



Denver Public Schools
Professional Compensation System for Teachers

ProComp

Teacher Compensation Trust Board of Directors

A G E N D A

July 19, 2006

- I. Review and Approve Agenda
- II. Review and Approve June 21 Minutes
- III. Review Financial June Financial – *Information (Rich Allen)*
- IV. Replacement of Doug Tucker – *Information (Andree Hall)*
- V. Presentation of Disaggregated Opt In Data – *Information (Brad Jupp and Caley Miller)*
- VI. Timetable of Implementation of ProComp Elements – *Information (Rich Allen and Brad Jupp)*
- VII. Status of ProComp Audit RFP – *Information (Velma Rose)*
- VIII. Language for Amending ProComp Trust Agreement – *Decision (Mary Brauer)*
- IX. Phase IV Contract with Carpe Datum – *Action (Rich Allen)*
- X. Future Agenda Items – *Information (Velma Rose)*
- XI. Calendar

Please see attachments bellow.

DENVER PUBLIC SCHOOLS

AGREEMENT FOR INDEPENDENT CONTRACTOR SERVICES

WHEREAS, School District No. 1 in the City and County of Denver and State of Colorado (hereinafter referred to as the "District") has the statutory authority to contract with persons, firms, consultants and/or entities for the provision of services to the District; and

WHEREAS, the District has determined that a need exists to retain a Contractor to provide the services hereinafter specified;

WHEREAS, CarpeDatum Consulting, Inc _____ (hereinafter referred to as the "Contractor") is qualified to provide the services required by the District; and

WHEREAS, the District maintains certain confidential information including trade secrets, student records, and all other information not clearly known to the public and/or confidential pursuant to law. The District's trade secrets and other proprietary and confidential information includes the whole or any portion or phase of any of the following: student records, employee records, scientific or technical information, designs, processes, procedures, improvements, confidential business or financial information, other information relating to any the District's business bids, techniques, operations, services, contracts, forms, and all other trade secret information not clearly known to the public ("Confidential Information"). Due to the value of the District's Confidential Information and the consequences if it is disclosed, taken or misused for any reason, the District seeks by this Agreement to protect the District's Confidential Information and any other confidential information the Contractor acquires as a result of the Contractor's provision of services to the District. The Contractor recognizes and respects the value of the District's Confidential Information.

NOW, THEREFORE, the undersigned parties desire to enter into this Agreement subject to the following terms and conditions:

1. Services. The Contractor shall provide the following: Validation of the data feeds, validation and modifications to the forecasting model, finalization of the documentation for the ProComp Fiscal Model application per the proposed project plan.

_____. The Contractor will provide the services consistent with generally accepted industry standards for the Contractor's customary services. On the effective date of this Agreement, and during the term of this Agreement, the Contractor will be fully qualified and will have all licenses, permits, certificates, registrations, and approvals needed to perform its obligations under this Agreement.

2. Schedule. The District and the Contractor agree that the services shall be provided at the following mutual agreed locations and times: on-site at DPS facilities as needed for interviews, system development and staff training, off-site as feasible for documentation and other tasks not requiring direct access to DPS staff.

_____.
3. Term. The provision of services under this Agreement shall commence on July 19, 2006 _____, and terminate on December 31, 2006 _____. The Contractor understands and agrees that the District has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise.

The provisions above regarding the term of this Agreement apply to the period during which the Contractor may provide services to the District under this Agreement. In addition, the Contractor's obligation regarding the Contractor's preservation and return of the District's Confidential Information and will continue in force indefinitely, both during and after the time during which the Contractor may provide services and products to the District.

4. Remuneration. The District shall be obligated to pay the Contractor a fee, as described below, for the services to be rendered pursuant to this Agreement. Total fee not to exceed: \$32,400.

The District shall process payment to the Contractor within thirty (30) days of receipt of an invoice by the District's Accounts Payable office. The invoice should detail dates of service, the charge for services and a description of the services. Such invoice shall be submitted to the site administrator to be forwarded to Accounts Payable with the Request for Payment form and the Contractor's W-9 form.

