

CONSULTANT AGREEMENT

Consultant:

Adaptive Consulting LLC (name)

Tax ID #: _____

82-1098311

Telephone: _____

703-953-4644

11923 Safa Court (address)

Herndon VA 20170

This is an Agreement, made as of the 7 day of April, 2017, by and between the Board of Education of Howard County (hereinafter, "Board") and Adaptive Consulting LLC (hereinafter, "Consultant") for services to be provided to the Office of Executive Services

WHEREAS, the Board desired to obtain services of the Consultant in the area of PIA, Records, Exec Services

WHEREAS, the Consultant desires to provide such services to the Board;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties, agree to the following terms and conditions:

1. Consultant Duties. The Consultant shall deliver services as specified in the Scope of Contract attached hereto as Exhibit A and incorporated herein.

The Consultant shall be considered an independent contractor and not an employee of the Board. The Consultant shall be responsible for the reporting and remittance of all state and federal taxes as an independent contractor, including without limitation, FICA and state and federal unemployment taxes. As the Consultant shall not be deemed a Board employee, it is understood and acknowledged that the Consultant shall not be entitled to Board employee benefits, including but not limited to, retirement and health insurance, and the Consultant expressly disclaims any right or entitlement thereto. If the Consultant is an employer, it warrants that it has and will continue to carry at all times under this Agreement workmen's compensation meeting the minimum coverage requirements under Maryland law.

2. Compensation. As set forth in Exhibit B, which is attached hereto and incorporated herein.

3. Term. This Agreement shall be effective as of April 10, 2017 and shall extend to October 10, 2017 at which time this Agreement shall terminate automatically, unless sooner terminated as hereinafter provided.

2. Termination. The Board may terminate this Agreement, without cause, by providing written notice thereof to the Consultant at least thirty (30) days prior to the intended date of termination at the address set forth below, or at such other address as may be later

designated by the Consultant in writing. In addition, the Board may terminate this Agreement without prior written notice to the Consultant: (1) For nonappropriation of funds, as set forth in the Paragraph entitled "Funding" herein, or (2) If it is determined by the Board that the Consultant has materially breached the Consultants obligations hereunder. Except as may be provided by law, the Consultant shall have no corresponding right to terminate this Agreement.

- 3.
4. Background Investigation. The Board in its sole discretion may require the Consultant to have a criminal background investigation, including fingerprints, before the Consultant begins providing services under this Agreement. In the event the Board requires such an investigation, the Board's investigator shall perform the investigation. The Consultant will pay all fees for the investigation.
5. Consultant's Representations and Warranties. The Consultant hereby warrants and represents that the professional services provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations. Breach of this warranty constitutes a material breach of the Agreement.
6. Nondiscrimination: The Consultant agrees that it shall not unlawfully discriminate on the basis of race, color, religion, age, ancestry or national origin, sex, sexual orientation, physical or mental disability, marital status or veteran's status with respect to employment opportunity or access to program pursuant to this Agreement.
7. Confidential Information: Obligation of Confidentiality - In performing services under this Agreement, Consultant and Client may be exposed to and will be required to use certain "Confidential Information". Consultant and Client along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.

Definition - "Confidential Information" means information, not generally known, and proprietary to the Consultant or Client or to a third party for whom the Consultant or Client is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the Consultant or Client. All information which Consultant or Client acquires or becomes acquainted with during the period of this Agreement, whether developed by Consultant, Client or others, which Consultant or Client has a reasonable basis to believe to be Confidential.

8. Confidentiality: The parties agree that the following will be treated as "Confidential Information": (i) all database information ("Data") provided by or on behalf of Client to CONSULTANT; (ii) all information provided by CONSULTANT to Client pertaining to the Services; (iii) all information which is labeled as such in writing and prominently

marked as "Confidential," "Proprietary" or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential. Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to CONSULTANT, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement.

