

AGENDA

ITEM

SUBJECT:

Contract For Candor Consulting and Diagnostics, LLC.

RATIONALE:

State law requires an approved method for acquisition of goods or services totaling over \$50,000.00 for a 12 month period.

I would like to accept the contract of Candor Consulting and Diagnostics, LLC, for Huntsville ISD from July 12, 2023 through August 31, 2024, not to exceed \$170,000. Services provided include staffing of Special Education Assessment staff, such as Diagnosticians, LSSPs, Speech Therapists, and Speech Therapy Assistants. The Assessment staff contracted will provide services such as obtaining informed consent for FIEs, conducting formal evaluations for students the district has obtained consent for, writing FIEs, attending ARD meetings to present FIEs.

RECOMMENDATION:

Administration recommends approval of the contract of Candor Consulting and Diagnostics, LLC, for Huntsville ISD through August 31, 2024.

CONTACT PERSON(S):

Ashley Kimich, Director of Special Education
Marcus D. Forney, Chief Academic Officer

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made as of July 10, 2023 ("Effective Date") by and between Huntsville Independent School District, ("District") having its principal place of business at 441 FM 2821 East, Huntsville, TX 77320 and Candor Consulting and Diagnostics, LLC, a professional service provider ("PSP"), having their principal place of business at 111 N Wall Street #1171, Belton, TX, 76513.

1. SERVICES

1.1. PSP shall provide professional services ("Services") to District as specified in a Statement of Work executed by the parties referencing this Agreement. In the event of a conflict between this Agreement and a Statement of Work, the terms of this Agreement shall prevail unless specifically modified by referencing the specific term to be modified. Any change in the scope of Services as set forth in a Statement of Work shall be agreed upon in writing by the parties. PSP shall have no obligation to perform services in connection with any such change until the parties have agreed upon the effect of such change on PSP's fees and/or schedule of performance.

1.2. District agrees that PSP's performance is contingent upon District's timely and effective performance of its responsibilities, decisions, and approvals. PSP may rely on all decisions and approvals of District.

2. FEES

2.1. Unless otherwise stated in a Statement of Work, PSP shall invoice District two times each month for the Services rendered plus all out-of-pocket expenses incurred during the previous invoice period, if allowed in Statement of Work. District will pay such invoices within thirty (30) days after the date of the invoice. In the event District disputes a portion of an invoice, District agrees to fully pay the undisputed portion and PSP's acceptance of such partial payment shall not waive any of its rights as to the remaining balances nor in any way constitute accord and satisfaction.

2.2. If allowed in Statement of Work, PSP shall be reimbursed for the actual out-of-pocket expenses and other expenses incurred in performance of the Services. PSP traveling out-of-town shall be reimbursed for mileage at the normal district rate, lodging, and reasonable and actual meal expenses.

3. WORK FOR OTHER CLIENTS

3.1. In recognition that PSP performing under this Agreement may perform similar services for others, this Agreement shall not prevent PSP from providing services or developing materials that are competitive with those developed or provided under this Agreement, regardless of any similarity between such services or materials. Subject to the confidentiality restrictions contained in Section 5, PSP shall be free to use its general knowledge, skills, and experience, and any ideas, concepts, know-how and techniques used in the course of providing the Services, on other engagements. PSP's other clients shall have the right to use materials incorporating such ideas, concepts, know-how and techniques.

4. TERMINATION

4.1. Either party may terminate this Agreement or any Statement of Work without cause upon giving the other party thirty (30) days prior or written notice. During the thirty (30) day termination period, District shall maintain and pay for the PSP staffing levels existing at the time of the notice of termination.

4.2. Either party may terminate this Agreement or any Statement of Work for a material breach thereof

(including nonpayment of fees, failure to fulfill any responsibilities set forth in the Statement of Work, or failure to cooperate in good faith with the other party in connection with the Services) upon giving the other party fifteen (15) days prior written notice identifying specifically the alleged breach, provided that the breaching party does not cure such breach within the fifteen (15) day notice period. During this notice period the non-breaching party shall have the right to suspend its performance under this Agreement.

4.3 Upon termination of this Agreement or any Statement of Work by either party, District will immediately pay PSP all fees, costs and expenses owed to or incurred by PSP up to the effective date of such termination; provided, however, that with respect to any Statement of Work that is the basis for the termination, District will pay PSP a pro rata amount of the fees due for such Statement of Work (based on the percentage of completion of the Services, as reasonably determined by District).

4.4 Unless the parties subsequently agree otherwise in writing, the terms and conditions of this Agreement shall govern any services that PSP may provide to District in the future, regardless of whether or not such services are performed pursuant to a Statement of Work.