5. Independent Contractor. The Contractor is retained only for the purposes and to the extent set forth in this Agreement and shall at all times have the status of an Independent Contractor. **The Contractor expressly agrees that, as an independent contractor, the Contractor is not entitled to any employee benefits from the District, including, but not limited to, any employer withholdings or liability for: taxes, FICA, Medicare or Medicaid; medical or disability insurance; vacation or leave; pension; unemployment insurance or worker's compensation insurance unless provided by the Contractor or some other entity (collectively, "Employee Benefits"). The Contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the Parties' contractual relationship.**

To the maximum extent permitted by law; the Contractor waives all claims against the District for any Employee Benefits.

The parties agree that the District will not:

- a. Require the Contractor to work exclusively for the District;
- b. Establish a quality standard for the Contractor, or oversee the actual work or instruct the Contractor as to how the work is to be performed, except the Parties agree as stated in Paragraph 1 that the Contractor's services will be consistent with generally accepted industry standards for the Contractor's customary services and products;
- c. Pay the Contractor a salary or hourly rate, but rather will pay only the compensation stated in Paragraph 4;
- d. Terminate the Contractor's current services for particular work the Contractor accepts from the District unless the Contractor violates the terms of this Agreement or fails to produce a result that meets the specifications of this Agreement;
- e. Provide more than minimal training for the Contractor;
- f. Provide tools or benefits to the Contractor;
- g. Dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established through a written agreement mutually acceptable to both Parties for particular work the Contractor accepts from the District;
- h. Pay the Contractor individually if the Contractor is an individual; instead, the District will make all compensation checks payable to the trade or business name under which the Contractor does business; or
- i. Combine its business operations in any way with the Contractor's business, but instead both Parties will maintain their own operations as separate and distinct.

6. No Agency Created. The Contractor agrees and understands that no authority exists pursuant to this Agreement for the Contractor to enter into any third party contract, assume any obligation, or make any representation to third parties on behalf of, or which may bind the District.

7. No Unauthorized Use of Names. Neither party will use the other's name in any advertisement, promotion, business card, etc. without the other Party's prior written consent.

8. Assignment Prohibited. This Agreement does not permit, nor will the District allow this Agreement to be assigned by the Contractor. In this regard, the Contractor understands that this Agreement shall be considered a personal services agreement.

9. Compliance With Law. In addition to the obligations regarding workers' compensation and unemployment compensation insurance stated in Paragraph 15.b., the Contractor will comply with all laws, regulations, municipal codes and ordinances and other workplace requirements and standards applicable to the provision of services/work performed and the Contractor's Employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, pensions, reports, and record keeping.

10. Modification/Entire Agreement/No Prior Agreement. This Agreement constitutes the entire understanding between the parties hereto and may not be modified and/or amended unless any such modification or amendment is reduced to writing and signed by both parties. The Contractor further understands and agrees that this Agreement supercedes any prior written or verbal agreement, promise, representation, understanding, or course of conduct between the parties.

11. Termination/Revocation. Either party may revoke or otherwise terminate this Agreement, upon reasonable cause, by notifying the other party in writing of their intention to take such action. Any such writing shall be sent to the other party by certified mail, return receipt requested, and shall be effective ten (10) days after the date of mailing. The grounds for reasonable cause shall include: material violations of this Agreement, and/or any act exposing the other party to liability for personal injury or property damage. In the event of termination, the District shall be obligated to pay the Contractor only for services rendered up to the effective date of termination.

In addition, the District may terminate this Agreement immediately without prior notice if any of the following occurs:

- a. If the Contractor commits an act of fraud, dishonesty, or any other act of negligent, reckless or willful misconduct in providing services to the District;
- b. If any contract by the District with any third party on which this Agreement substantially depends is terminated or the District is unable for any other reason to provide services for to the party(ies) to that contract; or
- c. If any circumstance beyond the District's control, including but not limited to financial constraints imposed by action of the legislature or Governor of the State of Colorado, prevents it from providing services or otherwise hinders, delays, or prevents the District from receiving revenue or income or increases its overhead to an extent the District reasonably decides to reduce or modify its operations.

12. Indemnification. The Contractor agrees to indemnify, defend and hold the District harmless from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the District or its employees, representatives, or agents, which arises directly or indirectly from any act or omission of the Contractor, including but not limited to any misconduct or neglect by the contractor.

