



Agreement: 21-475-A-WH
Approval Date: _____

INDEPENDENT CONTRACTOR AGREEMENT FOR PROFESSIONAL SERVICES
(CONSULTANTS, PERFORMERS, SPEAKERS, INSTRUCTORS, ENTERTAINERS, AND/OR ARTISTIC SERVICES)

By and Between
The School Board of Brevard County, Florida
and
The Brevard Schools Foundation

This Agreement ("Agreement") is made by and between The School Board of Brevard County, Florida, a political subdivision of the State of Florida, located at 2700 Judge Fran Jamieson Way, Viera, Florida 32940, more commonly known as Brevard Public Schools (hereinafter referred to as "BPS"), and The Brevard Schools Foundation, located at 2700 Judge Fran Jamieson Way, Viera, FL 32940, (hereinafter referred to as "Independent Contractor"), each individual referred to as a "Party" and, collectively, the "Parties."

WITNESSETH:

WHEREAS, pursuant to Rule 6A-1.012, Florida Administrative Code, the requirement for requesting bids from three (3) or more sources is waived for the procurement of professional or educational services, to include, but not be limited to, artistic services and those services performed by consultants, performers, speakers, instructors, and/or entertainers;

WHEREAS, BPS desires to secure a contractual relationship to obtain certain professional services, performed on a short-term basis (within a one (1) year term), by Independent Contractor;

WHEREAS, Independent Contractor is willing, able, and qualified to perform the required professional services, more specifically outlined in Exhibit "A" Work Order for Services ("Services");

WHEREAS, it is the intent of this Agreement to set forth the terms and conditions of the relationship between the Parties, allowing various schools and/or departments to utilize the Services on an as-needed basis using the form contained in Exhibit "A", the Work Order for Services; and

WHEREAS, BPS has assigned these Services performed by Independent Contractor to 21-475-A-WH for tracking purposes.

NOW THEREFORE, for good and valuable consideration and the mutual promises contained herein, the Parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and are incorporated herein.
2. **AMENDMENTS AND MODIFICATIONS.** No Amendments and/or modifications of this Agreement will be valid unless in writing and signed by each of the Parties.
3. **TERM AND TERMINATION.** The term of this Agreement will cover the period beginning April 14, 2021 through September 30, 2021. The Parties may renew the Agreement at the end of the period on the same or substantially similar terms by mutual written agreement. Independent Contractor will give BPS written notice of any substantial failure to perform under this Agreement through no fault of Independent Contractor. If BPS fails to correct or diligently pursue cure of such failure within ten (10) business days of receipt of notice, this Agreement may be terminated by Independent Contractor, at its option, upon thirty (30) calendar days' prior written notice to BPS. BPS may terminate this Agreement with or without cause upon thirty (30) days' written notice sent by certified mail to Independent Contractor.
4. **PAYMENT.** BPS agrees to provide funds for the Agreement as outlined in Exhibit "B", Fee Schedule, which is attached hereto and incorporated herein. Independent Contractor must send an original invoice with the purchase order number to Accounts Payable, 2700 Judge Jamieson Way, Viera, Florida 32940 to receive payment for services rendered. Payments must be made on or about forty-five (45) days after BPS's receipt of the invoice. BPS will pay these fees to Independent Contractor for services rendered as outlined in Exhibit "B," which includes all direct charges, indirect charges, and reimbursable expenses, if any. Failure on the part of Independent Contractor to complete Services in accordance with the Standard of Care will be considered a default of this Agreement.

