

PR#: _____
Contract Number: _____
RFP Number (if applicable): _____

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 30th day of July, 2021, by and between **Performance Services, Inc.** (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Provide all services as outlined in your proposal dated June 28, 2021, to **provide INTEGRATED PROJECT DELIVERY services for the ESSER II RELIEF FUNDS @ MILWAUKEE PUBLIC SCHOOLS.**

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM: July 30, 2021 through December 31, 2023

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

3. COMPENSATION

The above-mentioned services will be provided on an as-needed basis for a fee not-to-exceed the rate schedule identified in the response to RFP 21-026 dated June 4, 2021.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted via email to:

DFMSAccountsPayable@milwaukee.k12.wi.us

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON-APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person’s sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not be limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall affect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this contract.

8. SHIPPING/TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

9. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

10. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

11. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the

contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

12. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days notice, but reserves the right to give immediate notice. If In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

13. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

14. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

15. PROHIBITED PRACTICES

- A. Contractor during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Resources Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this contract.

16. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

17. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designees.

18. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

19. INTEGRATION/SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

20. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

21. TIMING

Time is of the essence in this Contract.

22. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

23. FORCE MAJUERE

MPS will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

24. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

25. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

26. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Executive Director of Communications & Outreach.

27. ORDER OF PRIORITY

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

28. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

29. CCS REQUIREMENT

The HUB requirement on this contract is per RFP 21-026. The COIN requirement will be established as described in the RFP 21-026. The student employment requirement is per RFP 21-026. The Career Education requirement is per RFP 21-026. Failure to achieve this requirement may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR: **Performance Services, Inc.**

By: _____

Dated: _____

Address: 4670 Haven Point Boulevard
Indianapolis, IN 46280

Phone Number: (317) 713-1750

Tax Id or SS _____

Budget Code: **VARIOUS**

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____
(Principal or Administrator Signature)

Dated: _____

By: _____
Keith P. Posley, Ed.D.
Superintendent of Schools

By: _____
Bob Peterson
President - Milwaukee Board of School Directors

**INTEGRATED PROJECT DELIVERY SERVICES FOR ESSER II RELIEF FUNDS
RFP #21-026**

**INTEGRATED PROJECT DELIVERY SERVICES FOR ESSER II RELIEF FUNDS
COST PROPOSAL FORM – Updated per Addendum 4
RFP #21-026**

7.2 PROPOSAL FOR INTEGRATED PROJECT DELIVERY SERVICES FOR ESSER II RELIEF FUNDS

All pricing provided herein shall comply with 6.3 – [Reimbursable Expenses](#). & 6.5 – [Additional Services](#).

ITEM NO.				
1.	Identify the fee for services to be paid to Integrated Project Delivery contractor for Phase 1 which includes Construction Program Analysis and Scope Development /Schematic Design services. Fee to be expressed as a percentage of the total value of work assigned to IPD Contractor as identified in the PSC Contract. .			
	Percent to be Applied Based on Blanket Contract Range (front loading of fees in this category will be viewed as a negative factor as part of the evaluation criteria)			
	\$0 - \$4,999,999	\$5 Mil-\$9,999,999	\$10 Mil-\$49,999,999	\$50 Mil - \$100 Mil
	0.5%	0.5 %	0.5 %	0.5 %
2.	Identify fee for services to be paid to IPD Contractor for Phase 2 which includes IPD Contractors costs associated with managing Construction Document Design Development, Bidding, and Construction for a project with a Scoping Estimate within the ranges noted below. Fee to be expressed as a percentage of the total value of the Estimate/GMP. Fees applied to each project contract will vary based on project estimate and finalized based on bids as noted below.			
	Percent to be Applied Based on Project Contract Range			
	\$0 - \$99,000	\$100,000 - \$499,999	\$500,000-\$999,999	\$1 Mil - \$5 Mil
	13.5 %	13.5 %	13.5 %	13.5 %
3.	Not Used			

Respondent Company Name: Performance Services, Inc.

**INTEGRATED PROJECT DELIVERY SERVICES FOR ESSER II RELIEF FUNDS
RFP #21-026**

7.3 MANDATORY FEES AND OTHER MARK-UP BREAKOUT: Updated per Addendum 4

Identify the percentage for each of the categories listed below. These are the percentages that will be utilized on the scoping estimate and on the final project total cost. These cost percentages will also be used as part of the evaluation and when necessary, applied to change orders or to check alignment of project costs.