5. CONFIDENTIAL INFORMATION

5.1 To the extent permitted by law, each party agrees that any information concerning the other's price quotes, preliminary concepts, marketing proposals, branding strategies, creative designs and concepts, technical data, web designs, trade secrets and know-how, research, product plans, products, customer technical requirements, software, programming techniques, algorithms, services, suppliers, supplier lists, customers, employee lists, customer lists, markets, developments, inventions, processes, technology, designs, drawings, engineering, apparatus, techniques, hardware configuration information, marketing, forecasts, business strategy, finances or other business information disclosed by the other party and identified in writing as confidential ("Confidential Information") shall not, without the disclosing party's authorization, be disclosed to any other party or used by the receiving party for its own benefit except as contemplated by this Agreement. The recipient shall protect the confidentiality of the Confidential Information using at least the same measures it takes to protect its own confidential information of like kind and shall restrict access to Confidential Information to its personnel on a need to know basis, to the extent permitted by law.

5.2 Nothing in this Agreement shall restrict either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies); (a) that is or becomes publicly available through no breach of this Agreement; (b) independently developed by it; (c) previously known to it without obligation of confidence; or (d) acquired by it from a third party that is not, to its knowledge, under an obligation of confidence with respect to such information. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information, the recipient shall promptly notify the other party of such receipt and may comply with such subpoena or process to the extent permitted by law. Confidential Information shall be returned or destroyed upon the earlier of: (i) the completion of the Services; or (ii) the disclosing party's request. PSP may retain, subject to the obligations of this Section 5, copies of Confidential Information for record keeping purposes. District shall retain all records for the period of time required by law.

5.3 PSP shall not:

- (a) Disclose Confidential Student Educational Records (as defined in subsection 5.5) to any person or entity except: Those that need to know the Confidential Student Educational Records for the purposes this Agreement and agree to be bound by the provisions of this Section; and
- (ii) In compliance with a lawfully issued subpoena or court order.

5.3.1 (b) Use the Confidential Student Educational Records for any purpose other than the purposes this Agreement contemplates.

5.4 Return of Confidential Student Educational Records

Upon the written request by the District, within thirty (30) calendar days, PSP must return to the District or destroy all Confidential Student Educational records. If the PSP destroys the Confidential Student Educational Records, PSP must certify that it has done so in writing and deliver that certificate to District within thirty (30) calendar days of the District's initial written request for the PSP to return or destroy all Confidential Student Records.

5.5 Definition of Confidential Student Educational Records

"Confidential Student Educational Records" means those records, files, documents, and other materials which (a) contain information directly related to a student; and (b) are maintained by an educational agency. See FERPA, 20 U.S.C.A. 1232g and accompanying regulations.

5.6 Texas Public Records

5.6.1 The District must comply with the Texas Public Information Act, Tex. Gov't Code § 552.001 et seq., ("the Act") and release public documents as defined by the Act upon request, including this Agreement and all records created and maintained in relation to this Agreement, subject to any authorized withholding of information under the Act.

5.6.2 Tex. Gov't Code§ 552.114 exempts student educational records which shall be kept confidential as required by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C.A. @1232g and its supporting regulations, Texas law and Section 5.3 above.

6. ASSIGNMENT

Neither party shall have the right to assign this Agreement without the other party's written consent, and any attempt to do so shall be void; provided, however, that either party shall have the right to assign this Agreement to any person or entity that acquires or succeeds to all or substantially all of such party's business or assets upon written notice to the other party.

7. ENTIRE AGREEMENT

This Agreement and any applicable Statement of Work constitute the entire understanding between PSP and District, and supersede all prior agreements, arrangements, representations, and communications (whether oral or written) regarding the subject matter of this Agreement. District is entering into this Agreement solely based upon the agreements and representations contained herein for its own purposes and not for the benefit of any third party.

8. FORCE MAJEURE

Except with regard to payments due PSP, neither party shall be liable for any delays or failures in performance due to circumstances beyond its control which could not be avoided by the exercise of due care.

9. APPLICABLE LAW AND VENUE

This Agreement shall be governed by Texas law without application of its conflict of laws principles. Any suit relating to this Agreement shall be instituted in a state or federal court in Tarrant County, Texas, and the parties irrevocably consent and waive all objections to the jurisdiction of any such court.

10. NOTICES

Any notice or other communication under this Agreement shall be in writing and shall be effective upon the earlier of actual receipt, seven (7) days following deposit into the United States mail (certified mail, return receipt requested), the next business day following deposit with a nationally recognized overnight courier service, or the same day following transmission of a legible facsimile copy during regular business hours of the party, in each case with any delivery fees pre-paid and addressed to the party at the address set forth on the first page of this Agreement or such other address as that party may notify the other from time to time in accordance with this Section 10.