5. **AVAILABILITY OF FUNDS.** The obligations of BPS under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by The State of Florida Department of Environmental Protection.
6. **PERSONNEL AND JESSICA LUNSFORD ACT COMPLIANCE.** All of the Services herein will be performed by Independent Contractor or under its supervision, and all personnel engaged in performing the Services will be fully qualified and, if required, authorized or permitted under applicable state and local law to perform such Services. Independent Contractor and any of its employees performing Services hereunder must comply with the Jessica Lunsford Act effective September 1, 2005, as same may be amended from time to time. Non-instructional school BPS employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds must meet level 2 screening requirements as described in Section 1012.32, Florida Statutes. For purposes of this Agreement, contractual personnel include any vendor, individual, or entity under Agreement with BPS. The cost of the required screening is at the expense of Independent Contractor.
7. **FEDERAL AND STATE TAX.** BPS is exempt from federal and state taxes for tangible personal property. Independent Contractor is not exempted from paying applicable sales tax to the State of Florida and/or the federal government, as the case may be, for the purchase of materials to fulfill contractual obligations with BPS, nor is Independent Contractor authorized to use BPS's tax exemption number in securing such materials. In the event Independent Contractor is also exempt from federal and state taxes for tangible personal property, it shall promptly submit to BPS an appropriate exemption certificate. BPS will sign an exemption certificate submitted to it by Independent Contractor. Independent Contractor is responsible for payment of its own FICA and social security benefits with respect to this Agreement.
8. **DOCUMENTATION.** In the performance of this Agreement, Independent Contractor must maintain books, records, and accounts of all activities in compliance with standard accounting procedures.
9. **INSURANCE.**
 - (a) Independent Contractors Who are Legal Entities. At its sole expense, if Independent Contractor is a legal entity (i.e. LLC, Inc., Company, etc.) or otherwise registered with the Florida Division of Corporations, Independent Contractor must, at all times, maintain the following types of insurance during the term of this Agreement and such insurance will apply to Independent Contractor, its employees, agents, and sub-contractors:
 - i. Workers' Compensation insurance in statutory amounts and Employers' Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance must apply to all Independent Contractor's employees who will be engaged in the performance of the Services in this Agreement.
 - ii. Commercial General Liability insurance, including products and completed operations and contractual liability, arising from any and all claims for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy must include The School Board of Brevard County, Florida, its board members and employees as additional insured.
 - iii. Automobile Liability insurance, including all owned, non-owned, and hired vehicles used in conjunction with providing Services outlined in this Agreement, for property damage and bodily injury, including death, in an amount not less than One Million Dollars (\$1,000,000) each accident. This policy must include The School Board of Brevard County, Florida, its board members, employees, and representatives as additional insured.
 - iv. Independent Contractor agrees to provide proof of insurance before execution of this Agreement and that no Services will begin until proof of insurance is received by BPS. Receipt of proof of insurance is not an approval of Independent Contractor's insurance or a release or waiver of Independent Contractor's obligation to provide the insurance required in this Agreement.
 - (b) Independent Contractors Who are Sole Proprietors or Individuals. If Independent Contractor is a sole proprietor or individual, they must complete the Independent Contractor Request for Waiver of General Liability Insurance, attached hereto as Exhibit "C" and incorporated herein.