Not Used				
1.				
CONSTRUCTION DOCUMENT DESIGN DEVELOPMENT CONSULTANT FEE – on separate sheet identify what costs are included.				
2.	\$0 - \$99,000	\$100,000 - \$499,999	\$500,000-\$999,999	\$1 Mil - \$5 Mil
	0%	0%	0%	0%
GENERAL CONDITIONS MARK UP – on separate sheet identify what costs are included				
3.	\$0 - \$99,000	\$100,000 - \$499,999	\$500,000-\$999,999	\$1 Mil - \$5 Mil
	3.0%	3.0%	3.0%	3.0%
PROFIT & OVERHEAD – on separate sheet identify what costs are included				
4.	\$0 - \$99,000	\$100,000 - \$499,999	\$500,000-\$999,999	\$1 Mil - \$5 Mil
	15.0%	15.0%	15.0%	15.0%
Not Used				

NOTE: No other costs or future cost increases (other labor, materials, overhead, fuel surcharges, trucking reimbursement, etc.) will be allowed outside of this agreement.

Respondent Company Name: Performance Services, Inc.

SAMPLE PROJECT ESTIMATE SHEET

The following estimate template is provided as a guide to identify the type of information that is expected to be included with each scoping and project budget and to clarify how various fees identified in cost proposal forms are to be applied. Task/Work Description should be detailed, by line item/task and broken out by material and labor costs.

	Task/Work Description	Cost	Notes/Comments
1.	Electrical – break down costs on estimate to provide sufficient detail to identify scope.	\$ Identify estimated cost then update based on bids received.	<i>These costs are based on the estimates or bids received.</i>
2.	Mechanical – break down costs on estimate to provide sufficient detail to identify scope.	\$ Identify estimated cost then update based on bids received.	<i>These costs are based on the estimates or bids received.</i>
3.	Self-Performed Work - Mechanical – break down costs on estimate to provide sufficient detail to identify scope.	\$ Identify estimated cost then update based on bids received.	<i>These costs are based on the estimates or bids received.</i>
4.	Construction Sub Total	\$ Total of all construction Bids	<i>Total of costs based on the estimates or bids received.</i>
5.	General Conditions	\$	<i>Should be based on percentage identified in 7.3 (3)</i>
6.	Profit and Overhead	\$	<i>Should be based on percentage identified in 7.3 (4)</i>
7.	Construction Document Design Development Fee	\$ Identify cost for design. Scoping estimate should include breakdown for Document Development and Construction Administration	<i>Should be based on percentage identified in 7.3 (2)</i>
8.	Total – Guaranteed Maximum Price	\$ Total of lines 4, 5, 6 and 7	<i>IPD Contractor's fee is based this total</i>
9.	IPD Contractor Fee	\$ Identify fee to be paid to IPD Contractor. If work does not proceed to construction, fee is based on actual costs to IPD Contractor	<i>For Scoping Estimate, the IPD Contractor fee percentage shall be per 7.2 (1). For Design/Construction Phase, IPD Contractor Fee shall be based on percentage identified in 7.2 (2)</i>
10.	Total amount to be paid to IPD Contractor	\$ Total of lines 8 and 9	<i>This is the amount that will be identified on the IPD Design and Construction Contract</i>
10.	Other Costs to be paid by owner such as moving costs, abatement, furniture and equipment, etc.	\$	<i>IPD Contractor does not receive any fees associated with tasks they are not managing</i>

Supplement to 7.3 Mandatory Fees and Other Mark-Up Breakout

Table 7.3 in the Cost Proposal Form requests information on what costs are included for the three (3) identified categories.

2. Construction Document Design Development Consultant Fee

These costs are not applicable, and listed as zero in our Cost Proposal Form, as we have interpreted these costs to be captured in 7.2(2) related to Phase 2 services.

3. General Conditions Mark-Up

These costs refer to any cost of construction not included by subcontractors, vendors, or in other identified categories. For example, it may include but not be limited to, costs related to bond, project insurance, project safety, warranty, permit costs, signage, equipment storage, etc.

4. Profit and Overhead

This includes our profit and all overhead costs associated with running a construction business. These overhead costs include, but are not limited to, administrative staff (i.e. sales/marketing, legal, management), office rent, utilities and supplies, equipment and tools, computers and IT equipment/services, computer software (i.e. AutoCAD, Revit, Procore, MS Office, etc.), insurance, company vehicles and maintenance, etc.

As additional information, we have provided construction cost data from RS Means – a widely utilized and referenced source in the industry – to highlight typical Overhead and Profit percentages for construction firms and contractors. See attached pages, and specifically lines 0350, 0400, and 0450, which show the following:

Project Size	Typical Overhead and Profit
\$500,000	25%
\$2,000,000	20%
Over \$10,000,000	15%

Firms that represent significantly lower overhead/profit percentages to Owners typically employ other strategies and means to obtain these industry standard thresholds.