

**CONTRACT BETWEEN
THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA
AND
RANDALL D. BURKS, ESQ.**

THIS CONTRACT entered into this _____ day of June, 2005, by and between **THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA** (hereinafter referred to as the "BOARD"), which is the governing body of the School District of Palm Beach County, Florida, and **RANDALL D. BURKS, J.D., M.Ed., Ph.D.** (hereinafter referred to as "CONSULTANT"),

1. **CONTRACT.** This contract represents a renewal of the contract between the CONSULTANT and the BOARD which had an effective term of January 1– June 30, 2005. This Contract extension shall be effective from July 1, 2005, through 11:59 p.m. on December 31, 2005, with an option to renew or extend as agreed to by both parties.

2. **PROFESSIONAL SERVICES AND RESPONSIBILITIES OF THE CONSULTANT.** CONSULTANT shall serve as an independent contractor for the BOARD, serving primarily in the field of appellate and Administrative Law/Regulatory Compliance/Governance, such as in the following areas:

- Researching and writing appellate briefs and conducting appellate practice in state and federal courts;
- assisting the Chief Counsel, et al., in the areas of Administrative Law, Regulatory Compliance, and Governance;
- providing written and/or oral information and legal opinions concerning current Policies to District staff, the Department of Legal Services, and the BOARD;
- researching and providing oral and/or written information and legal opinions in the areas of Administrative Law and rulemaking, the Sunshine Law, the Public Records Act, the Code of Ethics for Public Officers and Employees, the K-20 Education Code, constitutional law, general education law, and other areas of expertise of the CONSULTANT, as requested by the Chief Counsel;
- preparing legal briefs or memoranda of law for submission to the Attorney General, DOE General Counsel, or the Florida Commission on Ethics if the BOARD or Chief Counsel desires to obtain an advisory opinion therefrom;
- reviewing, editing, researching, and drafting proposed Board rules (Policies and procedures);
- assisting with the School Board's Policy development processes, including: working with senior counsel, as needed, in the drafting process; assisting with preparation of

notices as required by law and submitting notices for publication in The Palm Beach Post and distribution by other methods consistent with law;

- assisting with reviewing such proposed Policies for legal sufficiency and soundness, clarity and cohesiveness;
- attending and assisting the Chief Counsel at, as requested, the BOARD's special meetings on Policies;
- assisting with managing and maintaining the School Board Policies Web site and maintaining the Policy Revisions web site (*www.SchoolBoardPolicies.com/ revisions.htm* or other site as designated); assisting with posting the final adopted versions of Policies on the District's Internet web site for Policies at *www.SchoolBoardPolicies.com* or *www.palmbeach.k12.fl.us/policies*;
- preparing for and/or presenting training sessions for District staff as requested or assigned by the Chief Counsel;
- maintaining and/or further customizing the custom software for time logging and case management which were programmed by the CONSULTANT;
- being on call to assist the Chief Counsel, if requested, with regular Board meetings via telecommunication; and/or
- performing other responsibilities as needed or requested by the Chief Counsel.

a. Evaluation of Services. -- the services provided by the CONSULTANT will be measured by the CONSULTANT's success in carrying out the responsibilities listed above.

b. Relation to Employees.-- CONSULTANT shall not supervise or evaluate the performance of personnel in the Department of Legal Services.

c. Litigation.-- The services to be performed by the CONSULTANT are not generally expected to include trial litigation, but will include appellate practice.

3. **INDEPENDENT CONTRACTOR.** The parties understand and agree that the services to be provided by CONSULTANT as an independent contractor will be performed exclusively by CONSULTANT and that the relationship between the BOARD and CONSULTANT will not be that of an employer and employee. The BOARD shall at all times be obligated to the CONSULTANT for payment of fees under the conditions outlined below.

4. **LOCATION OF WORK.** As an independent contractor, CONSULTANT shall be responsible for setting his own time and place of work. CONSULTANT may provide any of the services agreed to under this Contract on the District premises or from another

site. (CONSULTANT acknowledges that a few services can efficaciously be provided only on District premises, such as attending special Board meetings on Policies.) It is anticipated that CONSULTANT may be present a few hours per week on District premises, with the remaining work being provided from off-site. When working as usual from off-site, CONSULTANT agrees to be reasonably available to the Chief Counsel via telecommunications and/or electronic media and to make himself available in person when requested and reasonably possible, upon reasonable notice.