Furthermore, the Contractor will defend the District from any claim and will indemnify the District against any liability for any Employee Benefits for the Contractor imposed on the District; and the Contractor will reimburse the District for any award, judgment or fine against the District based on the position the

Contractor and/or any of its employees or agents who provides any services to the District related to this Agreement (the Contractor's "Employees") was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

13. Governing Law. This Agreement has been executed in Colorado and shall be governed in accordance with the laws of the State of Colorado in every respect.

14. Severability. If it is found by a court of competent jurisdiction or by operation of law that a term or provision of this Agreement is invalid or unenforceable, the remainder of the Agreement shall be unimpaired and continue in force and effect, and the invalid or unenforceable term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid or unenforceable term or provision.

15. Insurance.

a. No Insurance Through the District. The District will not include the Contractor as an insured under any policy the District has for itself, including, without limitation, any liability, life, collision, comprehensive, health, medical, workers' compensation or unemployment compensation insurance policy.

b. Contractor to Obtain, Maintain and Manage Workers' Compensation and Unemployment Compensation Insurance for its Employees. The Contractor must have in place on the effective date of this Agreement and must maintain during the term of this Agreement workers' compensation insurance and unemployment compensation insurance covering each of the Contractor's Employees. The Contractor will be solely responsible for managing, and, consistent with the indemnification provision in Paragraph 12 will be solely liable for any damages or award and will defend and indemnify the District with regard to, any occupational injury claim or unemployment claim, appeal or related proceeding brought by or on behalf of any Employee of the Contractor. The Contractor must provide proof reasonably satisfactory to the District and its insurers that the Contractor has workers' compensation insurance and unemployment compensation insurance policies in place providing the required coverage for the Contractor's Employees.

16. No Waiver. No assent, expressed or implied, by the District to any breach of any obligation or covenant by the Contractor shall be construed as a waiver of any subsequent or other breach by the Contractor.

17. Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed to limit or define the terms and provisions hereof.

18. Conflict. In the event of a conflict between the terms of the Agreement and any exhibits attached to this Agreement, the terms of this Agreement shall prevail.

19. Relief the District May Seek. The Contractor further agrees that, if the Contractor violates Paragraphs 20-22 of this Agreement, it would be difficult to determine the damages the District would suffer including, but not limited to, losses attributable to lost confidential information. Accordingly, the Contractor agrees that if the Contractor violates Paragraphs 20-22 of this Agreement, the District will be entitled to an Order for injunctive relief and/or for specific performance, or their equivalent, from a court, including requirements that the Contractor take action or refrain from action to preserve the secrecy of the District's Confidential Information and to protect the District from additional damages, and the Contractor agrees the District does not need to post a bond to obtain an injunction and waives the Contractor's right to require such a bond.

20. Confidential Information Belongs Solely To the District. The District's Confidential Information and all other confidential information and data relating to the District's business are the District's exclusive property, and the Contractor therefore agrees that:

- a. All notes, data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting any of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to the District;
- b. At all times while this Agreement is in effect, the Contractor will keep secret and will not disclose to any third party, take or misuse any of the District's Confidential Information, or any other confidential information the Contractor acquires or has access to because of its provision of services;
- c. At all times while this Agreement is in effect, the Contractor will not use or seek to use any of the District's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business or in any way adverse to the District's interests;
- d. On the District's request or on termination of this Agreement, the Contractor will promptly return to the District all its property, specifically including all documents, disks or other computer media or other materials in the Contractor's possession or control that contain any of the District's Confidential Information;
- e. After termination of this Agreement, the Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of the District's Confidential Information; and
- f. The Contractor will promptly advise the District of any unauthorized disclosure or use of the District's Confidential Information by any person or entity.

The Parties agree this provision is intended to express the District's rights and the Contractors' duties to the District under the Colorado Uniform Trade Secrets Act, West's Colorado Revised Statutes Annotated §§ 7-74-101-110, and other applicable law.

