

INTERGOVERNMENTAL AGREEMENT FOR ROCKIES PROCUREMENT SERVICES

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into pursuant to C.R.S. §29-1-203 and 203.5 by and between the following parties (“Parties”), subject to final approval by a Party’s governing board:

Canon City Schools
Cheyenne Mountain School District 12
Colorado Springs School District 11
Eagle County School District
El Paso County School District 49
Garfield County School District 16
St. Vrain Valley School District
Thompson Valley School District
Weld County RE-9

WHEREAS, on April 2, 2018 Rockies Purchasing Services (“Original RPS”) was formed as a Colorado non-profit corporation for the purposes described in the original Articles of Incorporation (“Original Articles”);

WHEREAS, the Parties hereto now desire RPS to be a public corporation known as Rockies Procurement Services (“RPS”) by meeting the requirements of C.R.S. §29-1-203 and 203.5, and to delegate powers to RPS as allowed thereunder and in accordance with this Agreement;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the Parties agree as follows:

I. PURPOSES, POWERS, RIGHTS, OBLIGATIONS, and RESPONSIBILITIES

- a. The Parties do hereby establish a separate public corporation pursuant to C.R.S. §29-1-203 and 203.5.
- b. The purposes, powers, rights, obligations, and responsibilities of RPS shall be as provided for in the Articles of Incorporation (“Articles”) attached hereto as Appendix A and incorporated herein by this reference and the Bylaws (“Bylaws”) attached hereto as Appendix B and incorporated herein by this reference. By approving this Agreement the Parties also approve the Articles and Bylaws.

II. MEMBERSHIP

- a. The Parties hereto shall be the members of RPS with those rights provided to “members” in applicable law, the Articles, Bylaws, and adopted policies of the RPS Board of Directors. Additional members may be added or existing members may withdraw in accordance with Articles, Bylaws, and adopted policies of the RPS Board of Directors. Once an additional member has met the requirements to become a member of RPS it shall approve by resolution and execute its agreement with this Agreement and become a Party hereof. Once a member withdraws from RPS it shall approve a resolution to withdraw and provide a written and

- executed termination and will no longer be considered a Party hereof or Member of RPS.
- b. It is acknowledged that any previous members of Original RPS not a Party to this Agreement are not Members of RPS or parties of this Agreement in any sense.

III. THE RPS BOARD OF DIRECTORS

- a. The RPS Board of Directors shall have those rights, powers, obligations, and responsibilities as provided for in the applicable law, the Articles, and the Bylaws. The composition, rules, qualifications, and other governance provisions ,including without limitation the number of directors, manner of appointment, terms of office, compensation if any, procedures for filling vacancies, voting/quorum requirements, etc., for the RPS Board of Directors shall be as provided for in applicable law, the Articles, Bylaws, and adopted policies of the RPS Board of Directors.

IV. FINANCES, BOOKS, AND RECORDS

- a. RPS shall be subject to and remain in compliance with the public depository requirements of C.R.S. Title 11 article 10.5 and 47.
- b. The RPS Board of Directors shall maintain adequate accounting of its funds, properties, business transactions, annual audits or exemptions, and such records shall be open to inspection at any reasonable time by the Parties, their attorneys, or agents. Such accounting shall be in compliance with Generally Accepted Accounting Principles and in compliance with various reporting requirements as imposed by statute, especially with regard to the collection and expenditures of telephone surcharges as provided by statute.
- c. The books and records of RPS shall be subject to an annual audit, if required by law, unless the financial activities of RPS are fully reported in the audit or audits of a Member. The audit shall be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado.

V. TERM AND TERMINATION OF AGREEMENT

- a. This Agreement shall become effective upon passage of a resolution of each Party to approve this Agreement, and final execution hereof. If a Party fails to pass a resolution to approve this Agreement, then the remaining Parties may execute this Agreement and make it effective, and any Party who fails to pass a resolution shall be removed from the list of Parties.
- b. This Agreement, or any party's participation in this Agreement, may be terminated by written notice from the Party or Parties to the RPS Board of Directors at least 90 days prior to July 1 of any given year.
- c. Once there are less than two parties remaining, or if all parties agree to terminate this Agreement, the powers granted to RPS under this agreement shall continue to the extent necessary to make an effective disposition of the property, equipment, and monies required or held pursuant to this Agreement and as required by the Articles, Bylaws, or applicable law. At such time of dissolution all of the property shall be transferred to one or more of the Parties hereof, or as provided for in the Articles or Bylaws.
- d. The Parties' financial obligations under this Agreement and the renewal of this Agreement

are specifically contingent upon annual appropriation of funds sufficient to perform such obligation, in accordance with Article X, Section 20 of the Colorado Constitution, also known as “TABOR”

VI. MISCELLANEOUS

- a. Any notice demand or request provided for or required by this Agreement shall be in writing and shall be deemed properly given if delivered in person, by facsimile, by e-mail, or by certified mail, postage prepaid to a Party at the address of that Party.
- b. This Agreement may be amended by the Parties from time to time, which amendment shall be in writing and executed by all the Parties hereto.
- c. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be El Paso County, Colorado.
- d. If any provision of this Agreement or the application hereof to any party or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end the provisions of the Agreement are declared to be severable.
- e. This Agreement constitutes the entire agreement between the parties and no additional or different oral representations, promise, agreement or any prior versions of this Agreement shall be binding on any party with respect to the subject matter of this Agreement.
- f. Nothing in this Agreement shall be construed or deemed as a waiver of any rights and protections of any party, board member, or employee under the Colorado Governmental Immunity Act, Section 24-10-101, et. Seq., C.R.S., or the immunity provisions set forth in Section 29-11-105, C.R.S. Further, nothing in this Agreement shall be construed as creating any duty to indemnify between the parties.
- g. This Agreement may be executed electronically and in counterparts.
- h. In accordance with law, in order to form RPS as a separate public entity, an executed copy of this Agreement shall be filed with the division of local government in the department of local affairs, to be retained as a public record.

