



THE SCHOOL DISTRICT OF PALM BEACH COUNTY
School District Consultant Agreement

AGENDA ITEM NUMBER	BOARD MEETING DATE April 25, 2007
CONTACT Sharon Swan - Director Purchasing	PX 48214
SCHOOL / DEPARTMENT ERP Project Team	

**Agreement between the School Board of Palm Beach County and
 Metaformers, Inc.**

THIS AGREEMENT is entered into this twenty-sixth day of April, 2007 by and between the SCHOOL BOARD OF PALM BEACH COUNTY, hereinafter referred to as "Board" and Metaformers, Inc. hereinafter referred to as "Consultant".

WHEREAS, the Board desires to enter into this Agreement with the Consultant, providing, among other things, for the Consultant's services to the Board; and

WHEREAS, the Consultant desires to enter into this Agreement with respect to his/her (hereinafter his) services to the Board, upon the terms and conditions hereinafter set forth.

WHEREAS, the Consultant is specially trained and possesses the necessary skills, experience, education and competency, and licenses or credentials to perform the required services.

NOW, THEREFORE, the Board and the Consultant agree as follows:

1. TERM

The term of this Agreement shall commence on April 26, 2007 and shall end on July 31, 2007

2. RESPONSIBILITIES OF CONSULTANT

A. The Consultant shall perform the following services:

Redesign/replacement of contract pay is needed for next fiscal year in order to reduce risk of payroll issues for FY08. In addition, improvements will be made in the areas of work flow and time reporter data automation. See attached Statements of Work.

B. Time, date, and location of services:

April 26, 2007 through July 31, 2007

3. CONSULTANT BACKGROUND INFORMATION

Education See Attached Resumes

Position and Address _____

Target Group/School/Department Employees District wide

Approximate Number to be Served _____

4. EVALUATION/FOLLOW-UP METHOD

Evaluation of the Consultant shall be provided by Mike Burke

TITLE OF THE CONSULTANT SUPERVISOR

of the District at regular intervals and in accordance with the attached evaluation tool, Exhibit "A".

FINANCIAL IMPACT

The financial impact is \$326,390.00 The source of funds is ERP Budget

DEPT	FUND	FUNC	ACCT	PROGRAM	BUDG. MGR.	LOCAL CODE	AWARD YEAR
9028	3965	7410	569120	8369	C405	000	NPRJ

5. COMPLIANCE WITH POLICIES AND LAWS

The Consultant shall comply with all current School Board of Palm Beach County's Policies. The School Board's policies are located at <http://www.palmbeach.k12.fl.us/> or www.schoolboardpolicies.com and are incorporated herein. It shall be the Consultant's responsibility to comply with all School Board Policies as they may be modified from time to time during the term of this Agreement. The Consultant shall abide by all applicable federal, state and local laws.

6. **COMPENSATION**

A. The School Board shall pay the Consultant the maximum sum of (write out amount)

Three Hundred-Twenty-Six Thousand, Three Hundred Ninety dollars and 00/100

(\$ 326,390.00), for a maximum of 1,876 hours which is based upon the following rate schedule.

Daily Rate: _____ Half Day Rate: _____

Hourly Rate: \$170/\$180/\$185 Flat Rate: _____

I grant permission for any or all parts of this presentation to be videotaped. Yes No

B. No payment shall be made unless and until the Board verifies that all services for which payment is requested have been fully and satisfactorily performed. The Consultant shall submit to the Board any documentation necessary to substantiate the full and satisfactory performance of the services for which payment is requested. The administrator who will verify the services have been performed and approve the invoice is:

Mike Burke

7. **CONFIDENTIALITY OF STUDENT RECORDS**

The Consultant is subject to all School District obligations relating to compliance with student records confidentiality laws. By signing this Agreement, the Consultant acknowledges and agrees to comply with the Family Educational Rights and Privacy Act (FERPA) and all State and Federal Laws relating to the confidentiality of student records.