10. **TIME OF ESSENCE.** Time is of the essence concerning the performance of all terms and conditions of this Agreement.
11. **STANDARD OF CARE.** In providing Services under this Agreement, Independent Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice by BPS, Independent Contractor will correct those Services not meeting such a standard.
12. **INDEMNIFICATION.**
- a. To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless SCHOOL BOARD, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, and attorneys' fees at the pre-trial, trial, and appellate levels, to the extent caused by negligence, recklessness, or intentional wrongful conduct of CONTRACTOR or other persons employed or utilized by CONTRACTOR in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification is in addition to and not in lieu of any other remedy available under this Agreement or otherwise. CONTRACTOR's available insurance under this Agreement, or otherwise, will not diminish or limit this indemnification obligation in any way. The remedy provided to the Indemnitees by this indemnification survives this Agreement. The provisions of this Section specifically survive the termination of this Agreement. The provisions of this Section are intended to require the CONTRACTOR to furnish the greatest amount of indemnification allowed under Florida law. If any indemnification requirement in this Agreement violates any law, the Parties agree the provision requires the greatest level of indemnification by the CONTRACTOR to the Indemnitees allowable under Florida law. CONTRACTOR acknowledges that indemnification by the SCHOOL BOARD may be unenforceable under Florida law and that the SCHOOL BOARD does not waive any legal defense based on the unenforceability of such indemnification position. This indemnification shall not apply to any claims, suits, actions, damages, losses, expenses, and/or a cause of action, arising from BPS's negligence or intentional misconduct.
 - b. Nothing in this Agreement shall be deemed to affect the rights, privileges, or be deemed a waiver of, or limitation of, BPS's sovereign immunity protection and limitations of liability pursuant to Section 768.28, F.S. Any indemnity or assumption of liability by BPS hereunder shall be subject to BPS's rights to sovereign immunity and any other limitations of liability provided BPS pursuant to Florida law.
13. **SUCCESSORS AND ASSIGNS.** BPS and Independent Contractor each binds itself and its partners, successors, executors, administrators, and assigns to the other Party of this Agreement and the partners, successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither BPS nor Independent Contractor will assign, sublet, convey, or transfer its interest in this Agreement without the written consent of the other. Nothing herein is construed as creating any personal liability on the part of any officer or agent of BPS, which may be a party hereto, nor is it construed as giving any rights or benefits hereunder to anyone other than BPS and Independent Contractor.
14. **GOVERNING LAW AND REMEDIES.** The law of the State of Florida will govern this Agreement. Any and all legal action necessary arising out of the Agreement will have its venue in Brevard County, and interpretation of the Agreement will be according to the laws of Florida. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
15. **CONFLICT OF INTEREST.** Independent Contractor represents that it presently has no interest, and will acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder, as provided for in Section 112.311, Florida Statutes. Independent Contractor further represents that it will not employ any person having any interest for said performance of services. Independent Contractor will promptly notify BPS in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstances which may influence or appear to influence Independent Contractor's judgment or quality of Services provided hereunder. If, in the opinion of BPS, the prospective business association, interest, or circumstance would not constitute a conflict of interest by Independent Contractor, BPS will so state in its response and Independent Contractor may, at its option, enter into said association, interest, or circumstance

and it will not constitute a conflict of interest with respect to the Services provided to BPS by Independent Contractor under the terms of this Agreement. If BPS, in its sole discretion, determines that there is a conflict, Independent Contractor will not enter into or, if already entered into, will immediately terminate such arrangement or agreement with the subject business associate.

16. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Independent Contractor is, and will be, in the performance of all Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of BPS. All persons engaged in any of the work or Services performed pursuant to this Agreement will at all times, and in all places, be subject to Independent Contractor's sole direction, supervision, and control. Independent Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects to Independent Contractor's relationship and the relationship of its employees to BPS shall be that of an independent contractor and not as employees or agents of BPS. Independent Contractor does not have the power or authority to bind BPS in any promise, agreement, or representation. Nothing contained herein creates an association, partnership, joint venture, or relationship of principal and agent or master and servant among the Parties or any affiliate thereof, or to provide any Party hereto with the right, power, or authority whether expressed or implied, to create any such duty or obligation on behalf of any other party.
17. **NONDISCRIMINATION.** Independent Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, or expression, and genetic information or any other category of persons protected pursuant to Florida law.
18. **SURVIVAL.** All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. The insurance and indemnity provisions set forth in the Agreement will survive the termination of the Agreement.
19. **COMPLIANCE WITH LAWS.** Independent Contractor agrees it will comply with all applicable laws, codes, ordinances, permitting, and regulations as well as applicable BPS policies and BPS regulations, rules, and guidelines in connection with the Services to be provided hereunder. BPS agrees it will comply with all applicable laws, codes, ordinances, permitting, and regulations in connection with the Services provided hereunder.
20. **SEVERABILITY.** If any terms or provision of this Agreement, or the application thereof to any person or circumstances will, to any extent, be held invalid or unenforceable, such term or provision shall be stricken and deemed unenforceable. Every other term and provision of this Agreement will be deemed valid and enforceable to the extent permitted by law.
21. **NAMES; TRADEMARKS.** Independent Contractor shall acquire no rights under the Agreement to, and will not use, the name of BPS or the name of "Brevard County Public Schools" or "BPS" either alone or in conjunction with or as part of any other name, word, mark, picture, logo, design, and/or trademark (collectively, "BPS Marks") in any of Independent Contractor's advertising, publicity, or promotion; to express or imply any endorsement by BPS or its Services; or in any other manner (whether or not similar to the uses hereinabove expressly prohibited) without the prior review and written approval by BPS, except as expressly permitted herein. No advertisement, publication, or other use of BPS marks shall be published or otherwise promulgated by Independent Contractor without BPS's prior inspection and written approval. This clause will survive the expiration or sooner termination of this Agreement.
22. **FERPA.** To the extent Services provided hereunder pertain to the access to student information, Independent Contractor must adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.
23. **NON-EXCLUSIVE AGREEMENT.** The Parties understand and agree this Agreement is a non-exclusive agreement, and the Parties hereto may participate in other comparable services to and from any other person or entity.
24. **ENTIRETY OF AGREEMENT.** BPS and Independent Contractor agree that this Agreement and any documents made a part thereof, sets forth the entire agreement between the Parties, that there are no promises or

understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the Parties hereto.

25. **CONSTRUCTION OF AGREEMENT.** Each Party has participated in negotiating and drafting this Agreement, so if ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.
26. **NON-WAIVER.** The failure of either Party to exercise or delay in exercising any right, power, or privilege provided for hereunder is not deemed a waiver thereof; nor will any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege under this Agreement. No Party is deemed to have waived a right, power, or privilege provided for herein, unless such waiver is in writing and signed by the waiving Party.
27. **FORCE MAJEURE.** Except as otherwise provided herein, none of the Parties shall be obligated to perform, be in default of its performance, if prevented by: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, epidemic/pandemic, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation; or (c) labor dispute that results in a strike or work stoppage affecting the performance of this Agreement.
28. **NOTICE.** All formal notices, proposed changes, and determinations between the Parties hereto including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by United States mail, postage prepaid, to the parties at the contact information listed below:

**THE SCHOOL BOARD OF BREVARD COUNTY,
FLORIDA**
Attention: Procurement
2700 Judge Jamieson Way
Viera, Florida 32940

THE BREVARDSCHOOLS FOUNDATION
Attention: Janice Kershaw
2700 Judge Fran Jamieson Way
Viera, Florida 32940

29. **COUNTERPARTS.** This Agreement may be executed in counter copies, including facsimile and electronic mail signatures, each of which shall be deemed to constitute one (1) original document.

30. **PUBLIC RECORDS.**

1.1. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, recordsrequest@brevardschools.org, BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**

1.2. This Agreement is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, F.S., which generally makes public all records or other writings made by or received by the Parties. Contractor acknowledges its legal obligation to comply with Section 119.0701, F.S. Contractor shall keep and maintain public records, as defined in the Florida Public Records Act, which would be required to be kept and maintained by BPS to perform the scope of services. Contractor will comply with all requirements for retaining public records and will transfer, at no cost to BPS, all public records in the possession of Contractor upon a request for such public records. See Section 119.0701(2)(b)4, F.S., for additional recordkeeping requirements.

- 1.3. A request to inspect or copy public records relating to BPS's contract for services must be made directly to BPS's Custodian of Public Records. If BPS does not possess the requested records, BPS's Custodian of Public Records will immediately notify Contractor of the request. Contractor must provide a copy of the records to BPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. If Contractor does not timely comply with BPS's request for records, BPS will be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.
 - 1.4. Should Contractor fail to provide the requested public records to BPS within a reasonable time, Contractor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, F.S.
 - 1.5. Contractor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Agreement term and following the completion, expiration, or termination of same if Contractor does not transfer the records to BPS. Upon completion, expiration, or termination of this Agreement, Contractor shall transfer, at no cost to BPS, all public records in its possession or keep and maintain public records required by BPS to perform the services. If Contractor transfers all public records to BPS, Contractor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Contractor keeps and maintains public records upon completion, expiration, or termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records and provide requested records to BPS pursuant to the requirements of this Article. All public records stored electronically must be provided to BPS in a format that is compatible with the information technology systems of BPS.
31. **E-Verify.** Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, BPS has made and executed this Agreement and Independent Contractor has made and executed this Agreement on the day and year written below.

