

Delaware Department of Education Contract

Communications Support - RFP#2015-11

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on June 30, 2015, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE, and **Colvin Communications**, hereafter referred to as

WHEREAS, DDOE desires to obtain certain services to help in institutionalizing the work around the building and design of internal and external communication of department priorities for the next couple of years; and

WHEREAS, COLVIN COMMUNICATIONS desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and COLVIN COMMUNICATIONS represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and COLVIN COMMUNICATIONS agree as follows:

1. Services.

1.1 COLVIN COMMUNICATIONS shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix B; and (c) COLVIN COMMUNICATIONS's response to the request for proposals, attached hereto as Appendix C. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by COLVIN COMMUNICATIONS shall be furnished without the written authorization of DDOE. When DDOE desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify COLVIN COMMUNICATIONS, who shall then submit to DDOE a "Change Order" for

approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by COLVIN COMMUNICATIONS for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 COLVIN COMMUNICATIONS will not be required to make changes to its scope of work that result in COLVIN COMMUNICATIONS's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from the execution of this agreement and a State of Delaware Purchase Order through June 30, 2015.

2.2 DDOE will pay COLVIN COMMUNICATIONS for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix A.

2.3 DDOE's obligation to pay COLVIN COMMUNICATIONS for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$112,000. It is expressly understood that the work defined in the appendices to this Agreement must be completed by COLVIN COMMUNICATIONS and it shall be COLVIN COMMUNICATIONS's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DDOE's purchase order(s) to COLVIN COMMUNICATIONS.

2.4 COLVIN COMMUNICATIONS shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide COLVIN COMMUNICATIONS a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt. DDOE's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle COLVIN COMMUNICATIONS to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to COLVIN COMMUNICATIONS, 4201 Cathedral Ave. NW, Apt 614E, Washington, DC 20016-4955.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by COLVIN COMMUNICATIONS. If an Appendix specifically provides for expense reimbursement, COLVIN COMMUNICATIONS shall be reimbursed only for reasonable expenses incurred by COLVIN COMMUNICATIONS in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to COLVIN COMMUNICATIONS all damages, costs and expenses caused by COLVIN COMMUNICATIONS's negligence, resulting from or arising out of errors or omissions in COLVIN COMMUNICATIONS's work products, which have not been previously paid to COLVIN COMMUNICATIONS.

2.8 Invoices shall be submitted to:
Betty Torbert
Delaware Dept. of Education
401 Federal Street, Suite 2
Dover, DE 19901

3. Responsibilities of COLVIN COMMUNICATIONS.

3.1 COLVIN COMMUNICATIONS shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by COLVIN COMMUNICATIONS, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, COLVIN COMMUNICATIONS shall follow practices consistent with generally accepted professional and technical standards. COLVIN COMMUNICATIONS shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, COLVIN COMMUNICATIONS shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. COLVIN COMMUNICATIONS shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused

by COLVIN COMMUNICATIONS's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the COLVIN COMMUNICATIONS to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. COLVIN COMMUNICATIONS will not produce a work product that violates or infringes on any copyright or patent rights. COLVIN COMMUNICATIONS shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by DDOE of any products or services furnished by COLVIN COMMUNICATIONS shall not in any way relieve COLVIN COMMUNICATIONS of responsibility for the professional and technical accuracy and adequacy of its work. DDOE's review, approval, acceptance, or payment for any of COLVIN COMMUNICATIONS's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and COLVIN COMMUNICATIONS shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by COLVIN COMMUNICATIONS's performance or failure to perform under this Agreement.

