



School District of the City of Pontiac

Kelley Williams, Superintendent

PONTIAC BOARD OF EDUCATION Agenda Item Request Form

Purpose:	<input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action <input type="checkbox"/> Report	Presenter(s):	<u>Kelley Williams, Superintendent</u> <u>Darryl Segars, General Counsel</u>
Contract:	<input type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Extension/ <input checked="" type="checkbox"/> Modification	Attachment(s):	<u>R&J Consulting and Contracting, LLC Contract</u>
<input type="checkbox"/> N/A		Board Meeting Date:	<u>June 19, 2017</u>

Agenda Item: R&J Consulting and Contracting, LLC Contract Extension

Background/Rationale: R&J Consulting and Contracting, LLC oversees the District's facilities department. Among other things, it develops and maintains a five-year Capital Improvement Plan (CIP), including Sinking Fund Priority List based on 2016 Facilities Condition Assessment, to best support the program delivery and safety needs of Pontiac School District within the constraints of the approved Finance and Operating Plan and present same to the District by September 30, 2016. The CIP will be also responsive to the needs of the District's representative on capital construction projects and monitors the work of any contracted owner's representative or Construction Manager, to assure the complete implementation of approved projects. The Fee payable for the Services provided for twelve months of this Agreement shall not exceed \$98,000. Also, the contractor may be reimbursed for expenses, in an amount not to exceed \$19,200 (annually). The contractor's fee and expenses are unchanged from last year. The term of this Agreement shall commence on July 1, 2017, and shall end on June 30, 2018. This Agreement may be terminated by either party without cause upon thirty (30) days advance written notice to the other party's last known address or immediately by the District for Cause.

Funding Source/Account Number/s: 110-093-1261-0000-0000-3192

Recommendation: It is the recommendation of the Administration that the Board of Education approve R&J Consulting and Contracting, LLC contract for FY 2017/2018. The Fee payable for the Services provided for twelve months of this Agreement shall not exceed \$98,000. Also the contractor may be reimbursed for expenses, in an amount not to exceed \$19,200 (annually). The contractor's fee and expenses are unchanged from last year. The term of this Agreement shall commence on July 1, 2017, and shall end on June 30, 2018.



School District of the City of Pontiac

Kelley Williams, Superintendent

Approvals Required:

<i>Kelley Williams</i> Superintendent	<i>6/15/17</i> Date	<i>Camen White</i> Human Resources	<i>6/15/17</i> Date
<i>[Signature]</i> Business and Finance	<i>15 June 2017</i> Date	<i>Dr. Lewent</i> Curriculum & Instruction	<i>6-15-17</i> Date
<i>Darryl Segars</i> Legal Counsel	<i>6/15/17</i> Date		

Moved By: _____

Supported By: _____

Board Vote:

Ayes:

Nays:

Request Approved: Yes No

Date Approved: _____

INDEPENDENT CONSULTING AGREEMENT

THIS INDEPENDENT CONSULTING AGREEMENT (the "Agreement") is made on this first day of July, 2017,

by and between the School District of the City of Pontiac ("PSD" or "District") and R&J Consulting and Contracting, LLC. ("Consultant" or "Contractor").

WHEREAS, the District is a School District in the state of Michigan; and,

WHEREAS, the District and Consultant desire to enter into an independent contracting relationship whereby Consultant will be engaged to provide the services set forth in this Agreement; and,

WHEREAS, the District and Consultant desire to set forth their understanding with respect to their relationship and the limitations on their relationship.

THEREFORE, in consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Engagement. PSD hereby engages Consultant and the Consultant accepts such engagement to serve as an independent contractor to provide the services set forth in this Agreement for the consideration and upon the terms and conditions set forth in this Agreement. . Consultant agrees to assign Robert Englund to perform the services required by this Agreement and may not assign the services to another without the advance written authorization of the Superintendent of PSD.
2. Relationship. The relationship between PSD and Consultant shall be that of independent contracting parties. Consultant shall be self-directed in its activities (provided Consultant shall abide by the terms of this Agreement). Consultant shall determine its own methods and manner for performing the services to be performed under this Agreement within the overall policies and budgets established by PSD, as they may be amended from time to time. Consultant shall at no time represent itself to be an employee, servant or agent of the School District. The Contractor shall receive direction on service goals and objectives directly from the District Superintendent.
3. Taxes, Workers Compensation Insurance and Other Expenses
 - (a) Consultant shall be wholly responsible for paying all of its own taxes, including Federal and State Income Taxes, FICA, FUTA, Worker's Compensation, Unemployment and Single Business taxes to the extent that any or all of the foregoing are applicable. Consultant shall defend, indemnify and hold harmless the PSD from and against any claims by any government entity or taxing authority for any taxes, retirement contributions, interest or penalties relating to Consultant, or its owners, employees or agents, if any. Consultant shall acquire, if required by law, workers compensation insurance for its owners, employees and agents and shall defend, indemnify and hold harmless PSD from and against any and all claims for workers compensation brought by or on account of Consultant or any of its owners, employees or agents.