THE BREVARD SCHOOLS FOUNDATION

By: _____ Date: _____
Authorized Representative Signature

Print Name: _____

Title: _____

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

By: _____ Date: _____
Misty Belford, Board Chairperson

Exhibit "A"

WORK ORDER FOR SERVICES

Independent Contractor:	The Brevard Schools Foundation
Tracking Number Assigned by BPS Procurement:	21-475-A-WH
Description of Services to be Performed:	<p>Updating K-12 Recycling Curriculum and Teacher's Guide as outlined in Exhibit C and scheduled as revised in Exhibit D.</p> <p>Key Deliverables for Updating K-12 Recycling Curriculum</p> <p>Objective: The Florida Department of Environmental Protection (FDEP) will work with the Florida Department of Education (FDOE) to develop a request for proposal to update the Solid Choices K-12 curriculum content to address the significant number of new waste reduction and recycling processes and technologies implemented in the state of Florida over the last 10 years; including the incorporation of the Next Generation Sunshine State Standards (NGSSS) and web based technology.</p> <p>Existing Curriculum: The Solid Choices curriculum was developed as a result of the 1988 Solid Waste Management Act whereas Section 404.714(5)(b), F.S. mandated that solid waste management instruction be provided at both the elementary and secondary levels of our public schools. In 2010, Section 403.7032(4)(b) also directed FDEP to develop a comprehensive recycling program designed to achieve a 75% recycling rate through programs to educate students in grades K-12 in the benefits of, and proper techniques for recycling and programs to educate and train the public in proper recycling efforts.</p> <p>Solid Choices: Thinking, Learning, and Making Choices about Solid Waste and Solid Choices: Ounce of Prevention consists of two instructional modules, one for K-2 and one for grades 3-5. Each module is made up of five lessons. These modules are designed to integrate solid waste management into school curriculum. The lessons use solid waste management as a focal point for existing instruction in areas such as language arts, math, science, and social studies; for addressing the Florida State Standards; and for preparing students for standardized testing.</p> <p>The FDEP's Office of Environmental Education, which was originally responsible for the development of Solid Choices, was closed in 2000. It is only available now in scanned pages saved as a PDF on the FDEP Recycling webpage.</p> <p>Key Deliverables Scope: Update and Expand the K-12 Solid Choices Recycling Curriculum and Teachers Guide Required: ADA Compliant and translated into Spanish</p>

	Lesson introductions and tutorials for implementation Publish curriculum Provide training for FDEP and Florida K-12 Educators.
Location of Services to be Performed:	Offsite
Dates of Services to be Performed:	April 14, 2021 through September 30, 2021
Times of Services to be Performed:	N/A
Name and Contact Information of BPS Employee Coordinating Services at Location:	N/A
Other Notes and/or Expectations:	

Exhibit "B"

FEES FOR SERVICES

Description:

BPS shall pay the Contractor on a fixed price and cost reimbursement basis up to a maximum of \$400,000 for the completion of services as specified in the Scope of Work as outlined in Exhibit C and scheduled as revised in Exhibit D on a pass-through basis as funds are provided by the State of Florida Department of Environmental Services. This agreement shall not financially or bind the district to make payment in any manner.

The Contractor will be paid 5% of the budgeted total of \$400,000 as outlined in Exhibit C and scheduled as revised in Exhibit D less 0.5% for BPS administrative costs.

\$20,000 less \$2,000 = \$18,000 total due to Brevard Schools Foundation