21. Confidentiality Agreements With The Contractor's Employees. The Contractor will cause each of its Employees who may gain access to any of the District's Confidential Information, to execute a confidentiality agreement reasonably acceptable to the District before disclosing any Confidential Information to that Employee or permitting that Employee to have access to any Confidential Information.

22. Non-solicitation. The Contractor shall not solicit directly or indirectly any of the District's employees for a period of two years following the termination of this Agreement without prior written consent of the District.

23. Attorneys' Fees, Experts' Fees, Costs. In any litigation of any dispute between the parties, in addition to any relief, order or award that enters, if the District is the prevailing party, it will be awarded and the Contractor shall be liable for reasonable attorneys' fees, expert witness fees and costs.

24. Notices, Process. Any notice this Agreement requires must be in writing and will be effective only if hand-delivered or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the Contractor's address first stated below; at the District's address as follows: Denver Public Schools, Director of Purchasing, 900 Grant Street, Denver, Colorado 80203; or at such other address as a party may later give notice to the other party. Each party agrees to waive service of process in any action brought to enforce or to interpret this Agreement, and the parties agree that service of the complaint and any other pleading, discovery, order or document in any such action that would otherwise have to be served by personal service will be deemed served three (3) days after being sent to the other party and that party's attorney as provided above.

IN WITNESS OF THE PARTIES AGREEMENTS, the District and the Contractor have executed this Agreement on the date(s) indicated below:

CONTRACTOR: CarpeDatum Consulting

By: W. Chris Brown
(signature)

Title: Managing Partner

Address: 18449 East Hinsdale Ave

City, State, Zip: Foxfield, CO 80016

Tax ID: #84-1474923

Date: 6/29/2006

* * * * *

**SCHOOL DISTRICT NO. 1
IN THE CITY AND COUNTY OF DENVER
AND STATE OF COLORADO**

RECOMMENDED BY:

Site Administrator's Signature

Print Name and Title

School or Department

Date

* * * * *

APPROVED BY:

Authorized Designee of the Board of Education per Board Policy DJA

Print Name and Title

Date

THIS FORM MUST BE COMPLETED IN FULL, SUBMITTED TO THE DISTRICT'S PURCHASING DEPARTMENT, AND APPROVED AND EXECUTED BY THE BOARD OF EDUCATION'S DULY AUTHORIZED DESIGNEE PRIOR TO THE COMMENCEMENT OF THE CONTRACTOR'S PROVISION OF SERVICES. THE DISTRICT SHALL NOT BE LIABLE FOR PAYMENT FOR ANY SERVICES PERFORMED BY THE CONTRACTOR PRIOR TO SAID APPROVAL.

JUNE 2006 PROCOMP TRUST FINANCIAL REPORT

Investments	
Colo Trust Plus + yield of 5.1%	\$ 20,778,668.35
Receivables:	
June 21-30, 2006 Property Taxes, net of collection fees	490,978.61
Total Assets	<u>\$ 21,269,646.96</u>
Payable:	
Net Revenues	21,269,646.96
Balance	<u>\$ 21,269,646.96</u>