In the case of ISD:

Ashley Kimich
Director of Special Education
Huntsville Independent School District
441 FM 2821 East,
Huntsville, TX 77320
Ph.: (936) 435-6970
e-mail: adkimich@huntsville-isd.org

In the case of PSP:

Jake Fralicks
Director of Placement Services
111 N. Wall St
#1171
Belton, Texas 76513
Ph.: (254) 613-2459
e-mail: jake@candorddiag.com

11. CONFIDENTIALITY

The District acknowledges that the District may have access to confidential business information that constitutes valuable, proprietary and unique assets of PSP. Accordingly, the District agrees that if it receives or otherwise has access to any confidential information of PSP, then the District will protect that confidential information and treat it as strictly confidential. District agrees that it will not at any time or in any manner, either directly or indirectly, use any of PSP's confidential information for the District's own benefit or divulge, disclose or communicate in any manner any of PSP's confidential information to any third party without the prior written consent of PSP, except as may be necessary for the purposes of this Agreement or required by applicable law. PSP acknowledges that District is a governmental entity subject to the Texas Public Information Act. PSP agrees that compliance with the requirements of the Texas Public Information Act shall not be considered a breach of confidentiality under this Agreement.

12. INTELLECTUAL PROPERTY OWNERSHIP

PSP agrees that any and all tangible and intangible materials, products, ideas, inventions, documents or works of authorship conceived or developed under this Agreement (collectively, "Works") shall be considered works made for hire and the sole property of District, who will own all worldwide rights, including copyright, patent rights, and other intellectual property rights. If and to the extent that any of the Works are not considered works made for hire, the District hereby assigns to PSP or its designee all worldwide rights, including copyright, patent rights and other intellectual property rights, in and to the same without the necessity of any further consideration and agrees that PSP or her designee can obtain and hold in her name all such rights. If any preexisting works are embodied in the Works, then the District will retain its rights in and to the preexisting works, but (i) will notify PSP of the embodied preexisting works upon delivery of the Works.

13. **INDEMNIFICATION**

PSP shall defend, indemnify, and hold harmless District and its trustees, officers, employees and agents, and their respective successors, heirs, and permissible assigns (the "Indemnitees"), against any and all liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation, and whether incurred in the defense of a third party claim or a claim to enforce this provision) that may be incurred by or imposed upon the Indemnitees, or any of them, in connection with any claim, suit, demand, action, or judgment arising out of the following: (a) any breach by the party of any representation or warranty made in this Agreement; (b) the failure by the party to perform any covenant, agreement, or obligations set forth in this Agreement.

14. **MISCELLANEOUS**

14.1 **Independent Contractor.** In performing Services pursuant to this Agreement, PSP shall be acting as an independent contractor, and no party shall have the authority to bind, represent or commit the other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose.

14.2 **Use of District's Name.** With District's prior approval, PSP may use District's name and trademarks as a District reference, including a general description of the Services provided to District by PSP, in her resume, District list, case studies, and in other promotional information including, but not limited to, press releases, brochures, reports, letters, white papers and electronic media such as e-mail or Web pages.

14.3 **Complaints; Causes of Action.** In the case of any claims, legal or non-legal, asserted by PSP against District, no such demand shall be made by PSP until the complaint procedure found in Huntsville ISD Board Policy GF (LOCAL) has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit "A." The parties agree that any cause of action arising under, or in connection with, this Agreement will not be valid unless such action is commenced by the filing of a complaint in a court of competent jurisdiction within one year after completion of the Services. In the event that District fails to make any payment due under this Agreement, District shall reimburse PSP for her costs of collection, including court costs and reasonable attorneys' fees, unless District obtains a judgment dismissing such action.

14.4 **Survival.** The terms of Sections 2 ("Fees"), 3 ("Work for Other Clients"), 4 ("Termination"), 5 ("Confidential Information") and other sections which by their nature are intended to extend beyond termination shall survive termination of this Agreement for any reason.

14.5 **Authority.** This District shall become valid and binding upon District only upon execution by its duly authorized representative.

15. **Statement of Work.** Huntsville ISD is contracting with Candor Consulting and Diagnostics to complete Evaluations for the Special Education Department for the purpose of establishing or updating eligibility. Records and pertinent student information will be provided by Huntsville ISD for review and must be returned on completion of the Evaluation/REED. Access will be granted to appropriate programs, such as eSped for Candor personnel to complete their work. Agreed upon rates are as follows:

- Marielle Chambers – Educational Diagnostician services are billed at \$82.00 per hour

IN WITNESS THEREOF, the parties caused this Professional Services Agreement to be executed and delivered as of the date first above written and represent that the persons whose signatures appear below are duly authorized to execute this Agreement.

Candor Consulting and Diagnostics, LLC

By: 
Signature

Jake Fralicks
Director of Placement Services

Date Signed 7-12-2023

Huntsville Independent School District

By: 
Signature

Ashley Kimich
Director of Special Education

Date Signed 07/10/2023