Consultant will not receive student Information.

Consultant will receive student Information and Release or Transfer of Student Information (PBSD 0313) will be completed prior to Consultant receiving student information.

Consultant will receive student Information. Since parental consent will not be obtained and Consultant has legitimate educational interests in the information, Consultant shall hereby be deemed an "other school official" in accordance with School Board Policy 5.50 and shall enter into the Addendum concerning student information (Exhibit C) which is attached hereto and incorporated herein.

8. **BACKGROUND CHECKS/FINGERPRINTING**

The Jessica Lunsford Act: All individuals who are permitted access on school grounds when students are present, individuals who will have direct contact with children or any student of the School District, or who will have access to or control of school funds must be fingerprinted and background checked. Consultant agrees to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all individuals in the organization who meet any of the conditions to submit to a background check, including fingerprinting by the School District's Police Department, at the sole cost of Consultant. Consultant shall not begin providing services contemplated by this Agreement until Consultant receives notice of clearance by the School District. The School Board, nor its members, officers, employees, or agents, shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of Consultant (or discontinuation of Consultant's services) on the basis of these compliance obligations. Consultant agrees that neither the Consultant, nor any employee, agent or representative of the Consultant who has been convicted or who is currently under investigation for a crime delineated in Florida Statutes §435.04 will be employed in the performance of this contract.

9. **INDEPENDENT CONTRACTOR**

The Consultant is, for all purposes arising under this Agreement, an independent contractor. the Consultant and its officers, agents or employees may not, under any circumstances, hold themselves out to anyone as being officers, agents or employees of the Board. No officer, agent or employee of the Consultant or Board shall be deemed an officer, agent or employee of the other party. Neither the Consultant nor Board, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers compensation benefits, injury leave, or other leave benefits.

10. **OWNERSHIP**

A. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and other materials produced by the Consultant under this Agreement shall be the sole and exclusive property of Board. No such materials produced, either in whole or in part, under this Agreement shall be subject to private use, copyright or patent right by the Consultant in the United States or in any other country without the express written consent of Board.

B. Board shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent any such materials produced by the Consultant under this Agreement.

11. **INDEMNIFICATION/HOLD HARMLESS**

The Consultant shall, in addition to any other obligation to indemnify the Palm Beach County School Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School District, their agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting there from, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Consultant, or anyone directly or indirectly employed by them, or of anyone for whose acts any of them may be liable in the performance of the work; or violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work; claims or actions made by the Consultant or other party performing the work. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Consultant under workers' compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. Any cost or expenses, including attorney's fees, incurred by the Palm Beach County School District to enforce this agreement shall be borne by the Consultant. The Consultant recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the School Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

12. **TRAVEL**

Travel is is not allowable for this contract. Estimated travel expense is not to exceed _____ for the term of the contract. The Consultant agrees to submit all necessary documentation and proof of expenses in accordance with F. S. § 1 12.061 and School Board Policy #6.01. The Consultant further agrees that reimbursement for travel must be submitted on travel reimbursement forms with the rates determined by F.S. § 112.061 and School Board Policy 6.01 and must be authorized by the appropriate administrator(s).

13. **AMENDMENT**

This Agreement may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by the School Board.

14. **ASSIGNMENT**

Neither the Consultant nor the Board may assign or transfer any interest in this Agreement without the prior written consent of the other party.

15. **GOVERNING LAW AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of Florida. Any dispute with respect to this Agreement is subject to the laws of Florida, venue in Palm Beach County, Florida. Each Party shall be responsible for its own attorney's fees and costs incurred as a result of any action or proceeding under this agreement.

