

# LETTER OF ENGAGEMENT

Between

**Barbara Byrd Bennett**

And

**Detroit Public Schools**

THIS AGREEMENT is by and between the Detroit Public Schools of Wayne County, Michigan (hereafter "the District"), a body corporate and politic, having a principal place of business at [REDACTED] Detroit, Michigan and Barbara Byrd Bennett an independent contractor, (hereafter "Consultant"), a sole proprietorship.

The District now enters this Agreement with Consultant to perform the services set forth below.

## ARTICLE I. TERM

This Agreement is entered into as of May 11, 2009. It shall continue in effect through March 2, 2010 unless earlier terminated in accordance with Article XII.

## ARTICLE II. SERVICES

Consultant shall provide expert professional services including, but not limited to the following:

1. Serve as Chief Academic and Accountability Auditor to the Emergency Financial Manager (EFM)—and perform duties as specified by the Emergency Financial Manager.
2. Perform all duties and services as deemed necessary by the Emergency Financial Manager.
3. Any and all determinations of the adequacy of services and satisfactory performance of the consultant under this agreement shall be made by the emergency financial manager and in the sole discretion of the Emergency Financial Manager.

## ARTICLE III. INDEPENDENT CONTRACTOR STATUS

- A. Independent Contractor Status. Consultant is an independent contractor and not an employee, agent, joint venturer or partner of the District.
- B. Consultant's Employees. Consultant may, at his/her own expense, retain or employ such assistants/employees as he/she deems necessary to perform the Services. Consultant assumes full and sole responsibility for the payment of

all compensation and expenses of these assistants/employees, including workers' compensation coverage as required, all federal, state, and local income taxes, unemployment and disability insurance.

- C. Performance of Service for Others. Consultant shall retain the right to perform services for others during the term of the Agreement excepting any and all vendors or contractors who have any relationship with the Detroit Public Schools.

#### ARTICLE IV. COMPENSATION

- A. Rate. For Services rendered satisfactorily pursuant to the terms and conditions of this Agreement, Consultant shall be compensated as follows:

Monthly compensation of services—

[Net Daily rate \$160,000.00 / 206 days = \$776.70/day]

May 11, 2009 – May 31, 2009 (9 days)	\$ 6,990.30
June 1, 2009 – February 28, 2010 (9 mos. x \$16,828.48/mo)	\$151,456.30
March 1, 2010 – March 2, 2010	\$ 1,530.40

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\$160,000.00

Monthly Compensation

June 1, 2009 – February 28, 2010 (9 mos.)	\$16,828.48
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10% of monthly compensation	\$1,683
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Total monthly compensation:	\$16,828
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Total monthly expenses:	\$ 1,683
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Total monthly compensation & expenses	\$18,511
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- B. Consultant's Invoices. Consultant shall prepare and send to the District monthly invoices on or after the last day of the month. Payment will occur 7 business days from the receipt of invoice. Invoices shall include the following information: (i) the date(s) upon which Services were performed; (ii) a summary description (ii) a summary description of the Services performed.
- C. Work Schedule. Consultant shall work at least three (3) days a week and a minimum of eight (8) hours per day until June 15, 2009. Thereafter June 15, 2009, consultant will work five (5) days a week and a minimum of eight (8) hours per day.

- D. Payment Schedule. For each monthly invoice prepared and timely submitted in satisfactory form, the District will make payment within seven (7) business days.
- E. Responsibility for Taxes. Because Consultant is an independent contractor, the District shall not withhold any amount for any tax or other withholdings from any sums due Consultant under this Agreement.

#### **ARTICLE V. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Consultant represents, warrants, and covenants that:

- A. Consultant's Qualifications. Consultant has the expertise, experience, and ability necessary to perform the Service expertly and efficiently. Consultant shall perform all Services in accordance with the highest professional standards applicable to the services performed.
- B. Qualifications of Contractors' Employees or Agents. Consultant shall require from his/her employees and subcontractors, if any, the same standards of professionalism, ability and expertise as are required of Consultant by this Agreement.
- C. Compliance with Law. Consultant, his/her employees, subcontractors and agents, shall comply with all federal, state, and local laws, ordinances, rules and regulations and shall obtain all permits, licenses and/or approvals which are applicable to Consultant's delivery of services hereunder.

#### **ARTICLE VI. COSTS AND EXPENSES**

All costs and expense incurred by Consultant in the performance of this Agreement shall be borne solely by Consultant.

#### **ARTICLE VII. INDEMNITY**

In an amount not to exceed the maximum compensation to be paid to Consultant under Article V of the Agreement, Consultant agrees to indemnify and hold harmless the District (including its Emergency Financial Manager, Board of Education, officers, agents, representatives and employees as the same may be constituted from time to time hereafter) from and against all liability, losses and/or damages or expenses or costs of judgments of any kind against the District that may arise in connection with (1) Consultant's failure to perform under the terms of this Agreement, and/or (2) any

intentional or criminal misconduct or negligence arising out of or in connection with Consultant's performance of this Agreement.

