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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Vanessa Sifuentes, High School Network Superintendent

Meeting Date April 24, 2024

Subject Consulting Agreement - Edgility Consulting, LLC – High School Network

Ask of the Board Approval by the Board of Education of a Consulting Agreement by and between the District and Edgility Consulting, LLC, Keene, NH, for the latter to provide recruitment and support related to its search for a new Principal for McClymonds High School, via the High School Network Office, for the period of March 19, 2024 through June 30, 2024, in an amount not to exceed \$40,000.00.

Background McClymonds High School is in the process of searching for a new principal for the 2024-2025 school year. Though the position has been posted since January 2024, only a limited number of candidates have applied for this role. The District would like to identify as many qualified candidates as possible to provide the McClymonds community with the best possible opportunity to select a highly qualified leader to serve as their next principal. As such, the District would like to expand its current outreach and recruitment efforts by partnering with Edgility Consulting, a reputable educational leadership search firm.

Discussion Partnering with Edgility Consulting will allow the District to expand current capacity by recruiting principal candidates on a national level through a robust network of nominators and high-potential principal candidates. Upon completion of the recruitment campaign, Edgility will cultivate and refer 6-8 high quality candidates to the District for engagement in the principal interview process. Edgility will conduct outreach and initial screening based on hiring criteria established by the District and will also facilitate the collection of additional community input to inform principal selection.

Fiscal Impact Total amount not to exceed \$40,000.00.

Attachment(s)

- Consulting Agreement

**CONSULTING AGREEMENT BY AND BETWEEN
EDGILITY CONSULTING AND OAKLAND UNIFIED SCHOOL DISTRICT**

This agreement (the “**Agreement**”) is made on March 19, 2024 by and between Edgility Consulting LLC, a New Hampshire limited liability company (“**Consultant**”) and Oakland Unified School District (“**Client**”) (collectively referred to as “**Parties**”). Client wishes to retain Consultant to provide recruitment support related to its search for a Principal, and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Background and Purpose. Consultant provides talent equity consulting services and executive search services. Client desires to retain Consultant and Consultant agrees to provide to Client services on the terms and conditions set forth herein.
2. Services. Consultant shall provide to Client the services set forth in **Exhibit A (“Services”)**, which is attached hereto and expressly incorporated herein by this reference. **Exhibit A** may be amended from time to time by the Parties pursuant to a written amendment signed by both Parties pursuant to the terms of this Agreement.
3. Duties of Client. Client agrees to reasonably cooperate with Consultant in the performance of Consultant’s Services and, specifically, Client agrees to the duties assigned to Client within this Agreement and as set forth in **Exhibit A** hereto.
4. Term. The Term of Services shall commence as of the date first written above and shall terminate on the earliest of the following events:
 - A. If an offer of employment from Client for the position of Principal (the “**Search Position**”) is accepted by any individual, then the Search shall be deemed successfully completed as of the date of said acceptance and the Term of Services shall end. As such, payment of all final fees or portion(s) of fees due to Consultant shall be paid as of that date pursuant to Section 5 herein, and the term of the Agreement will end naturally thereupon;
 - B. If and when Consultant presents to Client up to six (6) “suitable” candidates for client interviews, then the Term of Services shall be deemed completed. A candidate shall be deemed “suitable” only if: (i) the Client agrees that a candidate is suitable, or (ii) after the Candidate passes the Client’s Performance Based Interview Round and moves forward to the Principal Selection Committee at the Client’s school site. An interview may be performed by any means, including telephone, video conference, or in person and is conducted by the Client or any of its employees, directors, contractors, or other affiliates (not including Consultant itself).
 - C. If a period of ten (10) weeks elapses from the date that this Agreement is executed by Client, then Parties agree that the reasonable time period for the Search will have elapsed and the Term of Services shall end (even if none of the triggering events specified in Sections 4(a) or 4(b) have occurred), such that further work by Consultant shall cease and the payment of all final fees or portion(s) of fees due to Consultant shall be paid

pursuant to Section 5 herein.