3.4 COLVIN COMMUNICATIONS shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by COLVIN COMMUNICATIONS's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

| Project | Team | Title | % of Project Involvement |
|----------------|------|-------|--------------------------|
| Richard Colvin | | | 100 |

3.5 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, COLVIN COMMUNICATIONS will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DDOE. If COLVIN COMMUNICATIONS fails to make a required replacement within 30 days, DDOE may terminate this Agreement for default. Upon receipt of written notice from DDOE that an employee of COLVIN COMMUNICATIONS is unsuitable to DDOE for good cause, COLVIN COMMUNICATIONS shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 COLVIN COMMUNICATIONS shall furnish to DDOE's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 COLVIN COMMUNICATIONS agrees that its officers and employees will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 COLVIN COMMUNICATIONS has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of the State.

3.9 COLVIN COMMUNICATIONS will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.10 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that COLVIN COMMUNICATIONS fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

5.1 In connection with COLVIN COMMUNICATIONS's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with COLVIN COMMUNICATIONS in the performance of services under this Agreement and

will be available for consultation with COLVIN COMMUNICATIONS at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by COLVIN COMMUNICATIONS under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives. DDOE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform COLVIN COMMUNICATIONS by written notice before the effective date of each such delegation.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to COLVIN COMMUNICATIONS. It is understood that DDOE's representatives' review comments do not relieve COLVIN COMMUNICATIONS from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by COLVIN COMMUNICATIONS as it may request, any data which DDOE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

COLVIN COMMUNICATIONS shall return any original data provided by DDOE.

5.6 DDOE shall assist COLVIN COMMUNICATIONS in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 COLVIN COMMUNICATIONS will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOE agrees not to use COLVIN COMMUNICATIONS's name, either express or implied, in any of its advertising or sales materials. COLVIN COMMUNICATIONS reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by COLVIN COMMUNICATIONS for DDOE relating to the services to be performed hereunder shall become the property of DDOE and shall be delivered to DDOE's designated representative upon completion or termination of this Agreement, whichever comes first. COLVIN COMMUNICATIONS shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOE. DDOE shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 COLVIN COMMUNICATIONS retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DDOE's rights to the materials, information and documents developed in performing the project. Upon final payment, DDOE shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which COLVIN COMMUNICATIONS retains title, whether individually by COLVIN COMMUNICATIONS or jointly with DDOE. Any and all source code developed in connection with the services provided will be provided to DDOE, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall COLVIN COMMUNICATIONS be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, COLVIN COMMUNICATIONS shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by COLVIN COMMUNICATIONS prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of COLVIN COMMUNICATIONS even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOE's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 COLVIN COMMUNICATIONS warrants that its services will be performed in a good and workmanlike manner. COLVIN COMMUNICATIONS agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by COLVIN COMMUNICATIONS for DDOE in connection with the provision of the Services, COLVIN COMMUNICATIONS shall pass through or assign to DDOE the rights COLVIN COMMUNICATIONS obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 COLVIN COMMUNICATIONS shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the COLVIN COMMUNICATIONS, its agents or employees, or (B) COLVIN COMMUNICATIONS's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) COLVIN COMMUNICATIONS shall have been notified promptly in writing by DDOE of any notice of such claim; and (ii) COLVIN COMMUNICATIONS shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE promptly notifies COLVIN COMMUNICATIONS in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, COLVIN COMMUNICATIONS will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. COLVIN COMMUNICATIONS will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or

modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by COLVIN COMMUNICATIONS; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by COLVIN COMMUNICATIONS; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in COLVIN COMMUNICATIONS's opinion is likely to be, held to be infringing, COLVIN COMMUNICATIONS shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and COLVIN COMMUNICATIONS's entire liability with respect to infringement.

9.3 DDOE agrees that COLVIN COMMUNICATIONS' total liability to DDOE for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or COLVIN COMMUNICATIONS negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to COLVIN COMMUNICATIONS.

In no event shall COLVIN COMMUNICATIONS be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if COLVIN COMMUNICATIONS has been advised of the likelihood of such damages.

