



## FRANKLIN-MCKINLEY SCHOOL DISTRICT CONTRACT AGREEMENT - GENERAL SERVICES

This Contract Agreement ("Agreement") is made as of January 1, 2016, between the Franklin-McKinley School District ("District") and Volter Strategic Advisors ("Contractor") (together, "Parties").

WHEREAS, the District is authorized by Government Code § 53060 to contract with any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District is authorized by Public Contract Code § 20111 to contract with any persons for the furnishing of non-construction services, if the contract amount is no greater than the annually adjusted statutory limit, which is \$87,800 in 2016; and WHEREAS, the District is in need of those services and/or advice; and

WHEREAS, the Contractor is specially trained and experienced and competent to perform the services required by the District, and those services are needed on a limited basis;

NOW, THEREFORE, the Parties agree as follows:

- 1. Services.** The Contractor shall furnish to the District the services, including the location where services be provided, as described in Exhibit "A," attached hereto and incorporated herein by this reference ("Services").
- 2. Term** Contractor shall commence providing Services under this Agreement upon execution of the Agreement by both parties though June 30, 2016.
- 3. Compensation.** District compensation to the Contractor shall not exceed \$ 21,000, inclusive of any costs or expenses paid or incurred by Contractor in performing the Services, without the express approval of the Board. Payment shall be made for all undisputed amounts within thirty (30) days after the Contractor submits a detailed invoice to the District's Accounts Payable Department for services actually performed. Invoices must reference corresponding Purchase Order number.
- 4. Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement. All original curricular materials provided in conjunction with Contractor services must be authorized for use by the District only and remain exclusively the intellectual property of the authors.
- 5. Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor with the sole authority for controlling and directing the performance of the details of the Services, District being interested only in the results obtained. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees.
- 6. Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
- 7. Certifications/Permits/Licenses.** Contractor shall secure and maintain in force such certifications, permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.
- 8. Standard of Care.** Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.
- 9. Safety and Security.** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 10. Work Product.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District.

- 11. Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
- 12. Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 13. Termination.**
- 13.1. With Cause by District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 13.1.1.** material violation of this Agreement by the Contractor; or
  - 13.1.2.** any act by Contractor exposing the District to liability to others for personal injury or property damage; or
  - 13.1.3.** Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and costs to the District exceed the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.
- 13.2 Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement upon fifteen (15) days written notice and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three days after the day of mailing, whichever is sooner. In the event that District terminates this Agreement pursuant to this section, District shall compensate Contractor for Services completed to date.
- 13.3** Upon termination, Contractor shall provide the District with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.
- 14. Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, Contractors, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and Contractors and/or attorney's fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor under or in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.
- 15. Insurance.** The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance:
- 15.1. General Liability.** One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars general aggregate for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability.
  - 15.2. Automobile Liability Insurance.** One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate for automobile liability insurance that shall protect the Contractor and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Contractor.
  - 15.3. Workers' Compensation and Employers' Liability Insurance.** For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide employers' liability coverage with minimum liability coverage of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and its respective elected officials, officers, employees, agents, representatives, Contractors, trustees, and volunteers.
  - 15.4. Other Insurance Provisions:**
    - 15.4.1.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
      - 15.4.1.1.** The District, its representatives, Contractors, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor; instruments of Service and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or

automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

**15.4.1.** For any claims related to the projects, the Contractor's insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of the Contractor's insurance and shall not contribute with it.

**15.4.1.** Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

**15.4.2.** The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**15.4.3.** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

**15.4.4.** Contractor shall furnish the District with Certificates of insurance showing maintenance of the required insurance coverage and original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before Services commence.

**15.5. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the District.

**16. Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

**17. Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Services shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

**18. Fingerprinting of Employees.** It is not contemplated at the time of execution of this Agreement that Contractor or its employees will have contact with students during the provision of services under this Agreement. If, at a future time, Contractor will have contact with any pupils, Contractor shall comply with the provisions of Education Code section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with District pupils until such time as the Contractor has verified in writing to the governing board of the District that the employee has not been convicted of a felony, as defined in Education Code section 45122.1. The Contractor's responsibility shall extend to all employees, subcontractors, agents, and employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this Agreement, shall be provided in writing to the District prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

**19. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**DISTRICT**

FRANKLIN-MCKINLEY SCHOOL DISTRICT  
645 WOOL CREEK ROAD  
SAN JOSE, CA 95112

ATTN Yelitza Peña  
TITLE Director, Community Relations  
EMAIL Yelitza.pena@fmsd.org

**CONTRACTOR**

NAME VOIER STRATEGIC ADVISORS  
ADDRESS 84 W. SANTA CLARA ST, Ste 260  
SD, CA 95113

ATTN PERIA RODRIGUEZ  
TITLE CEO  
EMAIL PERIA@VOIERSA.COM

Any notice personally given or sent shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 20. Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
- 21. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 22. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties. This agreement is not valid until approved/ratified by Franklin-McKinley School District Board of Education. Services shall not be rendered until Agreement is approved.
- 23. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Alameda County, California.
- 24. Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 25. Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 26. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 27. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 28. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 29. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 30. Contract Approval.** This agreement is not valid until approved/ratified by Franklin-McKinley School District Board of Education.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

CONTRACTOR	<u>Volere Strategic Advisors</u>	FRANKLIN-MCKINLEY SCHOOL DISTRICT
REPRESENTATIVE	<u>PERLA RODRIGUEZ</u>	REPRESENTATIVE <u>LARRI "MEGAN" LAMKEN</u>
TITLE	<u>CEO</u>	TITLE <u>Assistant Superintendent of Business Services</u>
SIGNATURE	<u>Perla Rodriguez</u>	SIGNATURE _____
DATE	<u>1.15.10</u>	DATE _____



December 21, 2015

Superintendent Juan Cruz  
Franklin -McKinley School District  
645 Wool Creek Drive  
San Jose, CA 95112

Dear Superintendent Cruz:

Thank you for providing Voler Strategic Advisors (Voler) with the opportunity to provide the Franklin -McKinley School District with a proposal for services.

In light of the District recently hiring a Public Information Officer (PIO), and based on the information you provided my team, our role will be a supportive role to the new PIO.

With that in mind, I outline our proposed scope of work.

### **Scope of Work**

#### *Trainings*

Voler Strategic Advisors will provide the District's PIO with a series of trainings related to media, public affairs, and the local political landscape.

#### *Public Affairs*

Understanding that the District's PIO is also expected to serve in a community/public affairs role, Voler will provide access to our network to immediately begin connecting the PIO to political, community, non profit, and parent leaders.

Additionally, through a training, Voler will provide an objective analysis of the current state of affairs and the various players in order to ensure that the District's agenda is not put at risk by not understanding the area's political landscape.



### *Internal/External Stakeholder Communications*

In order to ensure transparency with your stakeholder community, the District will have to be able to develop communications to both its internal and external communities.

As you know, if not strategized correctly, an inappropriate communication to your stakeholder community can actually further complicate and/or escalate an already challenging issue.

Having extensive experience in this area, Voler will work with the PIO to determine the proper message, tone, and distribution channels.

### **Fees**

Voler Strategic Advisors proposes a fee of \$7,000 per month, *not to exceed \$21,000.*

### **Duration of the Agreement**

The agreement would begin upon execution of the Board of Trustees and 3 months from that date.

### **Conclusion**

Again, thank you for the opportunity to provide you with a proposal. Given my group's extensive experience working with school districts I feel that we are best equipped to meet your needs and build a long-term relationship.

Respectfully,

Perla A. Rodriguez  
Chief Executive Officer