(b) Consultant, and its owners, employees and agents, shall not be entitled to participate in any of PSD retirement or fringe benefits programs and, unless otherwise agreed in writing by the PSD Superintendent.

4. Term. The term of this Agreement shall commence on July 1, 2017 and shall end on June 30, 2018, unless the District terminates this contract pursuant to Paragraph 13 of this Agreement.

5. Duties of Consultant. Consultant shall perform the scope of work per Attachment A of this agreement.

Consultant may not assign all or any part of these duties to any person or contractor without the advance written permission of the PSD Superintendent.

6. Working Facilities. Consultant may utilize the premises and facilities of PSD in rendering services pursuant to this Agreement, including existing infrastructure, such as office space, internal mail service, copiers, computers, internet access and email addresses.

7. Confidential Information and Records.

(a) Except as required by its duties to the School District, Consultant agrees that it, and its owners, employees and agents, will never, during the term of this Agreement or at any time subsequent to the termination of this Agreement, directly or indirectly use or disclose any confidential information of Oakland Schools without the written consent of the PSD Superintendent. Except as required in Contractor's duties to PSD, the Contractor agrees that it will never, during the term of this Contract or at any time subsequent to termination of this Contract, directly or indirectly use or disclose any Confidential Information of PSD without the written consent of PSD. All records, forms and supplies or any reproduced copies provided and furnished by PSD Schools to Contractor or its agents or obtained by Contractor or its agents during the course of its rendering Services to PSD shall always remain the property of PSD and shall be returned to PSD on demand, or upon termination of this Contract. Further, any information obtained by Contractor, or any reports prepared or supplied (including information contained therein) to PSD under the performance of the Services shall not be directly or indirectly disclosed by Contractor without the express written permission of PSD. All records and related documents prepared by Consultant, or otherwise created in connection with the rendering of services to PSD, shall be prepared in accordance with practices and procedures determined by PSD and shall be the property of PSD.

(b) All records, forms and supplies or any reproduced copies provided and furnished or obtained by Oakland Schools to Consultant, or its owners, employees or agents, or during the course of rendering services to the School District, shall always remain the property of Oakland Schools and shall be returned to Oakland Schools on demand, or upon termination of this Agreement.

8. Compensation to Contractor. PSD will pay Consultant, prorated as necessary, \$433.63 per day worked (the "Base Fee") for all Base Services performed for no less than 226 week days per 12

month period during the Term of this Agreement or in an amount not to exceed \$98,000 in a twelve month period. On weekends and evenings the consultant will be available “on call” by telephone for assigned staff as needed by staff. PSD shall also pay the Consultant \$1,600 per month for Contractor's reasonable and necessary expenses to perform the Services, including but not limited to, dues, fees, subscriptions, local and in-state travel, in-state conference expenses, and wireless service expenses for mobile phone and Internet. Subject to the approval of the District Superintendent in advance, Expenses for pre-approved out-of-state travel shall be reimbursed for travel related to the duties of the Consultant. The Fee and expenses payable for the Services provided for twelve months of this Agreement shall not exceed \$19,200. Payment shall be made to the contractor on a bi-weekly period upon of the receipt by PSD of an invoice from the Contractor.