10. Employees.

10.1 COLVIN COMMUNICATIONS has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by COLVIN COMMUNICATIONS in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of COLVIN COMMUNICATIONS who will be assigned to this project.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, COLVIN COMMUNICATIONS shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. COLVIN COMMUNICATIONS shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 COLVIN COMMUNICATIONS acknowledges that COLVIN COMMUNICATIONS and any subcontractors, agents or employees employed by COLVIN COMMUNICATIONS shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 COLVIN COMMUNICATIONS shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, COLVIN COMMUNICATIONS has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 DDOE may suspend performance by COLVIN COMMUNICATIONS under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to COLVIN COMMUNICATIONS at least 30 working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay COLVIN COMMUNICATIONS its compensation, based on the percentage of the project completed and earned until the effective

date of suspension, less all previous payments. COLVIN COMMUNICATIONS shall not perform further work under this Agreement after the effective date of suspension. COLVIN COMMUNICATIONS shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

12.2 In the event DDOE suspends performance by COLVIN COMMUNICATIONS for any cause other than the error or omission of the COLVIN COMMUNICATIONS, for an aggregate period in excess of 30 days, COLVIN COMMUNICATIONS shall be entitled to an equitable adjustment of the compensation payable to COLVIN COMMUNICATIONS under this Agreement to reimburse COLVIN COMMUNICATIONS for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by DDOE for its convenience, but only after COLVIN COMMUNICATIONS is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DDOE prior to termination.

13.3 If termination for default is effected by DDOE, DDOE will pay COLVIN COMMUNICATIONS that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to COLVIN COMMUNICATIONS at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of COLVIN COMMUNICATIONS's default.

- c. Upon termination for default, DDOE may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event COLVIN COMMUNICATIONS shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of COLVIN COMMUNICATIONS assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of COLVIN COMMUNICATIONS to fulfill contractual obligations it is determined that COLVIN COMMUNICATIONS has not so failed, the termination shall be deemed to have been effected for the convenience of DDOE.

13.5 The rights and remedies of DDOE and COLVIN COMMUNICATIONS provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 DDOE may, by written notice to COLVIN COMMUNICATIONS, terminate this Agreement if it is found after notice and hearing by DDOE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by COLVIN COMMUNICATIONS or any agent or representative of COLVIN COMMUNICATIONS to any officer or employee of DDOE with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, DDOE shall be entitled to pursue the same remedies against COLVIN COMMUNICATIONS it could pursue in the event of a breach of this Agreement by COLVIN COMMUNICATIONS.

13.6.3 The rights and remedies of DDOE provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but

such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by COLVIN COMMUNICATIONS to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOE shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by COLVIN COMMUNICATIONS, without prior written approval of DDOE.

15.3 Approval by DDOE of COLVIN COMMUNICATIONS's request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve COLVIN COMMUNICATIONS of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 COLVIN COMMUNICATIONS shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by COLVIN COMMUNICATIONS, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by DDOE's approval of the COLVIN COMMUNICATIONS's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOE may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOE's obligations under it shall be extinguished at the end of the fiscal year in which the State of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

COLVIN COMMUNICATIONS and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendices shall constitute the entire agreement between DDOE and COLVIN COMMUNICATIONS with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 COLVIN COMMUNICATIONS may not order any product requiring a purchase order prior to DDOE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, COLVIN COMMUNICATIONS shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. COLVIN COMMUNICATIONS shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 COLVIN COMMUNICATIONS covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. COLVIN COMMUNICATIONS further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 COLVIN COMMUNICATIONS acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. COLVIN COMMUNICATIONS recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOE may declare COLVIN COMMUNICATIONS in breach of the Agreement, terminate the Agreement, and designate COLVIN COMMUNICATIONS as non-responsible.

20.6 COLVIN COMMUNICATIONS warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DDOE shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 COLVIN COMMUNICATIONS shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DDOE may inspect or audit

COLVIN COMMUNICATIONS's performance and records pertaining to this Agreement at the COLVIN COMMUNICATIONS business office during normal business hours.