D. On a date pursuant to the Early Termination provisions set forth in Section 7 herein, which shall be considered "**Early Termination.**"

5. Compensation. As consideration for providing the Services, Client shall pay to Consultant as follows which shall in no event exceed the amount of \$40,000 ("**NTE amount**"). The NTE amount shall be for the full performance of this Agreement and includes all fees, costs, and expenses incurred by the Consultant, including but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs. Client shall not pay and shall not be liable to Consultant for any costs or expenses paid or incurred not described in Exhibit A or any fees and/or expenses exceeding the NTE amount.

5.1. Client shall pay Consultant a consulting fee in the amount of \$40,000 according to the following schedule:

- A. \$20,000 due upon execution of this Agreement; and
- B. \$20,000 due upon the end of the initial Term of Services, including pursuant to any of the triggering events set forth in Sections 4(a), 4(b), 4(c), or 4(d), whichever date comes earlier in time. Invoice will be sent after a triggering event occurs.
- C. If, upon the end of the Term of Services, Client wishes to continue to utilize the services of Consultant for a further "**Extended Term of Services,**" then, subject to mutual written agreement of the Parties, Consultant shall continue to provide services to the Client, which shall be billed on an hourly basis at the rate of \$175 per hour and a flat fee of \$1,000 to repost the position on job boards (not including fees charged by job boards which will be expensed to the client for reimbursement).

Payment is expected upon the provision of Services. If Consultant does not receive payment in full on any undisputed invoice within thirty (30) days, late charges at .8333% interest per month (10% per year) will be imposed on Client's unpaid balance after fifteen (15) days. The unpaid balance is determined by taking the beginning balance of Client's account for each month, adding any new charges and subtracting any payments made to Client's account. Consultant will then multiply this amount by the .8333% monthly periodic interest rate to compute the late charge for Client's account for that month.

5.2. Should Client request to make adjustments to the Agreement that will increase expenses or time allotted, the consulting fee will be subject to change. Any changes in the consulting fee will be communicated to Client with prior written approval.

5.3. All invoices and a copy of Consultant's W9 will be sent to Vanessa Sifuentes at vanessa.sifuentes@ousd.org and Accounts Payable at lily.giang@ousd.org. If ACH is the preferred method of payment, Client will send a copy of their ACH form to eaustin@edgilityconsulting.com. If paying by check, the remittance address on the invoice differs from the address on the W9. Client agrees to send payment to the following remittance address, also located on the invoice:

Edgility Consulting LLC
480 S Holly Street
Denver, CO 80246
Attn: Accounts Payable

5.4. Consultant shall not list Client's name and/or logo as part of a list of clients for whom Consultant has performed services, nor be listed on Consultant's website or within other printed or electronic materials without Client's express prior written consent in each instance.

6. Hiring of Candidates for Other Positions. Consultant will not attempt to fill any role or position other than the Search Position without a mutual written agreement of the Parties which will outline any fees for the additional services.

7. Early Termination.

7.1. Consultant and Client shall each have the right to end the Term of Services early by providing written notice to the other party at least thirty (30) days in advance of the termination date, and such termination shall be subject to the Early Termination Payments set forth in Section 8 herein.

7.2. Either Party shall have the right to immediately end the Term of Services by giving written notice of its intention to terminate for cause to the other Party. Termination for cause shall include: (i) breaches any material provision of this Agreement, including, without limitation, the duties set forth in Section 3 above, or the making of payments to Consultant when due under the terms of this Agreement or (ii) if either Party is adjudged bankrupt, makes a general assignment for the benefit of creditors or a receiver is appointed on account of its insolvency.

8. Early Termination Payments.

8.1. In the event that the Term of Services, or any Extended Term of Services, specified within this Agreement is terminated pursuant to Section 7.1 or Section 7.2, Client shall pay any and all fees, non-refundable expenses, and costs directly incurred by Consultant, or otherwise due and owing, as of the effective date of the termination, including any fees, non-refundable expenses, or costs which may be due pursuant to Section 8.2 herein.

8.2. If Client wishes to end the Term of Services pursuant to Section 7 without making a hire of any kind for the Search Position the fees, expenses and costs due and owing to Consultant as of the effective date of termination shall include the following:

A. If the Search is terminated by Client within thirty (30) days of Client signing this Agreement, without Client making a hire of any kind for the Search Position then the second installment of the consulting fee, as set forth in Section 5(B), will be waived in its entirety, but any other outstanding fees, expenses, and costs shall be paid as of the effective date of termination.

