bound, agree as follows:

1. **Scope of Services:** Consultant shall perform government relations, public relations, and related services directed and approved by the DPS Superintendent.

2. **Compensation to Consultant:** In consideration of the services to be performed by Consultant pursuant to this Agreement, DPS agrees to make payment to Consultant at the rate of \$ 3,000 per month retainer, no expenses. Consultant shall bill DPS not less frequently than quarterly for retainer incurred pursuant to this Agreement. Payment shall be made upon approval of DPS at its next regular monthly meeting following receipt of Consultant’s billing.

3. **Conditions of Payment:** All services provided by Consultant pursuant to this Agreement shall be performed by Gary Cerkenik or Jeff Anderson personally, unless DPS has given advance approval for services to be performed by another representative of Consultant. All services provided shall be performed to the satisfaction of DPS, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations.

All items of work to be performed by the Consultant shall be done in accordance with the requirements and recommendations of, and subject to the approval of, DPS. Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in Consultant’s final work product or services.

DPS shall not be obligated to pay for, nor shall consultant claim for, any services not specifically authorized pursuant to the terms of this Agreement, except upon advance written approval of DPS. Such approval shall be considered to be a modification of this

Agreement. Consultant shall notify DPS in writing before it begins any work which will be the basis for a claim for extra compensation. If such notification is not given or is not approved by DPS in writing before Consultant commences the work, then Consultant hereby waives and releases forever any claim or costs for such extra compensation. However, such notice shall not in any way be construed as proving the validity of any claim by Consultant except where approved in advance by DPS.

4. **Ownership of Work Product:** All data gathered, prepared or recorded by Consultant pursuant to the terms of this Agreement shall be the property of DPS. Upon request of any duly authorized agent of DPS, Consultant shall make every reasonable effort to explain or clarify the meaning of the data contained in the materials delivered to DPS.

5. **Term:** The term of this Agreement shall be from January \_\_, 2019, through January 1, 2020, unless earlier terminated in accordance with the provisions of this Agreement.

6. **Cancellation of Agreement:** Either party may cancel this Agreement at any time by giving written notice to the other party at least 3 months prior to the effective date of the termination. Consultant shall receive just and equitable compensation for all work satisfactorily performed pursuant to this Agreement. Notice to DPS shall be mailed or delivered to 215 North First Avenue East, Duluth, MN 55802. Notice to Consultant shall be mailed or delivered to Gary Cerkenik, Costin Group, Inc., 7226 Sand Lake Road, Britt, MN 55710.

7. **Independent Contractor:** It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partner, joint venturer or an association with the Consultant and DPS. Consultant is an independent contractor and neither it, its employees, agents, subcontractors or representatives shall be considered employees, agents or representatives of DPS. Except as otherwise provided herein, Consultant shall maintain, in all respects, its present control over the means and personnel by which this Agreement is performed. From any amounts due consultant, there shall be no deductions for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Consultant.

8. **Assignment or Transfer:** No portion of the work or services required under this Agreement shall be transferred, assigned, or otherwise disposed of except with the prior written consent of DPS.

9. **Indemnity:** Consultant agrees, to the fullest extent permitted by law, to indemnify and hold DPS harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by or arising from any professional errors and omissions and/or negligent acts and omissions of Consultant in performance of this Agreement and those of Consultant's sub-consultants or anyone for whom Consultant is legally liable. Consultant's indemnification obligation includes, but is not limited to, infringement of patent or copyright laws.

10. **Non-Discrimination:** Consultant shall not discriminate against employees or applicants for employment or in the rendering of work or services under this Agreement on the basis of race, creed, color, national origin, religion, sex, marital status, disability, sexual orientation, or status with respect to public assistance.

11. **Data Practices Act Compliance:** Consultant agrees to comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DPS in accordance with this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Consultant in accordance with this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to herein by either Consultant or DPS. In the event that Consultant receives a request to release the data referred to above, Consultant shall immediately notify DPS. DPS will provide instructions to Consultant concerning the release of the data to the requesting party before the data is released.

12. **Access to Records/Audit:** DPS, its authorized representative(s), or the State Auditor shall have full access to all records relating to the performance of this Agreement. Consultant agrees to maintain records relating to all services provided by it under the terms of this Agreement and shall retain all such records for one (1) year following the termination of this Agreement. Such records shall be made available for audit or inspection upon request of DPS or its authorized representative.

13. **Separability:** In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Agreement to fail of its purpose. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the Agreement.

14. **Entire Agreement:** It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous contracts presently in effect between DPS and Consultant relating to the subject matter hereof.

15. **Modification of Agreement:** Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, signed by authorized representatives of DPS and Consultant, and attached to the original of this Agreement.

IN WITNESS WHEREOF, DPS and Consultant have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 2019.

DULUTH PUBLIC SCHOOLS

COSTIN GROUP, INC.

By: \_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_  
Its \_\_\_\_\_