IN WITNESS WHEREOF, the parties hereto have caused their representatives to affix their respective signatures hereto, as of the day and year hereinabove set forth.

Canon City Schools

By _____ (Print Name and Title)

Signature

Cheyenne Mountain School District 12

By _____ (Print Name and Title)

Signature

Colorado Springs School District 11

By _____(Print Name and Title)

Signature

Eagle County School District

By _____(Print Name and Title)

Signature

El Paso County School District 49

By _____(Print Name and Title)

Signature

Garfield County School District 16

By _____(Print Name and Title)

Signature

St. Vrain Valley School District

By _____(Print Name and Title)

Signature

Thompson Valley School District

By _____(Print Name and Title)

Signature

Weld County RE-9

By _____(Print Name and Title)

Signature

Appendix A: Articles of Incorporation

ARTICLES OF INCORPORATION OF ROCKIES PROCUREMENT SERVICES

The undersigned, on behalf of and at the request of the board of directors of the Rockies Procurement Services (“RPS” or “Corporation”), does hereby file and effectuate these approved Articles of Incorporation in order to establish it as a political subdivision and public corporation pursuant to C.R.S. §29-1-203(5) and the contract entered into (“Contract”) by the participating governmental entities, in compliance with C.R.S. §29-1-203.5, under and by virtue of the laws of the State of Colorado, and in accordance with the provisions and requirements thereof, and do hereby make, execute, and acknowledge these Articles of Incorporation, declaring as follows:

ARTICLE I.

- A. The name of this public corporation is Rockies Procurement Services (“RPS” or “Corporation”).
- B. RPS shall have perpetual existence.

ARTICLE II.

- A. The following governmental entities, having voted to approve of these Articles of Incorporation, shall be the Members of RPS (“Members”):

Canon City Schools
Cheyenne Mountain School District 12
Colorado Springs School District 11
Eagle County School District
El Paso County School District 49
Garfield County School District 16
St. Vrain Valley School District
Thompson Valley School District
Weld County RE-9

- B. The Corporation shall be governed by a Board of Directors and the Members shall only have those rights conferred upon them by these Articles or the Contract.
- C. Additional governmental entities, which must be political subdivisions of the state of Colorado, may become Members upon application and admission by a majority vote of the Board of Directors. A Member may withdraw from Membership at any time for any reason by submitting written notice of such withdrawal to the Board of Directors at least 90 days prior to July 1 of any given year (this deadline may be waived by the Board of Directors) or may be terminated from Membership by a majority vote of the Board of Directors, at which time, in either case, any rights they have as a Member shall cease.

ARTICLE III.

- A. The nature of the business of RPS and the objects and purposes thereof proposed to be transacted, promoted, or carried on must be in compliance with applicable laws under which the Corporation is organized and shall be as outlined in the Contract, and shall include without limitation all those purposes, powers, rights, obligations, and the responsibilities conferred by C.R.S. 29-1-203 and 203.5, and without limitation the following:

1. To establish cooperative relationships among its members, and other entities with which it contracts, for the development of efficient and effective purchasing methods and practices in the field of public educational institution nutritional procurement; to encourage maintenance and continuity of ethical standards in buying and selling; to collect and disseminate useful information for its members; to promote the interchange of ideas and experiences within the School Food Authority profession; to promote the study, development and application of improved methods and practices to purchasing and inventory management; to provide education and support for nutrition purchasing; to increase buying power, reduce costs, and improve quality of available products and services; and to maximize procurement efficiencies while maintaining compliance with USDA procurement guidelines.

2. To transact all lawful business for which the Corporation is organized and to have and exercise all powers, privileges, and immunities now or hereafter conferred upon or permitted to it by the laws of the State of Colorado, including without limitation part 10 of Article 1 of Title 32, C.R.S., and to do any and all the things hereinbefore set forth to the same extent as natural persons could do insofar as permitted by the laws of the State of Colorado, these Articles of Incorporation, or the Bylaws of this Corporation.

ARTICLE IV.

- A. Because it is organized for purposes other than pecuniary profit, the Corporation shall not have any capital stock. The Bylaws of the Corporation and the Contract shall provide for Membership in the Corporation, the kinds and classes of Members, and the rights and privileges of each.

ARTICLE V.

- A. The Corporation may dissolve and wind up its affairs in the manner provided by law, the Contract, and the Articles. The Corporation may dissolve by a vote of two-thirds of all Members, or if the Corporation ever consists of less than two Members then it shall dissolve. Unless otherwise provided for, upon such dissolution, the assets of the Corporation shall be applied and distributed as follows:

1. All liabilities and obligations of the Corporation shall be paid and discharged, or adequate provisions shall be made therefore.