9. Tenure Disclaimer. Consultant acknowledges and agrees its duties do not require a teaching certificate of any type, regardless whether it, or any of its owners, employees or agents, are so certified. Therefore, Consultant agrees it, and its owners, employees and agents do not have and will not acquire tenure under the Teacher Tenure Act and are forever stopped from asserting otherwise.
10. No Authority to Contract. Consultant shall have no authority to commit PSD _____ to any contract or obligation.
11. Additional Warranties of Contractor. Consultant represents and warrants to PSD that Consultant's agreement to perform its duties under this Agreement does not violate any agreement or obligation to which Consultant is bound; and the services provided by Consultant shall be performed in a professional manner and shall be of a high grade, nature and quality and shall be performed in a timely manner consistent with the terms and conditions of this Agreement.
12. Other Activities. Consultant shall remain free to engage in other independent contracting activities; provided, however, that Consultant shall at all times remain available to perform its services under this Agreement in a first-class manner and shall refrain from engaging in any activities which are inconsistent with, which interfere with or which are in conflict with any of the terms of this Agreement.
13. Right to Termination. Notwithstanding anything herein contained, this Agreement may be terminated by either party without cause upon thirty (30) days advance written notice to the other party's last known address or immediately by PSD for Cause. For purposes of this Agreement, the term “Cause” shall mean:
 - (i) the failure to comply with any of the material terms of this Agreement after being given written notice of such failure and the failure to cure such condition within ten(10) days after receipt of such notice;

- (ii) the failure to implement, or adhere to, reasonable policies or directives of the PSD Superintendent after being given written notice of such refusal and failure to cure such condition within ten (10) days after receipt of such notice; or,
- (iii) the failure to competently perform the duties imposed upon Consultant pursuant to this Agreement and the failure to cure such condition within ten (10) days after receipt of such written notice.

In the event of termination of this Agreement, any and all compensation which has accrued as of the date of termination shall be paid to Consultant in accordance with the terms of this Agreement, but no additional compensation shall be due to Consultant.

14. Notices. All notices and other communications shall be effective upon receipt if hand delivered; shall be effective three (3) days after depositing in the U.S. mail to the other party's last known address; or, shall be effective one (1) day after sending by a nationally recognized overnight delivery service to other party's last known address.
15. School Safety. The Contractor understands this Agreement is subject to 2006 PA 680 and as such the Contractor, its employees and subcontractors of any degree, must present themselves for fingerprinting upon execution of this Agreement so that Oakland Schools is able to request from the Criminal Records Division of the Department of State Police (1) a criminal history check and (2) a criminal records check through the Federal Bureau of Investigation and receive from the Department of State Police reports concerning the same. The Contractor shall pay the cost of each criminal check performed related to this Agreement. Neither the Contractor nor subcontractor thereof of any degree shall assign any individual, and Oakland Schools shall not allow any individual, to regularly and continuously work under contract in any of its schools or in the schools of a constituent district that is being served by the Contractor pursuant to this Agreement if the reports on an individual's criminal history or criminal records check have not been received or if those checks would disclose or do disclose that individual has been convicted of a "listed offense" as that term is defined in Section 2 of the Sex Offenders Registration Act, 1994 PA 295, as amended, or which disclose that individual has been convicted of a felony other than a "listed offense" unless the Superintendent and the Board of Oakland Schools each specifically approve of the work assignment in writing.

Any personnel of the Contractor or of the subcontractors thereof of any degree that have been charged with any of the referenced crimes referenced in 2006 PA 680 shall immediately report that circumstance to Oakland Schools superintendent and shall not be permitted to work in any of the Districts schools or schools of the constituent districts served pursuant to this Contract during the pendency of the prosecution associated with such charge(s). Oakland Schools reserves the right to refuse Contractor's assignment of any individual, agent or employee of the Contractor or subcontracted personnel of any degree to render services under this Contract where the criminal history of that individual (including any pending charges) indicate, in the District's judgment, unfitness to perform services under this Contract. Violation of the above by the Contractor or a subcontractor thereof shall be a basis for immediate termination of this Contract.

The Contractor shall require language similar to the above in all of its agreements and/or contracts with its consultants, subcontractors, suppliers and material.

In addition to this contract clause, the Contractor shall be obligated to undertake every necessary effort to assist PSD in complying with statutorily required criminal checks and reporting requirements concerning any employees in its employ and subcontractors of any degree. To the extent applicable law related to criminal checks and reporting requirements is amended, Contractor agrees that it shall fully abide by, comply with and assist Oakland Schools with its compliance with such amendments. To that end the parties shall meet and negotiate any changes necessary to bring this contractual provision into compliance with such anticipated future amendments.