21. Insurance.

21.1 COLVIN COMMUNICATIONS shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. COLVIN COMMUNICATIONS shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, COLVIN COMMUNICATIONS hereby grants, conveys, sells, assigns, and transfers to

DDOE all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Surviving Clauses

The following clauses survive the termination of this Contract : Section 9.

24. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. COLVIN COMMUNICATIONS consents to jurisdiction venue in the State of Delaware.

25. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

CONTRACTOR: Colvin Communications
4201 Cathedral Ave. NW, Apt 614E
Washington, DC 20016-4955

DDOE: David Blowman
Deputy Secretary
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Phone No. (302) 735-4040
Fax No. (302) 739-7768

DOE Certificated Staff coordinating activity:

David Blowman

Next Page for Signatures.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

(Name of Contractor)

Original on File

(Official of Contractor)

Project Manager

3/

Date

Original on File

(Official of Contractor)

Principal Investigator

Date

Delaware Department of Education

Original on File

David Blowman

Deputy Secretary

Original on File

Date

Initial Finance Director

Original on File

Branch Associate Secretary

Deputy

Date

Initial Work Group
Director

Statement of Work – Appendix A

The Statement of Work for this consultant will include:

- Executing a communications strategic plan across the DDOE.
- Creating the processes, protocols and policies that will lead to consistent, timely communications internally and externally.
- Providing training in communications to all employees.
- Providing training and coaching for communications leads in each of the branches.
- Creating new vehicles for internal and external communications.
- Writing speeches and other communications collateral for the Secretary.
- Writing and editing press releases.
- Providing strategic communications advice to the Secretary.

Payment Schedule;

Vendor shall submit invoices along with progress reports. The invoice shall show the work period covered and the corresponding hours worked.

REPONSE TO DELAWARE RFP # DOE 2015-11, Communications Support

Vendor: Richard Lee Colvin
4201 Cathedral Ave. NW Apt. 614 E
Washington, D.C. 20016

Over the past 20 years, state education agencies have taken a larger and larger role in seeing to it that all students learn to high standards. The role of SEAs “has shifted significantly from low-profile, compliance activities like managing federal grants to engaging in more complex and politically charged tasks like setting standards, developing accountability systems and creating new teacher evaluation systems.”¹

In Delaware, the state worked with teachers, unions, higher education, the governor’s office and business leaders on an ambitious plan for reform that earned the State Department of Education and its partner districts one of the first two Race to the Top grants in 2010. That plan included the adoption of the Common Core State Standards, extensive support for implementation of those standards, investments to help school professional learning communities become skilled in using data to make instructional decisions, an emphasis on college access and success and a teacher evaluation plan that will soon include data from student test scores as a significant factor. These are significant changes in practice for educators, schools and districts as well as for the state DOE.

The State has made important progress in the past few years: 10,000 more students are proficient in reading and math. ELA and math scores are up, both state and NAEP. Graduation rates are up, dropout rates are the lowest ever, and the graduation rate is up significantly and above the national average, which is at its highest ever. But Delaware still has a long way to go: Only about a third of its students meet challenging NAEP standards in reading and math. Twenty percent still don’t graduate. And far fewer are prepared for college-level work or entry-level jobs.

The State can be proud of those gains but it clearly has much more to do. Over the next 12-24 months the DDOE is preparing for the end of its Federal Race to the Top grant, a new governor, and full transition to the Common Core, including aligned statewide testing with the Smarter Balanced Consortia.

Given what is at stake, clear communications—internally as well as externally—is extremely important. That is why communications is one of DDOE’s priorities, as Secretary Murphy discussed at the all-staff meetings in February 2015. The DOE needs to communicate clearly internally so that everyone in the Department understands the priorities and their role in carrying them out. The DOE needs to communicate clearly and frequently to external audiences so that they know what the DOE is trying to do and why. And the DOE needs to support Delaware school districts, public charter schools and colleges by providing them with timely, accessible information and celebrating their progress and achievements on behalf of students.