2. Assets held by the Corporation on condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement.

3. The remaining assets held by the Corporation shall be distributed to the one or more of the Members as determined in a plan of dissolution approved by the Board of Directors.

ARTICLE VI.

A. The address of the Corporation's registered office is 333 Main Street, Springfield, CO 81073, and the name of the registered agent at such address is Jeremy West, Procurement Consultant.

ARTICLE VII.

A. The names and the addresses of the individual filing these Amended and Articles of Incorporation is [INSERT] Jeremy West, Procurement Consultant 333 Main Street, Springfield, CO 81073.

ARTICLE VIII.

A. The affairs of the Corporation shall be managed by a Board of Directors in accordance with the Contract and the Bylaws of the Corporation. The number of directors shall be fixed by the Bylaws. The number of directors may be increased or decreased from time to time by amendment of the Bylaws, but no decrease in the number shall have the effect of shortening the term of any incumbent director.

B. The current Board of Directors consists of the following persons, who shall hold office until their successors have been elected or appointed and qualified, unless a director shall sooner resign or be removed, in which case such vacancy shall be filled according to the Bylaws of the Corporation:

Chairperson- Monica Deines-Henderson

Secretary

Treasurer- Mindi Wolf

Directors:

Janelle Grooms

Kathy Frank

Kent Wehri

Chris Delsordo

Jody Williams

Lisa Kendall

McKaley Phillips

ARTICLE IX.

A. A two-thirds majority of the voting Members who cast votes shall have power to enact, alter, amend, and repeal such Bylaws not inconsistent with these Articles of

Incorporation and the laws of the State of Colorado as it may deem best for the management of the Corporation.

ARTICLE X.

- A. The personal liability of any of the Corporation's directors to the Corporation or to its members for monetary damages for breach of fiduciary duty as a director is eliminated, except that this provision shall not eliminate the liability of the director to the Corporation or to its members for: (a) any breach of the director's duty of loyalty to the Corporation or its members; (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (c) any transaction from which the director derived an improper personal benefit.

ARTICLE XI.

- A. Cumulative voting shall not be allowed in the election of directors.

EXECUTED this 14th day of _____, 2022.

BOARD SECRETARY

Appendix B: Bylaws

BYLAWS OF ROCKIES PURCHASING SERVICES

ARTICLE I OFFICERS

Section 1. Offices and Qualification. The Officers of this Corporation shall be a Chairperson, a Secretary, a Treasurer, and such other Officers as may be appointed in accordance with the provisions of Section 3 of this Article I. One person may hold any two of said offices (except the same person shall not be both Chairperson and Secretary), but no such Officer shall execute, acknowledge or verify any instruments in more than one capacity if such instrument is required bylaw or by these Bylaws or by resolution of the Board of Directors to be executed, acknowledged or verified by any two or more Officers. The Officers of the Corporation shall be natural persons of the age of eighteen years or older.

Section 2. Appointment and Term. The Chairperson and the Secretary, and the Treasurer shall be appointed to a term of two years, except that the Secretary shall initially serve a one-year term so as to stagger the officer positions for election. Appointment shall be voted on by the Board of Directors by ballot at its Annual Meeting, and a simple plurality of the votes cast shall be necessary to appoint. Each Officer, except such Officers as may be appointed in accordance with the provisions of Section 3 of this Article, shall hold office until such Officer's successor shall have been duly appointed and qualified, or until such Officer's death, resignation, or removal in the manner hereinafter provided. Each officer may serve no more than three consecutive two year terms, except that the Board of Directors may approve additional terms in the event no other director is nominated to serve in an officer role.

Section 3. Subordinate Officers. The Board of Directors may appoint such other Subordinate Officers to hold office for such periods of time, have such authority and perform such duties as may be considered desirable, and the Board of Directors may delegate to any Officer the power to appoint any such Subordinate Officers.

Section 4. The Chairperson. The Chairperson shall be the active Executive Officer of the Corporation and shall exercise detailed supervision over the business of the Corporation and over its several Officers, subject, however, to the control of the Board of Directors. The Chairperson shall preside over the Annual Meeting of the Corporation and be a member ex officio of all committees. The Chairperson shall perform all duties as from time to time may be assigned to the Chairperson by the Board of Directors. The Chairperson shall have the authority to expend or commit the Corporation's funds up to the limit established annually by the board.

The Chairperson shall execute all deeds, conveyances, deeds of trust, bonds and other contracts under the seal of the Corporation except where otherwise permitted by law and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other Officer or agent of the Corporation.

Section 5. The Secretary. The Secretary shall:

- (a) Keep or cause to be kept correct and complete minutes of the proceedings of the Board of Directors and committees having any of the authority of the Board of Directors;
- (b) Keep or cause to be kept the seal of the Corporation;
- (c) Affix the seal to all documents requiring such seal;
- (d) Give all notices required by law and these Bylaws;
- (e) Execute with the Chairperson documents requiring attestation and certification by the Corporation's Secretary;
- (f) Perform all duties incident to the office of Secretary and such other duties as maybe assigned to the Secretary by the Board of Directors or the Chairperson.