5. **HOURS OF WORK.** As an independent contractor, CONSULTANT shall be responsible for setting his own hours and time of work, either part-time or full-time. Under normal circumstances, the CONSULTANT agrees to limit time charged to 40 hours per week. This clause shall be interpreted consistent with paragraph 6.b below.

6. **COMPENSATION.** For services performed by CONSULTANT as outlined in this Contract through 11:59 p.m. on December 31, 2005, the BOARD agrees to pay the CONSULTANT an hourly rate of \$60 (sixty dollars), provided that the hours paid shall normally be limited to 40 per week, as provided in Section 5 above and subject to paragraph 6.b below.

a. The CONSULTANT may normally be paid for services on a biweekly basis (i.e., once per two weeks), upon submission of a time sheet for that two-week period.

b. **ACCRUAL.--** Although the biweekly fees normally shall not exceed the amount for 80 hours, if the services provided by the CONSULTANT in a given two-week period happen to be less than 80 hours, CONSULTANT may accrue the differential within any subsequent two-week period by accruing the ability to work more, and report more, than 80 hours in any subsequent two-week period. Thus, for example, if CONSULTANT were to work 75 hours in a given two-week period, the remaining 5 hours may be worked and reported in a subsequent period, allowing for 85 paid hours in that subsequent period.

c. **MAXIMUM FEES.** The CONSULTANT shall not earn more than \$60,000 under this contract during its term.

7. **NO BENEFITS OR WITHHOLDINGS.** Because the CONSULTANT is an independent contractor and is not the BOARD's employee, CONSULTANT is responsible

for paying all required state and federal taxes. The Board will not provide retirement contributions, health insurance, or other employee benefits.

a. More specifically, BOARD will not withhold FICA or Social Security or any other state or federal income tax from CONSULTANT's payments; BOARD will not make state or federal unemployment insurance contributions on behalf of CONSULTANT; BOARD will not make disability insurance contributions on behalf of CONSULTANT; and BOARD will not obtain worker's compensation insurance or any other insurance on behalf of CONSULTANT.

b. Except in unusual circumstances such as attending an off-site seminar for the benefit of the BOARD, there shall be no travel reimbursement. If any travel reimbursement is provided, it shall be limited to that permitted under FLA. STAT. § 112.061 and Policy 6.01.

8. **BOARD SUPPORT.** The parties understand and agree that the BOARD may provide the use of computer equipment, photocopiers, and regular telephone equipment, as well as occasional clerical assistance to the CONSULTANT, to assist the CONSULTANT in carrying out his duties for the BOARD.

a. In general, CONSULTANT shall be expected to provide most clerical functions himself.

b. The BOARD shall not be obligated to provide a cellular telephone.

c. The BOARD shall not supply a paralegal or other staff for the benefit of the CONSULTANT, although CONSULTANT may work with and delegate certain tasks to a paralegal or secretary for the benefit or convenience of the BOARD and Chief Counsel, consistent with the direction of the Chief Counsel.

d. Further, CONSULTANT agrees to provide a cellular phone, at his own expense, to assist the Chief Counsel of the BOARD in maintaining contact at all reasonable times when CONSULTANT is, as usual, working off of District premises.

9. **BOARD's RESPONSIBILITIES.** The BOARD shall assist CONSULTANT by placing at CONSULTANT's disposal all information available to the Board, which is pertinent to CONSULTANT's duties. The BOARD shall arrange for access to and make all provisions for CONSULTANT to enter upon District property as required for CONSULTANT to perform his services.

10. **RECORDS.** CONSULTANT shall keep such records and accounts as may be necessary in order to complete the Contract and to obtain reimbursement for any expenses to which CONSULTANT may be eligible for reimbursement. CONSULTANT shall keep all books and records which are considered public records in accordance with Chapter 119, Fla. Stat., and the District's Records Retention Schedule.

