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**OAKLAND UNIFIED  
SCHOOL DISTRICT**

*Community Schools, Thriving Students*

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent  
Hitesh Haria, Chief Operations Officer  
John Krull, IT Officer, Technology Services

**Board Meeting Date** May 25, 2016

**Subject** E-Rate Consultation Services Agreement – RDV Consulting – Technology Services

**Action Requested** Approval by the Board of Education of E-Rate Consultation Services Agreement between the District and RDV Consulting Services, Oakland, CA, for the period July 1, 2016 to June 30, 2017, in an amount not to exceed \$34,500.

**Background** Oakland Unified School District has used RDV Consulting as an e-rate consultant for the past year with much success and is using the firm going forward for e-rate services. E-Rate consulting services help school districts meet the filing requirements for the E-Rate program. Oakland Unified School District has used a consultant previously to help file for this federal program

**Discussion** RDV Consulting will provide the following services:

- Collect data from Client and apply for E-Rate funding for July 1, 2016-June 30, 2017
- File SLD Form 470(s) on behalf of OUSD.
- Collect data on Free and Reduced Lunch Program Eligibility of students within Client organization
- File SLD Form 471, Form 486 and ensure that SLD Forms, such as BEAR Forms (Form 472), are filled out and submitted to vendors for E-Rate reimbursements to OUSD.
- Work with the Technology Department to maximize available funding.

**Recommendation** Approval by the Board of Education of E-Rate Consultation Services Agreement between the District and RDV Consulting Services, Oakland, CA, for the period July 1, 2016 to June 30, 2017, in an amount not to exceed \$34,500.

**Fiscal Impact** Measure J funds allocated to Technology Services / Common Core

**Attachments** E-Rate Consultation Services Agreement



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office**  
**With *Every* Consent Agenda Contract.**

**Legislative File ID No.** \_\_\_\_\_

**Department:** \_\_\_\_\_

**Vendor Name:** \_\_\_\_\_

**Contract Term:** Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

**Annual Cost:** \$\_\_\_\_\_

**Approved by:** \_\_\_\_\_

**Is Vendor a local Oakland business?** Yes \_\_\_\_ No \_\_\_\_

**Why was this Vendor selected?**

**Summarize the services this Vendor will be providing.**

**Was this contract competitively bid?** Yes \_\_\_\_ No \_\_\_\_

If No, answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
  - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - ☐ Western States Contracting Alliance Contracts (WSCA)
  - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **"Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**

## **E-Rate Consultation Services Agreement**

This Agreement is made between Oakland Unified School District ("Client") with a principal place of business at 1000 Broadway, Oakland, CA, 94607, and Henry (Rick) Del Valle aka RDV Consulting Services ("Consultant"), with a principal place of business at 7800 Crest Avenue, Oakland, CA 94605.

### **1. Services to be Performed**

Consultant agrees to perform the services described in Exhibit A, which is attached to this Agreement. Client agrees to provide information as described in Exhibit B, which is also attached to this Agreement.

### **2. Payment**

A. In consideration for the services to be performed by Consultant, Client agrees to pay Consultant **\$30,000.00 per year** for E-Rate activities performed in support of submission of documentation and funding of E-Rate discounts for Category One services for Client for E-Rate (and fiscal) year 2016-2017.

B. Activities performed in support of a Request for Proposal (RFP) for Category Two applications, including developing technical specifications, writing the RFP, and evaluating vendor responses, shall be billed at the additional amount of **\$4,500.00**.

Consultant's total compensation shall not exceed **\$34,500.00** upon completion of E-Rate activities during the term of the contract, without Client's written consent.

### **3. Terms of Payment**

**Consultant shall be paid \$10,000.00 upon signing this Agreement, or on October 15, whichever date is later in the fiscal year; the remaining amount is due when Consultant completes the services and submits an invoice, on or about May 15 of the fiscal year (2015-2016).** Completion of SLD Form 486, and SLD notification of acceptance, shall be considered as successful completion of Consultant services. Client shall pay Consultant within 30 days from the date of Consultant's invoice.