Section 6. The Treasurer. The Treasurer shall:

- (a) Have charge and custody of, and be responsible for, all funds and securities of the Corporation;
- (b) Receive and give receipts for moneys due and payable to the Corporation from any source whatsoever;
- (c) Keep or cause to be kept correct and complete books and records of account;
- (d) Render financial statements upon request to the Board of Directors;
- (e) Have charge of, and be responsible for, the preparation and filing of all tax returns and reports required by law, and the collection and payment of taxes such as withheld taxes, sales and use taxes, and any other taxes for which the Corporation may be responsible;
- (f) Assist with the preparation of the Corporation's budget;
- (g) Cause notices of dues to be mailed either electronically or via postal service;
- (h) Render a true and complete written report relative to the affairs of the office at each Board of Directors' and Corporation's scheduled meetings;
- (i) Collect membership dues and report to the Secretary any delinquency for proper notification;
- (j) Perform all duties incident to the office of Treasurer, and such other duties as maybe assigned to the Treasurer by the Board of Directors or the Chairperson. The Treasurer may be required to give a bond for the faithful performance of such Treasurer's duties in such sum and with such surety as may be determined by the Board of Directors.

Section 7. Removal. The Officers specifically designated in Section 1 of this Article may be removed by the vote of a majority of the whole Board of Directors at a meeting of the board called for that purpose whenever in the board's judgment the best interests of the Corporation will be served thereby. The Officers appointed in accordance with the provisions of Section 3 of this Article may be removed, either with or without cause by a majority vote of the Directors present at a meeting called for that purpose, or by the Officer to whom such power of removal may be delegated by the Board of Directors.

Section 8. Resignation. Any Officer may resign at any time by giving written notice to the Board of Directors or to the Chairperson or Secretary of the Corporation. Any such resignation shall

take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Vacancies. A vacancy occurring in any office because of death, resignation, removal, disqualification, or any other cause shall be filled for the unexpired portion of the term of office by the Board of Directors, except that in the case of a vacancy occurring in an office filled in accordance with the provisions of Section 3 of this Article, such vacancy may be filled by any Officer to whom such power may be delegated by the Board of Directors.

ARTICLE II DIRECTORS

Section 1. Number, Composition and Term. The property interests, business, and affairs of the Corporation shall be managed by the Board of Directors, as more fully set forth in Section 3 of this Article. The board shall consist of not less than four (4) nor more than eleven (11) Directors. The number of Directors may be increased or decreased at any time by a majority vote of the whole Board of Directors, except that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.

The Board of Directors shall consist of representatives elected by and from each of the following Member types: Small School Food Authority (defined as enrollment under 5,000)- 2 representatives; Medium School Food Authority (defined as enrollment between 5, 000 and 15,000)- 2 representatives; Large School Food Authority (defined as enrollment over 15,000)- Up to 5 positions; and Ad-Hoc- 2 positions. Ad-Hoc representatives may be from any size school food authority that is a Member of the organization. In addition, the Board of Directors may appoint additional Directors from representatives of Associate Members, so long as a majority of the Board of Directors at all times remains from representatives of primary Members. The initial term of some Directors shall be two (2) years, while others shall be three (3) years in order to stagger terms in a manner that approximately one-half of the Director seats are up for election each year. The term of any new or re-elected Director shall be two (2) years. Each director may serve no more than three consecutive two year terms, except that the Board of Directors may approve additional terms in the event no other director is nominated to serve.

Annually, on a date set by the Board of Directors, the Board of Directors shall be elected by a voting body consisting of representatives from each Member, wherein each Member appoints one voting representative to cast a single vote for each position up for election. Each representative shall sign a certification that they are the appointed, voting representative for that Member. The newly elected or re-elected Directors shall be seated at the next regular meeting following the election. If the number of candidates running for Director are equal to the number of seats available, then the Directors will take their seats without an election. If the number of candidates running for Director are less than the number of seats available the candidate(s) will take their seats without an election, and the Board of Directors may appoint Directors, as though there were a vacancy, to maintain the requirements of these Bylaws.

It shall be the responsibility of the Board of Directors to promulgate rules and direct those responsible for carrying out the intent of these Bylaws to conduct the annual election for

Directors, including without limitation preparing, distributing, collecting, and tabulating ballots. The Board shall make reasonable efforts to notify Members of requirements and deadlines for Board Director candidacy, and the time/location/method of the election. All final decisions regarding disputes in the election of Directors will be made by the Board of Directors.

Section 2. Duties. The Board of Directors shall manage the property interests, business, and affairs of the Corporation, including reviewing the reports of the Secretary and Treasurer, auditing all bills and accounts against the Corporation, fixing or delegating authority to fix the compensation of Officers and employees of the Corporation, and managing the assets of the Corporation. The board may direct any Officer or Officers of the Corporation to conduct the ordinary business and affairs of the Corporation. The board may, from time to time, employ such persons, as the board may deem necessary for the carrying on of the business and affairs of the Corporation, any of who may also be Officers or Directors of the Corporation. The board shall have no authority to expend or commit funds, or otherwise cause indebtedness of the Corporation to an amount in excess of the cash resources of the Corporation.

It shall be the duty of each Director to attend each board meeting, either in person, via video conference or telephonically. A Director may have an absence excused by the Chairperson. Excused absences must not exceed two (2) per year, or else a Director may be removed by majority vote of the remaining board Directors for excessive absenteeism.