Last fall, the senior leadership of the Department, led by Secretary Murphy, began examining its internal and external communications practices to identify ways to become more effective.

That examination led to the development of a new communication plan for the Department. That plan calls for the Department to be much more proactive in its communications. It also calls for everyone in the department to be part of that communications effort.

That requires thinking like a communicator.

What does that mean?

- ... knowing the Department's key priorities
- ... knowing the Department's key messages.
- ... knowing the Department's communication strategies to build understanding and support for those priorities
- ... knowing how they fit in as story-gatherers and story-tellers.

This will require a significant shift in behavior and culture in the agency. Also, a large number of people within the Department will need to be trained to be communicators and the lessons they learn will need to be reinforced. At the same time, the Department must begin communicating regularly and effectively to parents, educators, legislators, business leaders, the civil rights community, advocates and the general public. They need to know and understand the Department's priorities if the Department is to be able to generate the public will necessary to carry out significant changes in policy and practice in the state.

I have helped the state Departments of Education in Colorado, Kentucky and Florida to become more effective communicators regarding reform agendas that are similar to that of Delaware. I also have worked for the past two years with the U.S. Department of Education to produce communications that highlight the very real progress that schools all over the country are making on behalf of students.

My expertise in education policy and communications comes from more than 30 years of experience. I was a reporter and editor at the Los Angeles Times between 1988 and 2002; during most of that time I wrote about education at the state, national and international levels. I have written chapters in books on the implementation of rigorous standards, education philanthropy, school choice, college loans and civic education. In 2013, I published a book on school district leadership. I also have written about education issues for the Washington Post, Education Next, Carnegie Reports, U.S. News & World Report and others. I've written policy papers on assessment, standards, teacher quality and special education. Between 2002 and 2011, I ran an institute at Columbia University that helped education journalists across the country understand and cover complex policy issues. I have been an active blogger, use Twitter extensively and have helped clients with their Facebook presence.

I assisted the Delaware Department of Education in developing its strategic communications plan and understand what it takes to communicate in a consistent, timely way both internally and externally. For 12 years, I taught graduate students in education at UCLA to write effectively for a variety of audiences. I've also given workshops on writing op-ed articles to

education researchers, the deans of schools of education and young teachers and alumni from Teach for America.

I am familiar with the communication needs of the Department, have worked with other states on these issues, am very familiar with education issues nationally and have provided educators with a variety of training. I believe that have all of the skills necessary to more than adequately carry out the Scope of Work set out in the RFP.

Should I be awarded this contract, I am prepared to acquire the necessary insurance.

Cost Proposal

Hourly:

Daily:

Monthly: \$ 160 hours per month.

No increase in cost for up to 170 hours per month.

¹ Heather Zavadsky, "State Education Agency Communications Process: Benchmark and Best Practices Project," Building State Capacity and Productivity Center, Edvance Research, October 2014. Accessible at http://www.bscpcenter.org/benchmarking/assets/benchmark_and_best_practices_01_benchmarking_sea_strategic_communications.pdf

CONTRACT NO.: RFP # DOE 2015-11
CONTRACT TITLE: Communications Support
OPENING DATE: 3/6/15 at 3:00 PM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation submitted this date to the State of Delaware, Department of Education

It is agreed by the undersigned Vendor that the signed delivery of this bid represents the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative MUST be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Education.