### **4. Expenses**

Consultant shall be responsible for all travel and lodging expenses incurred while performing services under this Agreement, except as previously approved by Client.

## **5. Materials**

Consultant will furnish all materials, equipment, and supplies used to provide the services required by this Agreement. Client shall provide any data related to client needs, qualifications for E-Rate services and discounts, and other related materials as needed by Consultant, in a timely manner to ensure compliance with FCC and SLD guidelines and critical activity dates.

## **6. Intellectual Property Ownership**

Consultant assigns to Client all patent, copyright, and trade secret rights in anything created or developed by Consultant for Client under this Agreement. This assignment is conditioned upon full payment of the compensation due Consultant under this Agreement.

Consultant shall help prepare any documents Client considers necessary to secure any copyright, patent, or other intellectual property rights at no charge to Client. However, Client shall reimburse Consultant for reasonable out-of-pocket expenses.

## **7. Consultant's Reusable Materials**

Consultant owns or holds a license to use and sublicense various materials in existence before the start date of this Agreement ("Consultant's Materials"). Consultant's Materials include, but are not limited to, those items that may be identified in Exhibit C, if attached to and made part of this Agreement. Consultant may, at its option, include Consultant's Materials in the work performed under this Agreement. Consultant retains all right, title and interest, including all copyrights, patent rights and trade secret rights in Consultant's Materials. Consultant grants Client a royalty-free nonexclusive license to use any of Consultant's Materials incorporated into the work performed by Consultant under this Agreement. The license shall have a perpetual term and may not be transferred by Client.

## **8. Term of Agreement**

This agreement will become effective when signed by both parties and will terminate on the earlier of:

- the date Consultant completes the services required by this Agreement

Or

- the date a party terminates the Agreement as provided below.

## **9. Terminating the Agreement**

With reasonable cause, either party may terminate this Agreement effective immediately by giving written notice of cause for termination. Reasonable cause includes:

- a material violation of this Agreement, or
- non-payment of Consultant's compensation after 20 days written demand for payment.

Consultant shall be entitled to full payment for services performed prior to the effective date of termination.

## **10. Independent Contractor Status**

Consultant is an independent contractor, not Client's employee. Consultant's employees or subcontractors are not Client's employees. Consultant and Client agree to the following rights consistent with an independent contractor relationship.

Consultant has the right to perform similar services for others during the term of this Agreement.

Consultant has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.

Consultant has the right to hire assistants as subcontractors or to use employees at Consultant's own cost to provide the services required by this Agreement.

Client shall not require Consultant or Consultant's employees or subcontractors to devote full time to performing the services required by this Agreement.

Neither Consultant nor Consultant's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Client.

## **11. Local, State, and Federal Taxes**

Consultant shall pay all income taxes and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. Client **will not**:

- withhold FICA from Consultant's payments or make FICA payments on Consultant's behalf
- make state or federal unemployment compensation contributions on Consultant's behalf, or
- withhold state or federal income tax from Consultant's payments.

The charges included here do not include taxes. If Consultant is required to pay any federal, state, or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Client shall be responsible for paying any interest or penalties incurred due to late payment or nonpayment of any taxes by Client.

## **12. Exclusive Agreement**

This is the entire Agreement between Consultant and Client.

## **13. Modifying the Agreement**

Client and Consultant recognize that:

- Consultant's original cost and time estimates may be too low due to unforeseen events or to factors unknown to Consultant when this Agreement was made
- Client may desire a mid-project change in Consultant's services that would add time and cost to the project and possibly inconvenience Consultant, or
- other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances.

If any intended changes or any other events beyond the parties' control require adjustments to this Agreement, the parties shall make a good faith effort to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties, and added to this Agreement.

## **14. Resolving Disputes**

If a dispute arises under this Agreement, any party may take the matter to court. If any court action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which the party may be entitled.

## **15. Limited Liability**

This provision allocates the risks under this Agreement between Consultant and Client. Consultant's pricing reflects the allocation of risk and limitation of liability specified below.