A Director shall perform the duties as a Director, including the duties as a member of any committee of the board upon which the Director may serve, in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in paragraphs (a), (b), and (c) below; but such Director shall not be considered to be acting in good faith if such Director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A Director who so performs said duties shall not have any liability by reason of being or having been a Director of the Corporation. Those persons and groups on whose information, opinions, reports, and statements a Director is entitled to rely are:

- (a) One or more Officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional or expert competence; or
- (c) A committee of the board upon which the Director does not serve, duly designated in accordance with a provision of the Articles of Incorporation or the Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

Section 3. Chairman of the Board. The Chairperson shall serve as Chairman of the Board. The Chairman shall preside at all meetings of the Board of Directors, provide a general direction for the Board of Directors and shall perform all such duties incident to the office of Chairman of the Board and such other duties as may be prescribed from time to time by the Board of

Directors.

Section 4. Executive and Other Committees. The Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate from among the Directors an executive or other committees, each of which, to the extent provided in the resolution or in the Articles of Incorporation or these Bylaws shall have all of the authority of the Board of Directors, except that no such committee shall have the authority to (i) declare distributions; (ii) fill vacancies on the Board of Directors or any committee thereof; (iii) amend these Bylaws; (iv) approve a plan of merger or consolidation with another corporation; (v) authorize the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Corporation; (vi) authorize the voluntary dissolution of the Corporation or revoke proceedings therefore; (vii) adopt a plan for the distribution of the assets of the Corporation; (viii) amend, alter, or repeal any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

Neither the designation of any such committee, the delegation of authority to such committee, nor any action by such committee pursuant to its authority shall alone constitute compliance by any Director not a member of the committee in question with such Director's responsibility to act in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Section 5. Annual Meeting. The annual meeting of the Board of Directors shall be held in the month of June of each year, or at such other time as the Board of Directors may designate, within 60 days of the first or last day of June. The Board of Directors shall hold additional meetings at such other time or times as they may from time to time determine.

Section 6. Special Meetings. Special meetings of the Board of Directors or any committee designated by such Board, shall be held whenever called by the Chairperson or by a majority of Directors.

Section 7. Rules of Order. Roberts Rules of Order shall serve as a guide for all meetings of the Board of Directors, a copy of which shall be available upon request.

Section 8. Place of Meetings. The Board of Directors or any committee designated by the Board may hold its meetings at such place or places within or without the State of Colorado as the Board may from time to time determine or as shall be specified or fixed in the respective notices or waivers of notice of such meetings.

Section 9. Notice. Notice of special meetings shall be mailed to each Director or committee person, addressed to the Director's address as it appears on the records of the Corporation, at least three (3) days before the day on which the meeting is to be held; or shall be sent to the Director at such address as it is known to belong to the Director by either electronic mail or via postal service or delivered personally not later than one (1) day before the day on which the meeting is to be held. The notice shall indicate briefly the business to be transacted at or the purpose of the meeting. The corporation shall provide notice of all meetings at least one business day before the meeting and in compliance with the Colorado Open Meetings Law, C.R.S. § 24-6-401 *et seq.*

Section 10. Waiver of Notice and Approval of Action. Attendance of a Director at a meeting constitutes a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notice may be expressly waived by a writing executed and filed with the records of the meeting either before or after the holding thereof. No notice need be given of any adjourned meeting of the Board of Directors.

As to any Director who shall sign the minutes of any special or regular Directors meeting, such meeting shall be deemed to have been legally and duly called, noticed, held and conducted, and the signature of any Director to the minutes of a meeting shall for all purposes and as to all persons be held to be an approval of the action thereto.

Section 11. Meetings by Conference Telephone or Similar Communications Equipment:

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at a meeting.

Section 12. Colorado Open Meetings Law. As a Colorado public entity, all meetings of the Corporation shall be in compliance with the Colorado Open Meetings Law, C.R.S. § 24-6-401 *et seq.*

Section 13. Quorum and Manner of Acting. A majority of the number of voting members of the Board of Directors shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Directors.

Except as otherwise required by law, by the Articles of Incorporation, or by these Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present, shall be the act of the Board of Directors, unless a greater number is required by law, the Articles of Incorporation, or these Bylaws.

A director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting or unless the director files the Director's written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or forwards such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 14. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of such Director's predecessor in office. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by the affirmative vote of a majority of the Directors then in office for a term of office continuing only until the next election or appointment of Directors.

Section 15. Removal of Directors. The entire Board of Directors or any lesser number may be removed, with or without cause, by:

- (a) For those Directors who are ad hoc, by a majority of the Directors casting votes;
- (b) For those Directors who are representing a Member organization, by the majority vote of the governing board of the Member they are appointed to represent; and
- (c) Any Director who serves in connection or due to their relationship to a Member organization (i.e. as an employee or board member of that organization), shall be deemed “removed” once their relationship to the Member organization ceases.

Section 16. Resignation. Any director may resign at any time by giving written notice to the Chairperson or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE III MEMBERSHIP

Section 1. Eligibility. The membership shall consist of agency membership open to any publicly-funded school district within the State of Colorado.

