

Browning Public Schools  
**Board Agenda Request**  
Meeting to Be Held: 8/29/18



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**Recognition:**    Students                       Staff                       Parents  
**Information:**    Building Report                       Old Business                       Superintendent's Report  
**Action:**    Resignation                       Hiring                       Contract Service Agreements  
                     Travel Out-of-State                       Travel In State                       Approvals  
                     Termination                       Legal Matters                       Other:  
This action request pertains to  Elementary (only)                       High School/District Wide

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**Date:**      8/21/18

**To**            **Corrina Guardipee-Hall**  
                    Superintendent

**From:** Jeri Matt  
                    Title:      Director of Curriculum/Instruction

**Subject: Side By Side Educational Consulting Agreement**

**Description:** MPDG grant requires a consultant to come onsite and assist with implementing our Continuous Improvement Cycle Action Plans and instruction.

**Financial Impact: \$60,000**

**Funding Source (Budget/grant, etc.):** 115.5.465.2213.320.182

**Attachment(s): Contract Service Agreement**

**Approval:** Superintendent's Office/Finance/Personnel as applicable (Initial) \_\_\_\_\_

**Comments:** \_\_\_\_\_

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**Board Action:**    N/A (Info)     Approved     Denied     Tabled to: \_\_\_\_\_



## SIDE-BY-SIDE EDUCATIONAL CONSULTING, INC. AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is effective as of August 1, 2018 (the "Effective Date") by and between Browning Public Schools located in Browning, Montana (the "Program"), and Side-by-Side Educational Consulting, Inc., a Montana Corporation ("Consultant").

### BACKGROUND

- A. The Consultant has expertise in the Field of early childhood, literacy, curriculum and instruction, the Montana Preschool Program Standards, and the implementation of an instructional improvement process. The Consultant will provide professional development and support for implementation of the Montana Preschool Development Grant (MPDG) which includes, but is not limited to, the following areas: (1) implementation of the Montana Preschool Program Standards which include the Montana Early Learning Standards (MELS); (2) implementation of the comprehensive early learning assessment system; (3) alignment of program and content standards; (4) support and expansion of comprehensive services in the high need communities; (5) facilitation of on-site school visits; and (6) providing support to the Program Leadership Team in action planning process for continuous improvement.
- B. The Program is a subgrantee under the Montana Preschool Development Grant ("Grant") administered by Montana's Office of Public Instruction ("OPI").
- C. Pursuant to Grant requirements, the Program desires to obtain services of Consultant, and Consultant wishes to provide such services in the Field, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Consultant: Side-by-Side Educational Consulting, Inc., a Montana Corporation approved by the OPI as part of its administration of the Grant, possessing expertise in the Field of early childhood, literacy, curriculum and instruction, the Montana Preschool Program Standards, and the implementation of an instructional improvement process.
2. Field: Professional development and support for implementation of the Montana Preschool Development Grant (MPDG) which includes, but is not limited to, the following areas: (1) implementation of the Montana Preschool Program Standards which include the Montana Early Learning Standards (MELS); (2) implementation of the comprehensive early learning assessment system; (3) alignment of program and content standards; (4) support and expansion of comprehensive services in the high need communities; (5) facilitation of on-site school visits; and (6) providing support to the Program Leadership Team in action planning process for continuous improvement.