Consultant's total liability to Client under this Agreement for damages, costs, and expenses shall not exceed the compensation received by Consultant under this Agreement. However, Consultant shall remain liable for bodily injury or personal property damage resulting from grossly negligent or willful actions of Consultant or Consultant's employees or agents while on Client's premises to the extent such actions or omissions were not caused by Client.

NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE FOR THE OTHER'S LOST PROFITS OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

## **16. Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement
- three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement, or
- when sent by fax or electronic mail, such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.



### 17. No Partnership

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf.

### 18. Applicable Law

This Agreement will be governed by the laws of the state of California.

### 19. Assignment and Delegation

Either Consultant or Client may assign its rights or may delegate its duties under this Agreement.

#### Signatures

**Client:** Oakland Unified School District

By: James Harris Signature

Typed or Printed Name: President, Board of Education

Title: Antwan Wilson

Date: Antwan Wilson

**Consultant:** RDV Consulting Services, Board of Education

By: Henry Del Valle Signature

Typed or Printed Name: Henry Del Valle

Title: Owner

Taxpayer ID Number: 20-3871858

Date: 5/10/2016

File ID Number: 16-1076  
Introduction Date: 5-25-16  
Enactment Number: 16-0723  
Enactment Date: 5-25-16  
By: OK

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: [Signature]  
Attorney at Law

## **Exhibit A**

### Attachment to Agreement for E-Rate Consultation Services

#### For Oakland Unified School District

##### Services to be provided by Consultant:

1. Collect data from Client and apply for E-Rate funding for Year 19 (July 1, 2016- June 30, 2017)
2. File SLD Form 470(s) on behalf of client by December 31 of 2016.
  - a. Include specifications for voice, data, and networking requirements.
  - b. Assist Client personnel in evaluating vendor responses.
  - c. Work with Client to negotiate contracts with vendors to ensure compliance with E-Rate guidelines.
  - d. Collect and save data to comply with SLD guidelines for audit purposes.
3. Collect data on Free and Reduced Lunch Program Eligibility of students within Client organization
4. File SLD Form 471 and related items by February-March XX, 2016 (**date pending FCC's Schools & Library Division notification**)
  - a. Collect data from vendors as appropriate.
  - b. Determine discounts and funding amounts to be requested from E-Rate funds.
  - c. Ensure that Form 471 is accepted and approved by SLD.
  - d. Respond to any PIA audits from SLD in a timely manner, and ensure that responses are accurate and accepted by SLD.
5. File SLD Form 486 within 120 day window as defined by SLD
  - a. Ensure filing done within 120 days after Funding Commitment Decision Letter (FCDL) received by Client.

6. Ensure that vendor documentation (i.e. Grids and/or Signature Pages) are filled out and returned in a timely manner so as not to lose any funding as approved by SLD.
7. Ensure that SLD Forms, such as BEAR Forms (Form 472), are filled out and submitted to vendors for E-Rate reimbursements to Client.
8. Once all the above has been completed, work with Client to determine that the project has been completed and that final payment will be made to Consultant within 30 days of the agreed-to completion date.

## **Exhibit B**

### **Attachment to Agreement for E-Rate Consultation Services**

#### **For Oakland Unified School District**

In support of Consultant, Client will agree to the following:

1. Provide Consultant with data on Free and Reduced Lunch Program Eligibility of students within Client organization, in a timely manner, as soon as possible after October 2015 SNP Site Claim Report or any other Free-Reduced report (CEP, LPCC) is provided to the State of California.
2. Provide Consultant with copies of vendor Long Distance and/or Broadband bills and contracts, ISP bills and/or cell phone bills in a timely manner for Form 471 Expense estimation, and for processing of discounts (Form 472-BEAR).
3. Respond to Consultant requests for information relevant to USAC/SLD PIA audits and/or Selective Review Audits, within a 7 day timeframe, when possible.
4. Client will maintain an E-Rate binder every year, per USAC guidelines, for audit purposes, and Consultant will provide originals or digital (email, CD, USB drive) copies of documents as needed for the binder.
5. Client will provide Consultant with a Purchase Order to cover the expenses related to this contract for the Fiscal Year 2015-2016, with an amount not to exceed \$34,500 noted on the P.O.