B. If the search is terminated by Client more than thirty (30) days after Client signed this Agreement (but prior to another triggering event for ending the initial Term of Service), without Client making a hire of any kind for the Search Position then one half of the second installment of the consulting fee set forth in Section 5(B) (\$10,000) will be waived, but the remainder of the second installment (\$10,000) shall be paid as of the effective date of the termination, along with any other outstanding fees, expenses, and costs.

9. Conflict of Interest. Consultant agrees to devote the time and resources necessary to perform the services for Client provided for in this Agreement, but shall be free to work for any other client(s) during the term of this Agreement as long as that work does not prohibit Consultant from performing services for Client.

10. Confidential Information; Non-Disclosure.

10.1. Non-Disclosure by Consultant

A. During the term of this contract, Consultant may have access to and become acquainted with information of a confidential or proprietary nature (“**Confidential Information**”), which may be either applicable or related to the present or future business of Client or the business of its members and/or donors. Such Confidential Information shall be denoted as such by Client and includes, but is not limited to, employee demographic data, salary information, organizational financial information, strategic plans, human resources documents, and other information concerning employees. Consultant shall (i) not use for its own benefit or knowingly disclose to or use for the benefit of any other person, any Confidential Information without Client's prior written consent; (ii) use at least the same degree of care and precautions to protect Client's Confidential Information from disclosure that it employs with respect to its own confidential information; (iii) disclose Confidential Information only to those of its employees or contractors who require access to perform its obligations under this Agreement; and (iv) take appropriate action by instruction, agreement or otherwise with

Client's employees or other persons allowed such access to satisfy the foregoing obligations.

B. This Section shall not apply to any information which (i) is or becomes publicly available through no fault of Consultant; (ii) is already in Consultant's possession without restriction on disclosure when disclosed by Client; (iii) is independently developed by Consultant without use of Confidential Information; or (iv) is rightfully obtained from third parties without restriction on disclosure.

10.2. Non-Disclosure by Client

A. During the term of this contract, Client may have access to and become acquainted with information of a confidential or proprietary nature ("**Confidential Information**"), which may be either applicable or related to the present or future business of Consultant or the business of its members and/or donors. Such Confidential Information shall be denoted as such by Consultant and includes, but is not limited to, marketing materials used in recruitment outreach, candidate selection and hiring process materials (competency rubrics, interview guides, performance tasks), and materials used in anti-bias training and interview norming sessions. Client shall (i) not use for its own benefit or knowingly disclose to or use for the benefit of any other person, any Confidential Information without Consultant's prior written consent; (ii) use at least the same degree of care and precautions to protect Consultant's Confidential Information from disclosure that it employs with respect to its own confidential information; (iii) disclose Confidential Information only to those of its employees or contractors who require access to perform its obligations under this Agreement; and (iv) take appropriate action by instruction, agreement or otherwise with Consultant's employees or other persons allowed such access to satisfy the foregoing obligations.

B. This Section shall not apply to any information which (i) is or becomes publicly available through no fault of Client; (ii) is already in Client's possession without restriction on disclosure when disclosed by Consultant; (iii) is independently developed by Client without use of Confidential Information; or (iv) is rightfully obtained from third parties without restriction on disclosure.

11. Independent Contractor.

11.1. This Agreement will not render Consultant an employee, partner, agent of, or engaging in a joint venture with Client for any purpose. Consultant is and will remain for all purposes an independent contractor.

11.2. Consultant shall be responsible for paying all federal and state taxes and FICA taxes. Consultant shall complete the services required under this Agreement according to its own means and methods of work, which shall be in the exclusive charge and control of Consultant, the Client being interested only with the ends achieved and results obtained. Consultant shall be responsible for the procurement, cost, and use of all materials, supplies, equipment, and/or

additional labor needed or required to complete the requirements of the services provided pursuant to this Agreement.

11.3. Consultant acknowledges that Consultant shall not be entitled to any of the benefits provided by the Client to its employees, including but not limited to paid time off, health and welfare benefits, health and accident insurance, life insurance, or similar arrangements.