3. **Services:** The services to be provided by Consultant pursuant to Grant requirements (the “Services”), and the dates for the performance of such Services, are described on Exhibit A hereto.
4. **Fees:** The fees to be paid by the Program to Consultant for the Services (the “Fees”) are set forth in Exhibit A, attached hereto. Except for the reimbursable expenses specifically described in Section 5 below, the **fees are inclusive of all of Consultant’s expenses for Services**. Consultant’s invoices for Services will be sent to the address and billing contact set forth in Exhibit A. Payment for Fees shall be made to Consultant within forty-five (45) days of the invoice date.
  - a. The Program shall select at the beginning of this agreement from two payment options as indicated in Exhibit A and attached hereto:
    - i. **Payment Option #1:** For the specific school year, the fees will be paid IN ADVANCE to the Consultant by the Program for services contained within this agreement, including Exhibit A. In the event the number of days of services for the school year are not fulfilled by the Consultant, as outlined in Exhibit A, Consultant agrees to reimburse Program within thirty (30) days of the last day of services for the school year the amount for the number of days services were not performed. Specifically, reimbursement from Consultant to the Program shall be calculated based upon the calculation of services contained in Exhibit A of this agreement.
    - ii. **Payment Option #2:** For the specific school year, fees will be paid on a monthly basis to the Consultant by the Program for services contained within this agreement, including Exhibit A. Invoices will be submitted at the beginning of each month and the Program will pay in full on each invoices on a monthly basis for the services rendered pursuant to this agreement, as in outlined above in Section 4.
    - iii. *Selection by the Program shall be indicated in written form by **initialing and dating** the chosen payment option in Exhibit A.*
5. **Reimbursable Expenses:** In addition to the Fees set forth on Exhibit A, the Program shall reimburse Consultant from Grant funds for all non-refundable travel expenses incurred by Consultant in the event that the Program cancels or requests the rescheduling of the Services. Such reimbursable expenses shall be invoiced and paid in accordance with Section 4 above.
6. **Copying Costs:** Consultant shall send copies of training materials (if applicable) to the Program at least one week prior to the commencement of the Services. The Program shall be responsible for providing the required number of copies, at the Program’s sole expense, for purposes of receiving Services.
7. **Confidential Information:** In the event that the Program discloses any tangible confidential information to Consultant, it shall be clearly identified, in writing, as “confidential” (all information so identified, “Confidential Information”). Consultant agrees to hold all Confidential Information disclosed to Consultant by the Program in confidence, and Consultant shall neither disclose nor use the Confidential Information for any purpose other than providing the Services as contemplated herein. Upon the termination or expiration of the Term, Consultant agrees to return or destroy all Confidential Information supplied to Consultant by the Program.
8. **No Solicitation of Consultant’s Employees and/or Consultants:** Except after discussion with and the written approval of Consultant, during the Term and for twelve (12) months after the expiration or termination thereof, the Program shall not solicit or initiate contact or communications with the employees or



independent contractors of Consultant for the purpose of hiring or causing a third party to hire such persons, or cause or attempt to cause an employee or contractor of Consultant to terminate his, her or its employment or engagement with Consultant. The Program agrees that a breach of its obligations under this Section 8 could not reasonably or adequately be compensated in damages in an action at law and that Consultant shall be entitled to injunctive relief, which may include, but shall not be limited to, restraining the Program from engaging in any acts that would breach this Section 8. However, the injunctive relief conferred by this Section 8 is not intended to be exclusive of any other remedy that may be available to Consultant, and it shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

9. Relationship of the Parties: In performing Services, pursuant to this Agreement, Consultant and its agents, employees, and independent contractors, are not employees of the Program. Accordingly, although the Program may provide input regarding the general nature of the work to be performed and the goals to be met, the details, direction, and control of performing such work and meeting such goals shall be provided by Consultant and the Montana Office of Public Instruction pursuant to Grant requirements.
10. Term and Termination: The term of this Agreement (the "Term") shall be from the Effective Date until the date that the Services are completed, or until otherwise terminated in accordance with the terms of this Agreement. Subject to the provisions of Section 11 below, either party may terminate this Agreement at any time, for any or no reason, upon written notice delivered to the other party. Upon expiration or termination of this Agreement, the Program shall pay Consultant (in accordance with the invoicing and payment procedures set forth in Section 3 and Section 4 above) all Fees owed for all work performed and shall reimburse Consultant for all reimbursable expenses incurred (in accordance with the procedures set forth in Section 3, Section 4, and Section 5 above) as of the date of such expiration or termination.
11. Liquidated Damages for Untimely Terminations:
  - a. If the Program gives Consultant less than fifteen (15) days prior written notice of the Program's election to terminate this Agreement, the Program shall pay Consultant, as liquidated damages and not as a penalty, the sum of One Thousand Dollars (\$1,000) per day for each day and/or partial day of Services thereby cancelled.
  - b. If Consultant gives the Program less than fifteen (15) days prior written notice of Consultant's election to terminate this Agreement (for any reason other than the personal illness of Carrie L. Cole or any other individual that Consultant has scheduled to perform the Services on its behalf), Consultant shall pay the Program, as liquidated damages and not as a penalty, the sum of One Thousand Dollars (\$1,000); however, Consultant shall not be liable for liquidated damages under the termination of this agreement if termination is due to an emergency, such as, but not limited to personal illness, family illness, and/or natural disasters.
12. Severability: Should any valid federal or state law or final determination of any administrative agency or court of competent jurisdiction invalidate or otherwise affect any provision of this Agreement, the provision or provisions so affected shall be conformed automatically and to the extent possible to the law or determination in question, and in all events the remaining provisions of this Agreement shall continue in full force and effect.
13. Video Recording: Subject to compliance with the Program's policies, the demonstration lesson for teaching and learning provided by Consultant hereunder (if any) may be recorded by the Program in a video format, and a copy of the resulting video shall be provided to Consultant free-of-charge. Any videotape or DVD of the demonstration lesson shall not be distributed to any third party without the prior written consent of both parties.