#### **ARTICLE VIII. INTELLECTUAL PROPERTY RIGHTS**

All Work Product created pursuant to this Agreement shall be the sole and exclusive property of the District and, upon the request of the District, Consultant shall promptly deliver all Work Product, including all copies thereof, to the District. Consultant agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product as a whole, are hereby assigned and shall belong exclusively to the District. Upon any request by the District, Consultant shall promptly execute whatever legal documents or other materials that the District deems are necessary to secure, perfect, or substantiate the District's exclusive rights and interest in any Work Product created under this Agreement. "Work Product" for purposes of this provision means all writings, data, graphics and other materials and information (including any underlying computer programming code), in every form and/or format, which has already been or which is hereafter originally created by Consultant in conjunction with this Agreement.

#### **ARTICLE IX. CONFIDENTIALITY**

Consultant warrants and represents that he and any employees and/or agents of Consultant shall retain all information belonging to the District ("Confidential Information") in the strictest confidence and will neither use nor disclose said Confidential Information to any third party. Consultant recognizes that irreparable harm can be occasioned to the District by disclosure of this Confidential Information. All confidential documents are to be returned to the District.

#### **ARTICLE X. ASSIGNMENT OF CONTRACT**

Consultant shall not assign all or any part of the Consultant's rights or obligations under this Agreement.

#### **ARTICLE XI. TERMINATION OF AGREEMENT**

A. Automatic Termination. This Agreement shall terminate automatically on the occurrence of either of the following:

1. Death or total incapacity of Consultant (to the extent that services cannot be performed).

- B. Termination Upon Notice. The District may terminate this Agreement at any time for convenience upon thirty (30) days written notice.
- C. Compensation Upon Termination. Upon termination, if Consultant is not in default, he shall be compensated for services satisfactorily performed up to the effective date of termination. Under no circumstances shall the consultant be entitled to compensation or damages arising out of a termination of this contract in excess of 30 days compensation or compensation for the maximum duration of the termination notice period provided by the emergency financial manager, which ever is greater.

#### **ARTICLE XII. COMPLIANCE WITH LAWS/NON-DISCRIMINATION**

Consultant shall comply with all applicable laws, ordinances, rules and regulations adopted or established by federal, state or local governmental bodies or agencies. Consultant agrees not to discriminate against any employee or applicant for employment on the grounds of race, color, religion, sexual orientation, age, national origin, or handicap during the performance of this Agreement.

#### **ARTICLE XIII. CONFLICT OF INTEREST**

Consultant understands and acknowledges that the District is a public educational agency and, consequently, members of the District's Board of Education and certain of its employees are subject to legally mandated conflict of interest provisions. With this understanding, Consultant shall not take any action that creates a situation, which would or could appear to result in violation of applicable conflict of interest provisions. This Article shall survive the expiration, termination, or cancellation of this Agreement.

#### **ARTICLE XIV. NOTICE**

Any notices to be given by either party to the other shall be in writing, either by personal delivery or by mail postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing the introductory paragraph on page 1 of this Agreement. Notices mailed by regular mail shall be deemed received as of five days after mailing. Each party may change its address by written notice in accordance with this Article.

#### **ARTICLE XV. GENERAL PROVISIONS**

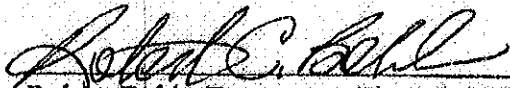
- A. Entire Agreement. This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes any and all agreements, either oral or written, which may exist between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or

agreements which are not embodied herein have been made by any party and that no agreement, state or promise not contained herein shall be binding on the parties.

- B. Waiver. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.
- C. Jurisdiction. This Agreement is hereby deemed to have been made and entered into by the parties according to the laws of the State of Michigan.
- D. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect.
- E. Changes. No amendment, alteration, or variation in the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.
- F. Authority. Each party hereby represents and warrants that he/she had full power and authority to enter into and perform his obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into it. Each party acknowledges that he/she has read, understands and agrees to be bound by the Agreement.
- G. Disputes. Any and all disputes arising out of this contract shall be submitted to binding arbitration through the American arbitration association in the State of Michigan. The arbitrator selected to adjudicate the dispute shall have no authority to add to or subtract from this contract and shall be bound to solely interpret the terms of this contract and strictly apply the terms of this contract adjudicating the dispute between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in Article II.

**DETROIT PUBLIC SCHOOLS**



Robert Bobb, Emergency Financial Manager



Barbara Byrd Bennett, Consultant