"Confidential Information" does not include information which (i) is or becomes generally available to the public other than as a result of disclosure by the Recipient, (ii) was known by the Recipient at the time of disclosure of the information without any obligation of confidence, and that knowledge is evidenced by reasonable proof, (iii) was or becomes available from a source other than the owner if the source was not legally bound to maintain the confidentiality of the information, or (iv) the Recipient independently develops without use of or reference to the Confidential Information. Each party acknowledges that unauthorized disclosure or use of the Confidential Information by a party may irreparably damage the other party in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information shall give the owner the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Each party hereby waives the posting of a bond with respect to any action for injunctive relief. Upon termination or completion of the Services hereunder, upon request of Client, CONSULTANT will deliver to Client (in a CONSULTANT format) the Client's Confidential Information as housed in the CONSULTANT production database(s), provided that CONSULTANT may maintain archival copies for audit purposes and dispute resolution purposes and CONSULTANT may retain copies of Confidential Information on back-up media in which such Data is co-resident with other employment and income data. CONSULTANT shall remain under its contractual obligation of confidentiality and security to Client and such obligations shall survive termination of the Agreement. This Section shall survive the termination of this Agreement.

9. Data Security and Privacy: CONSULTANT shall maintain an information security program that includes appropriate administrative, technical and physical safeguards reasonably designed to: 1) ensure the security and confidentiality of Confidential Information; 2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; 3) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to any customer; and 4) dispose of Confidential Information in a secure manner.

To comply with the safeguard obligations generally described above, CONSULTANT has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security,

confidentiality, and integrity of Client Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures. CONSULTANT shall notify Client in writing as soon as commercially practicable, however no later than forty-eight (48) hours, after CONSULTANT has either actual or constructive knowledge of a breach which affects Client's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. CONSULTANT shall have actual or constructive knowledge of an Incident if CONSULTANT actually knows there has been an Incident or if CONSULTANT has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. CONSULTANT shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. CONSULTANT shall promptly take appropriate action to mitigate such risk or potential problem at CONSULTANT's expense. In the event of an Incident, CONSULTANT shall, at its sole cost and expense, fully restore the Confidential Information, including, without limitation any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.

10. Family Educational Rights and Privacy Act ("FERPA"): CONSULTANT acknowledges that it will be in receipt of student information rendered confidential under the Family Educational Rights and Privacy Act ("FERPA") and affirms that it will maintain, use, share, and destroy that information in compliance with FERPA. CONSULTANT agrees to indemnify and hold harmless the Board of Education of Howard County for any damages or costs, including reasonable attorney's fees, associated with any act or omission by CONSULTANT, its agents and employees concerning its FERPA obligations under this section.

PURPOSE

The CONSULTANT shall only use the information provided under this Agreement for the purpose intended. No other use, access, conversion, or sharing of the information outside of the intended purpose is allowed.

DURATION OF RETENTION OF INFORMATION

The CONSULTANT may retain, store, hold information provided by Client only for the duration of the Agreement. At the end of the Agreement, CONSULTANT must destroy all data, records, images, and any other information in compliance with the National Institute of Standards and Technology (NIST) within 30 days after the end of the Agreement and/or Termination.

INDEMNIFICATION

CONSULTANT agrees to indemnify and hold harmless Client, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all

claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, in connection with or arising out of the acts or omissions of either Party or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement. The indemnities set forth herein will survive the expiration or termination of this Agreement.

Client agrees to indemnify and hold harmless CONSULTANT, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, arising out of the intentional or malicious acts of Client or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement. The indemnities set forth herein will survive the expiration or termination of this Agreement.

11. Sex Offender Requirement: Maryland law requires certain sex offenders to register with the local law enforcement agency; See Maryland Annotated Code, Criminal Procurement Article, §11-704. One of the purposes of this law, found in Article 27§ 792, is to inform school systems when a Registered Sex Offender is residing or working in the area. When the sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

As a contractor working for Howard County Public School System (HCPSS), we require that you do not employ Registered Sex Offenders to work on projects for our school system if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on HCPSS property. Further, Maryland Law that became effective June 22, 2006, requires that any person who enters a contract with a county board of education or a non-public school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender; See §11-722 Criminal Procurement Article. An employer who violates this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine.

Each contractor shall screen their work-forces to ensure that a Registered Sex Offender does not perform work at a county public school and also ensure that a subcontractor and independent contractor conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the contractor's direct employees and subcontractors and/or independent contractors it uses to perform the work. Violations of this provision may cause HCPSS to take action against the contractor up to and including termination of the contract.

Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland

Code further require that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school property with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving a sexual offense, child sexual abuse and crimes of violence.

The Contractor shall submit to HCPSS a listing of any employees assigned to perform under this agreement and certify that the necessary criminal history records checks have been conducted and that employee complies with the requirements.