14. **Governing Law:** This Agreement has been entered into under the laws of the State of Montana and the parties hereto agree that it shall be interpreted and all disputes arising hereunder shall be resolved in accordance with Montana law. The parties acknowledge and agree that the provisions of this Section 14 are reasonable because Consultant is a Montana Corporation, Consultant has significant operations in Montana, and Consultant has a need for consistency in the interpretation of its contracts with independent contractors, and, therefore, Montana has a substantial relationship to the Program's engagement by Consultant pursuant to this Agreement, and Montana has a material interest in the determination and resolution of any issues or disputes arising under this Agreement. This Agreement has been entered into and has been executed by Consultant in Montana following its execution by the Program. Exclusive jurisdiction and venue for any dispute arising hereunder shall be with the state or federal courts located in the County of Lincoln, State of Montana.
15. **Amendments.** Any amendment or modification to this Agreement shall be valid only in writing and signed by both parties.
16. **Notices:** Any notice, request, demand or other communication hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered to Consultant or to the Program, as the case may be, (ii) three (3) days after deposit with the U.S. Postal Service, certified mail, return receipt requested, with postage prepaid, or (iii) two (2) days after deposit with a reputable overnight delivery service, delivery fees prepaid. Such notices shall be addressed as follows:
  - a. If to Consultant:

Side-by-Side Educational Consulting, Inc.  
389 Canoe Gulch Road  
Libby, MT 59923  
Attn: Carrie L. Cole
  - b. If to the Program:

To the address for notices set forth on the signature page of this Agreement.

Each party may specify a different address for notices by giving notice of such changed address to the other party in accordance with this Section 16.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties respecting the Services, and there are no representations, warranties or commitments which may be relied upon by either party except as expressly set forth in this Agreement. This Agreement supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between the parties, whether oral or written. This Agreement may be amended only by an instrument in writing executed by both of the parties hereto.
18. **Acknowledgments.** The Program expressly acknowledges that it has read the terms of this Agreement, has had the opportunity to discuss those terms with its own legal counsel, and understands that this is a legally binding contract.



19. **Assignment.** This Agreement shall be binding on and shall inure to the benefit of the parties' respective successors and permitted assigns. Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, Consultant may engage one or more subcontractors to perform the Services contemplated herein.
20. **Mediation of Disputes.** In the event of a dispute relating to the parties' performance hereunder or the interpretation of this Agreement, prior to instituting any legal action other than injunctive relief, the parties agree to mediate in good faith before a mutually selected, neutral third party. Notwithstanding the foregoing, neither party shall have any obligation to mediate under this **Section 20** for more than forty-five (45) days after the date that a dispute first arose.
21. **Consultant's Insurance.** Consultant shall maintain throughout the Term, at Consultant's expense, insurance coverage that includes business liability insurance and worker's compensation insurance. Consultant shall provide the Program with copies of certificates evidencing such insurance coverage upon request.



IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

**Consultant:**

SIDE-BY-SIDE EDUCATIONAL CONSULTING, INC.

By: Carrie L. Cole

Title: President

Signature: \_\_\_\_\_

**Program:**

Browning Public Schools

By: Corrina Guardipee-Hall  
(Print Name)

Title: Superintendent

Signature: Corrina Guardipee-Hall

**Program's address for notices:**

PO. Box 610

Browning, MI 49417

Attn: Jeri Matt