Associate membership status shall be open to all publicly funded school districts outside the State of Colorado and to private schools within or outside of Colorado provided they are approved to offer at least one federal meal program to their students.

Section 2. Admission. Acceptance of members will be in accordance with established rules and qualifications as determined within these Bylaws.

Section 3. Termination/Revocation. The Board of Directors will be notified by the paid consultant or staff of failure to comply with these Bylaws, including specifically, but without limitation, provisions respecting payment of dues, fees, eligibility of members, violation of our Code of Ethics, and observance of policies as may be adopted by the Corporation’s Board of Directors from time to time. An agency considered for membership revocation, except for nonpayment of dues and fees, shall be provided thirty (30) days written notice of the proposed action by the Board of Directors and be given an opportunity to show cause at a scheduled Board of Directors meeting in person or by letter as to why the membership should not be revoked.

An agency desiring termination of their membership shall notify the Board of Directors by providing thirty (30) days written notice of their proposed termination. Unpaid dues shall be paid. Upon termination/revocation of membership, the Board of Directors or their representative shall notify the appropriate state agencies and vendors of membership termination.

Section 4. Reinstatement. Any suspended or terminated member may be reinstated by consensus of board per a defined reinstatement agreement.

Section 5. Voting. Each Member district is entitled to one vote by their primary member on each matter submitted to a vote of Members. A Member entitled to vote must send a representative to vote in person, unless otherwise permitted by law, the Articles, or these Bylaws. Voting by mail or electronically by members for election of Directors shall also be permitted, which

election shall require in such case at least a simple plurality of the votes which members are entitled to cast in the election. Voting by mail or electronically by members for an amendment to the Articles of Incorporation or a proposed plan of merger, consolidation, or dissolution, shall also be permitted, which amendment shall require in such case the affirmative vote of at least two-thirds (2/3) of the members casting votes. At each election of Directors, every primary member entitled to vote at such election shall have the right to cast one vote for each office to be filled.

Associate members are not eligible to vote, but the Board of Directors may appoint representatives to the Board of Directors from representatives of Associate Members, so long as a majority of the Board of Directors remains at all times representatives from primary Members.

Section 6. Closing Membership Books and Fixing Record Date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the Board of Directors of the Corporation may provide that the membership books be closed for a stated period but not to exceed, in any case, fifty days. If the membership books are closed for the purpose of determining members entitled to notice of or to vote at a meeting of members, such books shall be closed for at least ten days immediately preceding such meeting.

In lieu of closing the membership books, the Board of Directors may fix in advance a date as the record date for any such determination of members, such date in any case to be not more than fifty days and, in case of a meeting of members, not less than ten days prior to the date on which the particular action requiring such determination of members is to be taken.

When a determination of members entitled to vote at any meeting of members has been made as provided in this Section, the determination shall apply to any adjournment thereof.

Section 7. Annual Meeting. The regular annual meeting of members of the Corporation shall be held in the month of June of each year at the principal office of the Corporation, or at such other place, either within or without the State of Colorado, as may be ordered by the Chairperson or the Board of Directors; provided, however, that the Board of Directors may postpone such meeting for a period of time not in excess of sixty (60) days upon appropriate resolution at any regular or special meeting of the board.

At the regular annual meeting of the members, the Directors for the ensuing year shall be elected, the Officers of the Corporation shall present their annual reports, and the Secretary shall have on file for inspection and reference a complete record of members. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Corporation.

Section 8. Special Meetings. Special meetings of the members may be called by the Board of Directors, the Chairperson, or not less than fifty percent (50%) of the members entitled to vote at the meeting. Calls for special meetings shall specify the time, place and object or objects thereof, and no other business than that specified in the call shall be considered in any such meeting.

Section 9. Rules of Order. Roberts Rules of Order shall govern all meetings of the members, a copy of which shall be available at every meeting.

Section 10. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Colorado, as the place for any annual meeting or for any regular or special meeting of the members. If a special meeting shall be called otherwise than by the Board, or if the Board of Directors does not designate a place, the place of meeting shall be the registered office of the Corporation.

Section 11. Notice of Meetings. Written notice stating the place, date and hour of the meeting, and, in case of a special meeting, the purpose for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally, electronically or via postal service, or at the direction of the Chairperson, or the Secretary, or the Officer or person calling the meeting, to each member entitled to vote at such meeting. If requested by the person or persons lawfully calling such meeting, the Secretary shall give notice thereof, at corporate expense.

Section 12. Meetings by Conference Telephone or Similar Communications Equipment. Members may participate in a meeting by means of conference telephone, video conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at a meeting.

Section 13. Action by Members Without a Meeting. Any action required by law, the Articles, or Bylaws to be taken at a meeting of members, or any action which may be taken at a meeting of members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the members.

Section 14. Election of Directors. At each annual meeting of the members of the Corporation, Directors shall be elected to serve until their successors are duly elected and qualified, unless they sooner resign or are removed pursuant to Section 16 of Article II of these Bylaws. Election of Directors shall be by such of the members as attend the annual meeting, in person, or who submit their votes by mail or electronically, provided that if the majority of members entitled to vote is not represented, such meeting may be adjourned by the members present for a period not exceeding sixty (60) days at any one adjournment. Each member district entitled to vote at such election has the

right to vote, in person or by mail, electronically or via postal service, one vote for each office to be filled and for whose election the member has a right to vote. Cumulative voting shall not be allowed in the election of Directors.