16. Liability and Indemnification. Contractor warrants that its performance of the Services under this Contract does not infringe on or violate any copyright patent, trade secret or other property interest of a third party. The Contractor shall obtain written permission to use any materials, documents, writing, publications, software, recording or procedure, whether in written, video, audio or other media format, attributed to another (whether copyrighted or not) and proof of such written permission shall be submitted to PSD with the work product of another proposed to be used by the Contractor. Contractor agrees to indemnify, defend and hold harmless PSD, its Board of Education, in their official and individual capacities, employees, agents, contractors, successors and assignees, from and against any and all liabilities, damages, costs and expenses, including reasonable attorney fees, incurred in connection with any claim or suit brought against PSD arising from any claims of violation of any copyright, patent or trade secret by any third party resulting from Contractor's or PSDs' use of any equipment, software, technology, documentation and/or any other materials, documents, writing, publications, software, recording or procedure, whether in written, video, audio or other media format provided by Contractor under this Contract; provided that Contractor is notified in writing within thirty (30) days from the date the District knew of such claim. PSD retains the right to offset against any amounts owed Contractor hereunder or any such monies expended by PSD in defending itself against such claims.

Contractor agrees to indemnify, defend and hold harmless PSD, its Board of Education, in their official and individual capacities, employees, agents, contractors, successors and assignees, from and against any and all costs, expenses, damages, and liabilities, including reasonable attorney's fees, arising out of the: (i) negligent act or willful misconduct of the Contractor, its officers, directors, employees, successors, assignees, contractors and agents; (ii) any breach of the terms of this Contract by Contractor; or (iii) a breach of any representation or warranty by Contractor under this Contract. PSD agrees to notify Contractor by certified mail, return receipt requested, immediately upon actual knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this Contract. PSD does agree to accept responsibility for its gross negligence or intentionally wrongful conduct.

17. Insurance. The Contractor shall at the contractors expense maintain workers compensation as required by law and comprehensive general liability insurance, the latter with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Prior to October 1,

2014, Contractor shall name PSD as an additional insured on its comprehensive general liability insurance and provide a Certificate of Insurance for its policies.

18. Miscellaneous

Complete Agreement. This Agreement constitutes the complete agreement among the parties and supersedes and replaces all prior negotiations and agreements. There are no representations, warranties, covenants, conditions, terms, agreements, promises, understandings, commitments or other arrangements, whether express or implied, other than those expressly set forth or incorporated herein or made in writing on or after the date of this Agreement.

- A. Governing Law; Forum. This Agreement will be governed by, and construed in accordance with, the laws of the State of Michigan applicable to contracts made and performed entirely within the State and without giving effect to choice of law principles. Each of the parties agrees that any legal or equitable action or proceeding with respect to this Agreement shall be brought only in the State of Michigan Oakland County Circuit Court or the United States District Court for the Eastern District of Michigan. Each of the parties submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to such party's person and property and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party's last known address or in the manner set forth in this Agreement. Nothing in this Section shall affect the right of any party to serve process in any other manner permitted by law. Each party irrevocably waives any objection to the laying of venue of any such action or proceeding in the above-described courts.
- B. Expenses. Except as otherwise specifically provided herein, each of the parties hereto shall pay its respective counsel fees, accounting fees and other costs and expenses incurred in connection with the performance of this Agreement.
- C. No Third Party Beneficiaries. This Agreement is made solely for the benefit of the parties to this Agreement. Nothing contained in this Agreement shall be deemed to give any person, partnership, joint venture, corporation, limited liability company, governmental entity or other entity any right to enforce any of the provisions of this Agreement, nor shall any of them be a third party beneficiary of this Agreement.
- D. Arbitration. Except for the pursuit of injunctive relief, any claim, dispute, difference or disagreement arising under or relating to this Agreement shall be referred to a single arbiter mutually agreed upon by the parties, or if no single arbiter can be agreed upon, an arbiter shall be selected in accordance with the rules of the American Arbitration Association and such dispute, difference, or disagreement shall be settled by arbitration in accordance with the then prevailing National Rules for the Resolution of Employment Disputes of the American Arbitration Association, and judgment upon the award rendered may be entered in

any court having jurisdiction thereof. All arbitration proceedings shall take place exclusively in the State of Michigan, County of Oakland.

- E. No Waiver. The failure of any party to exercise or enforce any right or remedy conferred upon it hereunder shall not be deemed to be a waiver of any such or other right or remedy nor operate to bar the exercise or enforcement of any thereof at any time thereafter.

WHEREFORE, the parties have duly executed this Agreement on the day and year first above written.

The School District of the City Of Pontiac

By: _____

Its: Superintendent

By: _____

Its: Consent Agreement Consultant

R& J Consulting and Contracting Service, LLC

By: _____

Its: President