11. **TERMS AND CONDITIONS.**

a. **INDEMNIFICATION/PROFESSIONAL LIABILITY INSURANCE.--** If acting in good faith and without malicious purpose or not in a manner exhibiting wanton and willful disregard of human rights, safety or property when performing his duties, the CONSULTANT shall not be held responsible for any litigation settlement approved by the BOARD or for any adverse judgment, subject to the limits and criteria set forth in Section 768.28, Fla. Stat.

CONSULTANT shall obtain and maintain attorney's malpractice insurance for his benefit and that of the BOARD during the term of this contract. CONSULTANT shall indemnify and hold the School District harmless from liability for legal malpractice or any intentional or negligent act or omission of the CONSULTANT.

b. **TERMINATION OF CONTRACT.--** The CONSULTANT shall have the option to terminate the Contract upon written notice to the Superintendent or his designee. Such notice must be received at least ninety (90) days prior to the effective date of termination, unless CONSULTANT has been appointed to a governmental position that requires his services in less than ninety (90) days. The BOARD shall have the option to terminate the CONTRACT upon written notice to the CONSULTANT; and such notice shall be received at least ninety (90) days prior to the effective date of termination. Earlier termination dates may be established by mutual consent of both parties.

c. **NON-ASSIGNMENT.** The Contract cannot be assigned, nor can anyone other than CONSULTANT perform the services required under this Contract, except insofar as the Chief Counsel may direct that certain functions be delegated to another staff member.

d. **CONFLICT OF INTEREST.** The CONSULTANT represent that he presently has no interest and shall acquire no interest, either direct or indirect, which will conflict in any way with the performance of services required hereunder as provided for either in Sec-

tion 112.311 or 112.313, Fla. Stat., or in the rules governing members of The Florida Bar. Similarly, CONSULTANT represents that he shall not employ any person having a conflict of interest to assist him in the performance of the services to be provided pursuant to this Contract. The CONSULTANT shall promptly notify the BOARD in writing of all potential conflicts of interest owing to any perspective business association, interest, or other circumstances that may influence or appear to influence the CONSULTANT's judgment or the quality of services provided by CONSULTANT pursuant to this Contract. Such written notification shall identify the perspective business association, interest, or circumstances, and the nature of the work that the CONSULTANT might undertake. Said notification shall request an opinion of the BOARD as to whether the association, interest, or circumstances would, in the opinion of the BOARD, constitute a conflict of interest. The BOARD agrees to notify the CONSULTANT of its opinion within twenty (20) days of its receipt of notification by the CONSULTANT. If, in the opinion of the BOARD, the perspective business association, interest, or circumstances would not constitute a conflict of interest, the BOARD shall so state in the notification, and the CONSULTANT shall have the option of entering into said association, interest, or circumstances as he deems appropriate.

e. The BOARD shall provide CONSULTANT with the "HourGlass" software used by the Legal Services Department so that the CONSULTANT can readily keep track of and account for the hours spent performing his duties under this Contract. The majority of the CONSULTANT's services provided under this Contract may be provided from off-site.

f. CONSULTANT, as an independent contractor, shall report to the Chief Counsel to the School Board.

12. **SEVERABILITY.** In the event that any term, part, or provision of this Contract may be found to be illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term, part, or provision held to be invalid.

13. **LAW AND VENUE.** This Contract shall be governed by and construed in accordance with the laws of the State of Florida, and venue shall be in Palm Beach County, Florida.

14. **STRICT PERFORMANCE.** The failure of either party to insist on strict performance of any covenant or condition herein shall not be construed as a waiver of such covenants or conditions in any instance.

15. **ENTIRE CONTRACT.--** This Contract, including all exhibits hereto, constitutes the entire Contract between the BOARD and CONSULTANT with respect to the subject matter hereof, and it supersedes all other prior oral or written understandings or contracts relating to the subject matter hereof. This Contract may not be amended except in writing signed by both parties.

IN WITNESS WHEREOF, this Contract has been executed on the _____ day of _____, 2005.

SCHOOL BOARD OF PALM BEACH
COUNTY, FLORIDA

Randall D. Burks
RANDALL D. BURKS, Ph.D., Consultant

By: _____
THOMAS E. LYNCH, its Chairman

Reviewed and Approved by:
[Signature] 6/1/05
JULIEANN RICO ALLISON
Chief Counsel to the School Board

ATTEST:

ARTHUR JOHNSON, Ph.D., Superintendent