Section 15. Quorum and Manner of Acting. Unless otherwise provided in the Articles of Incorporation, members holding twenty percent (20%) of the votes entitled to be cast on the matter to be voted upon, represented in person, shall constitute a quorum at a meeting of members. If a quorum is present, the affirmative vote of the majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented at the meetings shall be the act of the members, unless the vote of a greater proportion or number or voting by classes

is required by law, the Articles of Incorporation, or these Bylaws. In the absence of a quorum, those present may adjourn the meeting from day to day but in no event for a period to exceed sixty (60) days at any one adjournment.

Section 16. Waiver of Notice and Approval of Action. When any notice is required to be given to any member of the Corporation under the provisions of law the Articles of Incorporation, or these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

Section 17. Order of Business. The order of business at the annual meeting, and so far as is practicable at all other meetings, of the members, shall be as follows:

- Determination of quorum.
- Proof of due notice of meeting or waiver of notice.
- Reading and disposal of any unapproved minutes.
- Annual reports of Officers and committees.
- Election of Directors.
- Unfinished business.
- New business.
- Adjournment.

Section 18. Dues. The annual amount of dues shall be set by the Board of Directors. Members shall pay annual dues, in full, at the beginning of each fiscal year, unless otherwise determined by the Board of Directors. Any member who has not paid their annual dues by October 1 shall be considered delinquent and may be dropped from the membership list, at the discretion of the Board. Members whose dues are delinquent shall not vote.

ARTICLE IV DISSOLUTION

The Corporation may dissolve and wind up its affairs in the manner provided by law, the Articles, or Bylaws, but upon such dissolution, the assets of the Corporation shall be applied and distributed as follows:

Section 1. All liabilities and obligations of the Corporation shall be paid and discharged, or adequate provisions shall be made therefore.

Section 2. Assets held by the Corporation on condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement.

Section 3. The remaining assets held by the Corporation shall be distributed to one or more of the Members pursuant to a plan of distribution adopted by the Board of Directors, unless otherwise provided by law.

ARTICLE V

INDEMNIFICATION

Section 1. Definitions. As used in this Article:

(a) “Corporation” includes any domestic or foreign predecessor entity of the Corporation in a merger or other transaction in which the predecessor’s existence ceased upon consummation of the transaction;

(b) “Director” means an individual who is or was a Director of the Corporation or an individual who, while a Director of the Corporation, is or was serving at the Corporation’s request as a Director, Officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, any partnership, joint venture, trust, employee benefit plan or other enterprise. A Director shall be considered to be serving an employee benefit plan at the Corporation’s request if the Director’s duties to the Corporation also impose duties, on or otherwise involve services by, the Director to the plan or to participants in or beneficiaries of the plan. “Director” includes, unless the context requires otherwise, the estate or personal representative of a Director;

(c) “Expenses” includes attorney fees;

(d) “Liability” means the obligation to pay a judgment, settlement, penalty, fine, or reasonable expense actually incurred with respect to a proceeding;

(e) “Official capacity” means: (i) when sued with respect to a Director, the office of Director in the Corporation, and, (ii) when used with respect to a person other than a Director, the office in the Corporation held by the Officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Corporation. “Official capacity” does not include service for any other foreign or domestic corporation or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise;

(f) “Party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding;

(g) “Proceeding” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Section 2. Permissive Indemnification of Directors. Except as provided in Section 4 of this Article, the Corporation may indemnify an individual made a party to a proceeding because the individual is or was a Director against liability incurred in any proceeding if the individual:

(a) Conducted himself or herself in good faith; and

(b) Reasonably believed: (i) in the case of conduct in his or her official capacity with the Corporation, that his or her conduct was in the Corporation’s best interest; and (ii) in all other cases, that his or her conduct was at least not opposed to the Corporation’s best interests; and

(c) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, be determinative that the Director did not meet the standard of conduct set forth in this Section.

Indemnification permitted under this Section in connection with a proceeding by or in the right of the Corporation shall be limited to reasonable expenses incurred in connection with the proceeding.

Section 3. Mandatory Indemnification of Directors. Unless limited by the Articles of Incorporation, the Corporation shall indemnify a Director who was wholly successful, on the merits or otherwise, in defense of any proceeding to which the Director was a party because he or she is or was a Director of the Corporation against reasonable expenses incurred by the director in connection with the proceeding.

Section 4. Prohibited Indemnification of Directors. The Corporation may not indemnify a Director under Section 2 of this Article:

(a) In connection with a proceeding by or in the right of the Corporation in which the Director was adjudged liable to the Corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the Director, whether or not involving action in his or her official capacity, in which the Director was adjudged liable on the basis that personal benefit was improperly received by the Director.

Section 5. Authority for Permissive Indemnification of Directors. The Corporation may not indemnify a Director under Section 2 of this Article unless authorized in the specific case after a determination has been made that indemnification of the Director is permissible in the circumstances because the Director has met the standard of conduct set forth in Section 2 of this

Article. The determination required to be made by this Section shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of Directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained, by majority vote of a committee of the Board of Directors designated by the Board of Directors (in which designation Directors who are parties may participate), consisting solely of two or more Directors not at the time parties to the proceeding; or

(c) By special legal counsel: (i) selected by the Board of Directors or its committee in the manner specified in subsections (a) and (b) of this Section 5; or (ii) if a quorum of the Board of Directors cannot be obtained and a committee cannot be designated, selected by a majority vote of the full Board of Directors (in which designation Directors who are parties may participate).