12. Conflict of Interest. The Consultant represents and warrants that there exists no actual or potential conflict of interest between the Consultant's performance under this Agreement and the Consultant's engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension thereof, the Consultant shall immediately advise the Board thereof.
13. Assignment. The Consultant shall not assign or transfer the Consultant's interest or obligation under this Agreement to any third party, without the prior written consent of the Board. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, elected official of the Board, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties to this Agreement.
14. Delegation of Duties. The Consultant shall not delegate the Consultant's duties under this Agreement without prior written consent of the Board.
15. Integration. This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the party sought to be bound thereby.
16. Fee Prohibition. The Consultant warrants and represents that he/she has not employed or engaged any person or entity to solicit or secure this Agreement, and that he/she has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement.
17. Funding. The failure of fiscal authorities to appropriate sufficient funds for the payment of these consultant services shall entitle the Board to terminate this Agreement without prior notice to the Consultant without obligation to pay for services after the date of termination.
18. Notices. Any notice required or permitted under this Agreement shall be sent by regular and certified United States Mail to:

Consultant: Adaptive Consulting LLC
Name: Susan Harris
Address: 11923 Sata Ct
Herndon VA 20170

For The Board of Education
of Howard County:

Caryn Lasser (Program Manager)
10910 Clarksville Pike
Ellicott City, MD 21042

19. Governing Law and Venue. The Agreement shall be governed and construed under the laws of the state of Maryland. Any or all lawsuits arising out of this Agreement must be filed in the appropriate State Court located in Howard County, Maryland.
20. Indemnification. The Consultant at its sole cost and expense, shall indemnify and hold harmless the Board, its Board members, officers, agents, and employees from all claims, liens, or demand, that result in losses, liabilities, defense costs and expenses (including reasonable attorneys' fees and costs of litigation) arising out of this Agreement.
21. Severability. Should any part, term or provision of this Agreement be declared invalid, void, or unenforceable, all remaining parts, terms, and provisions here of shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.
22. Time is of the Essence. Time is of the essence with respect to performance of the terms and conditions of this Agreement.

THIS AGREEMENT CONSISTS OF AND IS SUBJECT TO THE TERMS AND CONDITIONS AS OUTLINED IN THE PRECEDING PAGES.

Agreed to and accepted by the Consultant:

Peter A. Frank
Witness

Susan Harris 4/7/17
Consultant Signature Date

Tax Identification #: 82-1098311

Telephone: 703-953-4644

Board of Education of Howard County:

Pierre van Greunen April 10, 2017
Pierre van Greunen, Purchasing Officer Date

Budget and Finance Office Department
EXHIBIT A

CONSULTANT'S DUTIES

The Consultant's obligations and duties under this Agreement shall include, but are not limited to, the following:

- 10-15 hrs per week. Most work remote, occasional meetings in office.
- advise/consult on PIA process and procedures
 - advise on questions regarding PIA requests
 - review PIA requests & responses for legal sufficiency & provide legal counsel and basis for recommendations
 - assist with streamlining Standard Operating Procedures & Processes
 - review fee structure
 - review template responses, provide feedback
 - review redactions, exemptions, ensure quality control & consistency for documents released

EXHIBIT B

COMPENSATION

The Board shall compensate the Consultant for the performance of the duties set forth in EXHIBIT A not to exceed the amount of \$_____ dollars. The Consultant will work approximately 10-15 hours a week on an intermittent basis, beginning ____ (date), and ending ____ (date). They will be paid at the rate of \$165.00 per hour for a maximum total of \$_____00 (the hours may not exceed a total of 40 hours). A time sheet for reporting hours worked shall be completed on a bi-weekly basis. The Board shall not be responsible for the payment of interest.

The Consultant shall be paid only for items or services that are specifically named in the Agreement. No additional costs for items or services will be paid by the Board without prior written consent of the Board.

If the Agreement is terminated by the Board for any reason other than material breach by the Consultant, the Consultant shall be paid the pro rata share of the total compensation under this Agreement that is earned through the date of termination (i.e., the total amount of compensation, divided by the number of business days in the term of the Agreement, times the number of business days elapsed under the Agreement at the time of termination).

If the Agreement is terminated as a result of material breach by the Consultant, however, the value of the Consultant's services is zero, and the Consultant shall be entitled to no compensation under this Agreement.