Sum of FTE_SPLIT				WINDOW					
JOB_CODE	JOB_TITLE	SRE	PROG	New Hire	OPT-IN 1	OPT-IN 2	Non-ProComp	Grand Total	
1401	Nurse 181			1.20	21.00	7.00	29.90	59.10	
1500	Occupational Therapist 181			2.00	7.50		10.30	19.80	
1511	Psychologist 181			1.00	30.20	7.60	25.55	64.35	
1520	Physical Therapist 181			0.50	3.00	2.80	3.60	9.90	
1530	Social Worker 181				21.80	4.40	36.10	62.30	
1554	Speech Language Pathologist 181			1.00	39.50	8.25	30.25	79.00	
1570	Audiologist 181					1.00	3.00	4.00	
3300	Teacher, Secondary (High) 181	11		15.50	88.00	55.05	403.25	561.80	
		12	1700			11.50	7.00	41.76	60.26
			1702					1.00	1.00
			1713			1.00			1.00
			1733					2.00	2.00
			1743				1.00	4.00	5.00
			1746			1.00	1.00	5.00	6.00
			1753			1.00		1.00	2.00
			1797					1.74	1.74
		1798			5.00	1.00	1.50	7.50	
		12 Total			1.00	18.50	9.00	58.00	86.50
		13				3.00	4.00	26.50	33.50
		19			1.00	13.50	12.45	59.65	86.60
		21					1.00		1.00
		22						0.10	0.10
		28				1.00		8.00	9.00
		34					1.00		1.00
3301	Teacher Secondary (Middle) 181	11		7.00	63.50	40.04	295.34	405.88	
		12	1700		2.00	12.00	10.00	51.00	75.00
			1720			1.00			1.00
			1732				1.00	4.00	5.00
			1742			1.00	1.00	5.50	7.50
			1745				2.00	2.00	4.00
			1752					4.00	4.00
			1754					1.00	1.00
		1798			1.00			1.00	
		12 Total			2.00	15.00	14.00	67.50	98.50
		13				3.00	1.00	6.00	10.00
		19			4.00	14.50	11.96	106.91	137.37
		28						9.00	9.00
3302	Teacher, Elementary 181	11		13.50	109.54	66.50	634.89	824.43	
		12	1700			28.25	12.00	107.00	147.25
			1702			1.00		3.00	4.00
			1705					1.50	1.50
			1706			2.00		1.00	3.00
			1707				0.50	1.00	1.50
			1708					1.50	1.50
			1709			0.60		1.00	1.60
			1711			1.00			1.00
			1720			1.00		2.80	3.80
			1731			6.00	1.00	1.00	8.00
			1734			1.00	1.00	1.00	3.00
			1741			4.00	2.00	5.00	11.00
			1744			4.00	1.00	4.00	9.00
			1751			2.00		6.00	8.00
			1754			1.00			1.00
			1771			0.50			0.50
			1791			3.00		5.00	8.00
		1793			3.00	2.00	4.00	9.00	
		1795				1.00	0.50	1.50	
1798			1.00	0.50		1.50			
12 Total				59.35	21.00	145.30	225.65		
19			7.00	115.71	85.00	789.01	996.72		
22					0.50	4.00	4.50		
28			1.00	3.00	4.50	32.00	40.50		
33						0.50	0.50		
3305	Teacher on Special Assgnmt 181				11.00	3.00	8.50	22.50	
3306	Library Media Spec, Elem 181				12.00	9.00	30.50	51.50	
3307	Library Media Spec, M S 181				1.00	4.00	10.00	15.00	
3308	Library Media Spec, H S 181				1.00	1.50	9.50	12.00	
3329	Teacher, Itinerant Spec Ed 181				1.00	2.00	5.00	8.00	

Sum of FTE_SPLIT				WINDOW				
JOB_CODE	JOB_TITLE	SRE	PROG	New Hire	OPT-IN 1	OPT-IN 2	Non-ProComp	Grand Total
3330	Teacher,Spec Ed Center Prg 181			1.00	3.00	6.00	28.00	38.00
3350	Literacy Coach, High Sch 181				3.00	4.00	4.00	11.00
3351	Literacy Coach, Middle Sch 181				5.00	7.00	6.00	18.00
3352	Literacy Coach, Elem Sch 181				26.00	12.60	53.00	91.60
3360	School Counselor, High Sch 181				16.00	6.00	17.40	39.40
3361	School Counselor, Midd Sch 181				3.00	3.00	8.00	14.00
3362	School Counselor, Elem Sch 181						6.00	6.00
3370	Student Advisor, High Sch 181				3.00	6.00	14.00	23.00
3371	Student Advisor, Midd Sch 181				2.00	2.00	22.00	26.00
3372	Student Advisor, Elem Sch 181						1.00	1.00
3381	Tchr Admin Asst, Midd Sch 181						1.00	1.00
3382	Tchr Admin Asst, Elem Sch 181				4.00	3.00	21.00	28.00
3390	Math Coach, High Sch 181				1.00	2.00		3.00
3391	Math Coach, Middle Sch 181				3.00	1.00		4.00
3392	Math Coach, Elem Sch 181				1.00	2.00	13.50	16.50
6315	Military Instruction 240			1.00	15.00	7.00	5.00	28.00
Grand Total				59.70	741.60	439.15	3,048.05	4,288.50