

AGREEMENT

Between

School District 5 of Lexington and Richland Counties

And

Dan Neal, P.E. (Ret.), CONSULTANT

This agreement is between School District 5 of Lexington and Richland Counties (“District 5”) and Dan Neal, P.E. (Ret.) (**Consultant**), an independent contractor, and is entered into this 1st day of August, 2018 to be effective as of that date. This document is a legal contract, and is entered into to enable consultant to provide professional construction consulting services for District 5.

I. Scope of Services

Scope of Work

The consultant will perform the following tasks as an independent consultant on behalf of District 5:

- 1) Evaluate issues surrounding the implementation of the District’s current construction program including design, implementation and management of the program and address issues relating to perceived problems and defects with a focus on assisting District 5, its Board and Administration with developing cost effective solutions to the problems and providing advice and assistance to the Board, Administration, Staff and Counsel in addressing issues identified in an appropriate manner.
- 2) Make and commission any necessary reviews, studies or other investigations that Consultant deems necessary and appropriate to fulfill the responsibilities enumerated herein.
- 3) Work with the Board to provide advice and counsel regarding the issues presented and the best solutions in the Consultant’s opinion.
- 4) Work with the Board’s legal counsel to determine appropriate courses of action and to confirm District 5’s contractual obligations, rights and responsibilities as it relates to items identified as problems in the construction program.
- 5) Be available for meetings with the Board and Consultations with the District Administration and staff as necessary to fulfill the purpose of this Agreement.

II. Personnel

Mr. Neal shall perform all services under this agreement personally unless otherwise agreed to in advance by District 5. Consultant shall report directly to Christina Melton, Ph.D. and interact with other individuals as directed. He will have direct access to the Chairman of the District's School Board and will keep the Superintendent informed on conversations with the Chairman.

III. Project Term

This agreement will be in effect until the project is completed or until either party terminates the agreement as provided for in Section VI.

IV. Deliverables

Consultant shall produce a written summary each month of work performed. He shall also produce any other deliverables as reasonably required for the project or as requested by District 5.

V. Compensation and Method of Payment

District agrees to compensate Consultant at a rate of \$1,200 per eight or longer hour day and \$150.00 per hour for less than a day, plus all reasonable and customary expenses incurred in performing the services required hereby. This compensation and the reimbursement of expenses is the full amount due to the consultant. Once each month, consultant shall submit an invoice and provide a brief description of services performed and expenses incurred during the period.

VI. Termination of Agreement

Termination of Agreement - Either party can terminate this agreement by delivering written notice and a statement of cause to the other party ten (10) days prior to the date of termination. Either party's failure to perform their obligations as described herein shall be considered valid cause and the moving party's failure to perform after the date of termination shall not be considered a breach of contract and, accordingly, no damages, other than payment for fees and expenses incurred prior to termination, shall be owed after termination.

VII. Indemnification

District 5 agrees to fully indemnify, hold harmless and defend consultant from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of, relate to or result from consultant's provision of services to District 5 in each case whether or not caused by the negligence of consultant and whether or not the relevant claim has merit.

VIII. General Provisions

Section 1. Relationship of the Parties. The parties intend that the relationship between them created under this Agreement is that of an independent contractor only. Consultant is not to be considered an agent or employee of District 5 for any purpose and District 5 is interested only in the results obtained under this Agreement; the manner and means of performing the services are subject to Consultant's sole control. Consultant shall be responsible for all state, federal, and local taxes, including estimated taxes, and employment reporting for Consultant or any employees or agents of Consultant.

Section 2. Proprietary Rights.

A. Consultant agrees that all Work Product created solely or jointly by Consultant, its employees, associates, or subcontractors, arising from work performed hereunder, or previously conceived in anticipation of consulting work to be performed for District 5, shall be deemed "work made for hire." Consultant shall cause all of its employees, associates, or subcontractors assisting in creating the Work Product to execute a similar acknowledgement that the Work Product is "work made for hire." Consultant and all of its employees, associates, or subcontractors assisting in creating the Work Product shall execute all such assignments, oaths, declarations, and other documents as may be prepared by District 5 to effect the foregoing.

B. "Work Product" shall mean all documentation, manuals, teaching materials, creative works, know-how, and information created District 5, in whole or in part, by Consultant and all of its employees, associates, or subcontractors assisting in creating the Work Product within the scope of this Agreement, whether or not copyrightable or otherwise protectable.

Section 3. Confidentiality. Consultant shall maintain in confidence (A) the subject matter of this Agreement, (B) the consulting work carried out hereunder, (C) any inventions or ideas conceived hereunder, and (D) any business or technical information of District 5 acquired by Consultant as a result of the consulting work carried out pursuant to this Agreement, and Consultant shall not, without District 5's prior authorization, directly or indirectly use, publish, or disclose to others any information, data, designs, results, or opinions resulting from the consulting work carried out pursuant to this Agreement. These obligations of secrecy shall continue throughout the duration of this Agreement and for two years thereafter.

Section 4. Records. Consultant shall keep full and accurate records of all consulting work performed under this Agreement. All records, sketches, drawings, prints, computations, charts, reports, and other documentation made in the course of the consulting work performed hereunder, or in anticipation of the consulting work to be performed in regard to this Agreement, shall at all times be and remain the sole property of District 5. Consultant shall turn over all copies of such documentation on request by District 5.

Section 5. Notices. Any notice under this Agreement shall be in writing and shall be effective when actually delivered in person or three days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in this Agreement or such other address as either party may designate by written notice to the other.

Section 6. Waiver. The waiver by either party of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

Section 7. Assignment. Except as otherwise provided within this Agreement, neither party hereto may transfer or assign this Agreement without prior written consent of the other party.

Section 8. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The parties stipulate that any action arising under this agreement or surrounding this agreement may be brought only in Richland County, South Carolina and venue is proper only in Richland County South Carolina.

Section 9. Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Section 10. Titles and Captions. All article, section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Section 11. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

Section 12. Entire Agreement. This Agreement including any Addenda thereto contain the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

Section 13. Prior Agreements. This document is the entire, final and complete agreement of the parties, and supersedes and replaces all prior or existing written and oral agreements between the parties or their representatives.

Section 14. Agreement Binding. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Section 15. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 16. Good Faith, Cooperation and Due Diligence. The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

Section 17. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

Section 18. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

Section 19. Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 20. In the event of a dispute between the parties that is resolved during or after litigation, the prevailing party shall be entitled to reimbursement of the attorney's fees and costs associated with said litigation. The "prevailing party" is the party recovering more through litigation than was offered as settlement prior to or during litigation.

In Witness Whereof, the parties hereto have caused this contract to be signed on the date and year written below.

**SCHOOL DISTRICT 5 OF
LEXINGTON AND RICHLAND
COUNTIES**

CONSULTANT

Christina Melton, Ph.D.
Its: Superintendent
DATE: _____

Dan Neal, P.E. (Retired)
DATE: _____