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible; except that, if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by the body that selected said counsel.

Section 6. Advances of Expenses. The Corporation may pay for or reimburse the reasonable expenses incurred by a Director who is a party to a proceeding in advance of the final disposition of the proceeding if:

(a) The Director furnishes the Corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in Subsection (a) of Section 2 of this Article;

(b) The Director furnishes the Corporation a written undertaking, executed personally or on the Director's behalf, to repay the advance if it is ultimately determined that the Director did not meet the standard of conduct; and

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Section.

The undertaking required by subsection (b) of this Section shall be an unlimited general obligation of the Director, but need not be secured and may be accepted without reference to financial ability to make repayment.

Determinations and authorizations of payments under this Section shall be made in the manner specified in Section 5 of this Article.

Section 7. Indemnification of Officers, Employees and Agents. The Corporation shall have the following powers and duties of indemnification with respect to Officers, employees and agents:

(a) An Officer of the Corporation who is not a Director shall be entitled to mandatory indemnification pursuant to Section 3 of this Article;

(b) The Corporation may indemnify and advance expenses pursuant to Section 6 of this Article to an Officer, employee, or agent of the Corporation who is not a Director to the same extent as a Director; and

(c) The Corporation may indemnify and advance expenses to an Officer, employee, or agent of the Corporation who is not a Director to the extent, consistent with public policy, that may be provided by the Article of Incorporation, these Bylaws, general or specific action of the Board of Directors, or contract.

Section 8. Rights, Powers and Duties Not Exclusive. The indemnification provided by this Article shall not be construed to limit any other rights of indemnification to which Directors, Officers, employees and agents of the Corporation may be entitled under the laws of the State of Colorado; nor shall the indemnification provided by this Article be construed to limit any

other of the Corporation's power to indemnify its Directors, Officers, employees and agents as may be provided by the laws of the State of Colorado.

ARTICLE VI PERSONAL LIABILITY

Section 1. Director Immunity. No member of the Board of Directors of the Corporation shall be held liable for actions taken or omissions made in the performance of his duties as a Board member except for wanton and willful acts or omissions and except as provided below.

Section 2. Liability Insurance. The Corporation may purchase and maintain insurance on behalf of a person who is or was a Director, Officer, employee, or agent of the Corporation or who, while a Director, Officer, employee, or agent of the Corporation, is or was serving at the request of the Corporation as a Director, Officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against liability asserted against or incurred by him or her in that capacity or arising from his or her status as such, whether or not the Corporation would have the power to indemnify the person against the same liability under the provisions of Article VI. Any such insurance may be procured from any insurance company designated by the Board of Directors of the Corporation, whether such insurance company is formed under the laws of Colorado or any other jurisdiction of the United States or elsewhere, including any insurance company in which the Corporation has equity or any other interest, through stock ownership or otherwise.

Section 3. Personal Liability for Torts of Employees. No Officer or Director shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such Officer or Director was personally involved in the situation giving rise to the litigation or unless such Officer or Director committed a criminal offense. The protection afforded in this Section shall not restrict other common law protections and rights that an Officer or Director may have. This Section shall not restrict the Corporation's right to eliminate or limit the personal liability of a Director to the Corporation for monetary damages for breach of fiduciary duty as a Director.

Section 4. Personal Liability for Monetary Damages. If provided for in the Articles of Incorporation, the personal liability of any of the Corporation's Directors to the Corporation for monetary damages for breach of fiduciary duty as a Director is eliminated, except that this provision shall not eliminate the liability of the Director to the Corporation for monetary damages

(a) for any breach of the Director's duty of loyalty to the Corporation; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) for acts specified in law; or (d) for any transaction from which the director derived an improper personal benefit.

ARTICLE VII AMENDMENTS

Any and all provisions of the Bylaws may be altered, amended, repealed or added to at any annual or special meeting of the members called for that purpose by a majority vote of the

members casting votes entitled to vote. Members shall be provided bylaw changes 10 days prior to voting for review.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 1. Reimbursement by Officer of Expenses. Any payments made to an Officer of the Corporation such as salary, commission, bonus, interest, or rent, or entertainment, or travel expense incurred by such Officer, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service or other properly constituted taxing authority, shall be reimbursed by such Officer to the Corporation to the full extent of such disallowance. In lieu of payments by the Officer, subject to the determination of the Directors, proportionate amounts maybe withheld from such Officer’s future compensation payments until the amount owed to the Corporation has been recovered.

Section 2. Finances. Any member shall have the right to inspect the Corporation’s booksand accounts at all times. The Corporation’s financial records shall be audited annually by a qualified firm or individual, if required by law, unless the financial activities of RPS are fully reported in the audit or audits of a Member. The Treasurer shall not participate in the audit.

Adopted and approved by the Board of Directors on _____, 2021.

ROCKIES PROCUREMENT SERVICES,
a Colorado Public Corporation

By: _____
Secretary