11.4. Consultant shall be entirely and solely responsible for its acts and the acts of any of its personnel, agents, or subconsultants while engaged in the performance of services under this Agreement. Any employees or subconsultants of Consultant shall also be bound to the terms and conditions of this Agreement.

11.5. Consultant hereby agrees and acknowledges that Consultant is not and will not represent or hold itself out to be an employee, agent, partner or joint venturer of or with the Client. Neither Client nor Consultant shall have the authority to bind the other in any respect. Consultant hereby acknowledges and agrees that Consultant will be solely and entirely responsible for Consultant's acts, and those of its employees, including acts of omission, during the performance of Services pursuant to this Agreement. Any individual that Consultant engages to enable Consultant to perform the services necessary to achieve the end results expected by Client shall work under the direction and control of Consultant and shall be the employee of Consultant. Client shall have no control over such individual and such individual shall not be the employee of the Client or have any relationship with the Client whatsoever.

12. Indemnity. Client will indemnify, defend, and hold Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from, growing out of, or in any way connected with services provided by Consultant for Client under the terms of this Agreement, unless and only to the extent that an arbitrator finds that Consultant has committed gross negligence or willful misconduct in the conduct of the Services and holds Consultant liable in whole or in part. Notwithstanding anything to the contrary in the foregoing sentence, Consultant shall indemnify, defend, and hold Client free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments suffered by Consultant as a result of a third party legal action caused by the gross negligence or willful misconduct of Consultant; provided that such acts or omissions by Consultant were taken without the approval or acquiescence of the Client or an agent designated for this purpose by the Client.

13. Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or performance under the Agreement ("**Dispute**"), shall be resolved in the manner set forth in this Section 13, which shall be in lieu of litigation in any court, and the Parties specifically waive any right to a jury trial of any dispute between them.

13.1. Negotiation. The Parties will attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the Parties who have authority to settle the Dispute (each, a "**Representative**").

13.2. Mediation. If a dispute arises between the Parties to this agreement, whether arising from or related to the Agreement itself or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association (“**AAA**”) under its Commercial Mediation Procedures before resorting to the arbitration proceedings laid out in Section 13.3.

13.3. ARBITRATION AGREEMENT.

A. If mediation is unsuccessful, any dispute arising between the Parties, whether arising from or related to the Agreement itself or arising from alleged extra-contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort, the dispute shall be decided by arbitration in accordance with Title 9 of the United States Code and California Arbitration Act in the California Code of Civil Procedure, Title 9, §§ 1280-1294.4. The arbitration proceeding shall be conducted under the Commercial Rules of the American Arbitration Association (hereinafter, “**AAA**”), or, if the AAA has ceased to exist, its successor organization or a similar organization at the time demand is made.

B. Notice of the demand for arbitration must be provided, in writing, to the other Party at the locations specified in Section 14 of this Agreement and to the AAA. Demand must be made within one hundred and eighty (180) days after the dispute has arisen, time is of the essence. Said arbitration will occur within thirty (30) consecutive days after the Party demanding arbitration delivers the written demand on the other Party, unless impracticable or the Parties mutually agree otherwise in writing. Arbitration shall be initiated and conducted in the State of California or at such other location mutually agreed by the Parties.

C. The arbitrator shall be selected by Consultant from a list of five (5) arbitrators provided by the American Arbitration Association. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of California.

D. The arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, cancellation, accounting, attorney fees, and compensatory damages, except only that punitive damages shall not be awarded. The arbitrator may also award prejudgment interest as applicable under California Civil Code 3287.

E. The arbitrator shall issue a binding decree within thirty (30) days of the conclusion of arbitration.

F. The decision of the arbitrator shall be final and binding on both Parties.

G. This Section 13 provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.

14. Notice. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given (i) on the date of personal service on the Parties, (ii) three days after deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one day delivery, with receipt confirmed by the courier. Unless otherwise provided in writing, any such notice shall be delivered or addressed to the Parties as follows:

Consultant:

Edgility Consulting LLC

17 Elm Street
Suite C211
Keene, NH 03431

Attn: Christina Greenberg

Client:

Oakland Unified School District

1011 Union Street
Site 987
Oakland, CA 94607

Attn: Legal Department

Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

15. Entire Agreement. This document constitutes the entire agreement between the Parties, with all oral agreements being merged in this document, and supersedes all prior representations. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

16. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

17. Amendment. The provisions of this Agreement may be modified at any time by written agreement of the Parties. Any such agreement hereafter made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the Parties against whom enforcement of the modification or discharge is sought.

18. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.
19. Binding Effect. The Parties expressly agree that this Agreement is binding on each other's successors, heirs, assigns, beneficiaries, executors, administrators, and trustees.
20. Effective Date. This Agreement is effective as of the date signed by all Parties.
21. Governing Law. The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflicts of laws rules.
22. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action against any party to this Agreement.
23. Captions. All paragraph captions are for reference only and shall not be considered in construing this Agreement.
24. Construction. This Agreement shall not be construed against any party, and instead shall be construed as though all Parties have participated in its drafting. No promises or inducements have been made to the Parties to this Agreement. This Agreement is entered into freely and voluntarily.
25. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]

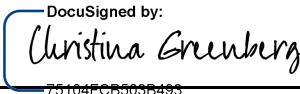
IN WITNESS WHEREOF, the Parties have executed this Agreement.

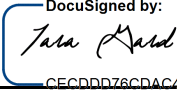
“Consultant”

“Client”

Edgility Consulting LLC
17 Elm Street
Suite C211
Keene, NH 03431

Oakland Unified School District
1011 Union Street
Site 987
Oakland, CA 94607

By:  DocuSigned by:
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By:  DocuSigned by:
CECDD76CDAC4B1

Name: Christina Greenberg

Name: Tara Gard

Title: Managing Partner

Title: Chief Talent Officer

Date: 3/19/2024

Date: 3/26/2024



Benjamin Davis, President, Board of Education

4/25/2024

By: 

Legislative File Id: 24-0874
Introduction Date: 4/24/2024
Enactment No.: 24-0738
Enactment Date: 4/24/2024 er

Name: Kyla Johnson-Trammell

Title: Superintendent

Date: 4/25/2024

Approved as to form by OUSD Legal Department

Name: Roxanne De La Rocha Signature:  Date: 3/19/24

EXHIBIT A DESCRIPTION OF SERVICES

Discovery Process and Search Equity Assessment

Through individual meetings, focus groups, and surveys with key stakeholders — from board members to community members — our Discovery process provides you with a Search Equity Assessment report, as well as the information needed for us to develop an ideal candidate profile and position competencies.

Discovery Process and Search Equity Assessment Deliverables

- Ideal candidate profile
- Job description and marketing materials
- Competency-aligned rubric
- Compensation study specific to your position

Candidate Cultivation

Our team will design and execute against the detailed recruitment plan we develop with your input. We circulate the opportunity to our internal list of over 40,000 nominators as well as other high-potential candidates that we research based on your criteria while conducting cold calls and personalized email outreach to high potential leads. We also have access to a number of databases of quality candidates from prominent educator preparation and support programs that we leverage to spread the posting to a wide group of talented individuals.

Candidate Cultivation Deliverables

- Cultivation calls, outreach emails, engagement of referral networks
- 50+ potential candidates for cultivation and initial screening
- Real-time tracking and reporting of metrics related to marketing outreach, email and phone responses, and applicant sources

Candidate Screening and Assessment

Once the recruitment campaign has introduced us to quality applicants, our team manages all of the candidate flow from our applicant tracking system, including screening resumes, conducting initial cultivation calls, leveraging recorded video interviewing technology and leading detailed phone interviews with candidates before passing them onto your team. Video interviews will be conducted through your own processes, as requested, and we will integrate those sessions into our tracking system.

Candidate Screening and Assessment Deliverables

- Weekly or bi-weekly calls to discuss overall candidate pool and progress of individual applicants
- Submission of six to eight (6-8) candidates for initial client interviews

Client Responsibilities

In order to support this work, Client will:

- Make pertinent senior leadership staff available for conversations and meetings
- Provide Consultant with relevant organizational information

- Notify Consultant immediately of any changes to the project plan, expected deliverables, or timeline