COMPANY NAME Colvin Communications Check one)

| | |
|-------------------------------------|-------------|
| <input type="checkbox"/> | Corporation |
| <input type="checkbox"/> | Partnership |
| <input checked="" type="checkbox"/> | Individual |

NAME OF AUTHORIZED REPRESENTATIVE Richard Lee Colvin
(Please type or print)

SIGNATURE Original on File TITLE Sole proprietor

COMPANY ADDRESS 4201 Cathedral Ave NW Apt 614e Washington DC 20016

PHONE NUMBER 201 819 3143 FAX NUMBER 202 364 3242

EMAIL ADDRESS rlee.colvin@gmail.com

FEDERAL E.I. NUMBER 270 54 1486 STATE OF DELAWARE LICENSE NUMBER 2014607410

| COMPANY CLASSIFICATIONS: | Certification type(s) | Circle all that apply | |
|--------------------------|---|-----------------------|----|
| | | Yes | No |
| CERT. NO.: _____ | Minority Business Enterprise (MBE) | Yes | No |
| | Woman Business Enterprise (WBE) | Yes | No |
| | Disadvantaged Business Enterprise (DBE) | Yes | No |
| | Veteran Owned Business Enterprise (VOBE) | Yes | No |
| | Service Disabled Veteran Owned Business Enterprise (SDVOBE) | Yes | No |

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO: RICHARD LEE COLVIN
(COMPANY NAME)

ADDRESS 4201 Cathedral Ave NW Apt 614e Washington DC 20016

CONTACT Richard Colvin

PHONE NUMBER 201 819 3143 FAX NUMBER 202 364 3242

EMAIL ADDRESS rlee.colvin@gmail.com

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO ☒ if yes, please explain _____

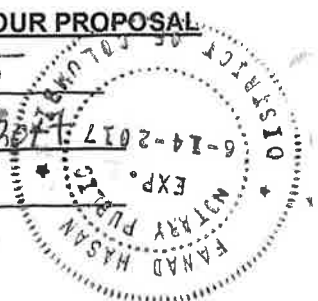
THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this 6th day of March, 20 15

Notary Public Original on File My commission expires 06/14/2017

City of Washington County of District of Columbia State of _____

NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2017



Attachment 3

EXCEPTION FORM

☒ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

[illegible]

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Attachment 4

CONFIDENTIAL INFORMATION FORM

Confidentiality and Proprietary Information

price quoted shall remain confidential

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STATE OF DELAWARE
DEPARTMENT OF EDUCATION

Attachment 5

Contract No. **RFP # DOE 2015-11**
Contract Title: **Communications Support**

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1. Contact Name & Title: Adam Kervan Schloss, President

Business Name: KSA Plus Communications

Address: 2000 N. 15th St.
Arlington VA 22201

Email: adam@ksaplus.com

Phone # / Fax #: 703.528.7100

Current Vendor (YES or NO): yes

Years Associated & Type of Work Performed: 3 years, editing, project management, strategic advice
2. Contact Name & Title: Scott Joffe, partner

Business Name: Cross Joffe

Address: 8610 Ridge Rd
Bethesda MD 20817

Email: scott@edstrategies.com

Phone # / Fax #: 301.229.3049

Current Vendor (YES or NO): no

Years Associated & Type of Work Performed: report writing, editing, strategic advising
3. Contact Name & Title: Chuck Melley, VP ^{US governmental relations} ~~Marketing Relations~~

Business Name: Pearson North America

Address: 1919 M Street NW Suite 600
Washington DC 20036

Email: chuck.melley@pearson.com

Phone # / Fax #: 202.471.2100

Current Vendor (YES or NO): no

Years Associated & Type of Work Performed: writing editing blogging strategic advice

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

STATE OF DELAWARE
DEPARTMENT OF EDUCATION

Attachment 9

Contract No. RFP # DOE 2015-11
Contract Title: Communications Support

EMPLOYING DELAWAREANS REPORT

As required by House Bill # 410 (Bond Bill) of the 146th General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: 7

2. Number and percentage of such employees who are bona fide legal residents of Delaware: 0

Percentage of such employees who are bona fide legal residents of Delaware: 0

3. Total number of employees of the bidder: 1

4. Total percentage of employees who are bona fide resident of Delaware: 0

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: _____

2. Percentage of employees who are residents of Delaware: _____

"Bona fide legal resident of this State" shall mean any resident who has established residence of at least 90 days in the State.