16. **TERMINATION**

The Board reserves the right to terminate this contract at any time and for any reason, upon giving thirty (30) days notice to the other party. If said contract should be terminated for convenience as provided herein, the Board will be relieved of all obligations under said contract and the Board will only be required to pay that amount of the contract actually performed to the date of termination with no payment due for unperformed work or lost profits. In the event School Board determines that the Consultant's services are not being performed as agreed upon, the Consultant shall be deemed to be in default and the School Board reserves the right to cancel this contract with five (5) days notice and to withhold all monies due the Consultant until such time as the Board, in its sole discretion shall determine whether to have the contract services completed by others or to cease obtaining the services. In the event that the Board determines to have the contract completed by others, the Consultant shall be liable for any costs of completion in excess of that called for in this contract. In the event that the Board determines not to have the contract completed by others, the Consultant shall be paid for the services that it satisfactorily performed prior to the termination but, in no event, shall the Consultant be paid for any work not actually performed or for lost profits.

In the event that it is determined that a termination for cause was unjustified, the termination shall be deemed a termination for convenience and the Consultant shall be entitled to payment only for work actually performed prior to the termination and to any additional sums.

17. **MINORITY STATUS**

The School District strongly encourages active minority/women business enterprise participation with all professional services. The Consultant certifies that:

This business is minority owned and operated (minimum 51%) Yes No

If a consultant not representing a firm, I am a minority. Yes No

If either statement above was checked yes, please indicate minority group.

- Black or African American
- Asian
- Native Hawaiian or Other Pacific Islander
- Hispanic or Latino
- American Indian or Alaskan Native
- Disabled
- White Female
- Other

18. LEGAL REVIEW

The parties hereto represent that they have reviewed the Agreement and have sought legal advice concerning the legal significance and ramifications of the provisions contained herein.

19. NOTICES

Any notice *permitted or required* under this Agreement shall be in writing and signed by the party giving or serving the same, and shall be served either by personal delivery or *certified* mail to the following persons and at the following addresses:

Consultant Metaformers, Inc.
 Address 1660 International Drive #400
McLean, VA 22102

SCHOOL BOARD OF
 PALM BEACH COUNTY, FLORIDA
 Purchasing Department
 3300 Forest Hill Boulevard, Suite A 323
 West Palm Beach, Florida 33406

Telephone # (703) 919 - 0967 Extension # _____

Consultant Email (**required**) ed.bouryng@metaformers.com



20. MANDATORY CONTRACT DOCUMENTS (If contract is going to Board for approval)



This Agreement includes the terms and conditions set forth in this document, and set forth in the following additional documents attached hereto and incorporate herein: (approval will not be granted without these **mandatory** attachments)

- "Exhibit A" - Provide consultant evaluation (PBSD 2075)
- "Exhibit B" - Beneficial Interest and Disclosure of Ownership Affidavit (PBSD 1997)

- \$2,500 or less requires consultant and principal/director signature only.
- \$2,501 to \$10,000 requires signature of consultant, principal/director, area/assistant superintendent, chief academic/operating officer and superintendent.
- All consultant contracts over \$10,001 must be approved by the Legal Department before going to the Board. The Board Chairman will sign the contract after Board Approval.

NOW, THEREFORE, the parties hereto have affixed their signatures on the day and year first above written.

	DATE	Ed Bouryng <small>PRINT NAME OF THE CONSULTANT</small>
	4-20-07 DATE	Mike Burke <small>PRINT NAME OF THE PRINCIPAL / DIRECTOR</small>

_____ <small>SIGNATURE OF AREA / ASSISTANT SUPERINTENDENT</small>	DATE	_____ <small>PRINT NAME OF THE AREA / ASSISTANT SUPERINTENDENT</small>
	DATE	Joseph Moore, Chief Operating Officer <small>PRINT NAME OF THE CHIEF ACADEMIC / OPERATING OFFICER</small>
	4-20-07 DATE	Kalinthia Dillard <small>PRINT NAME OF THE LEGAL SERVICES DESIGNEE</small>
_____ <small>SIGNATURE OF ARTHUR C. JOHNSON, Ph. D. SUPERINTENDENT</small>	DATE	_____ <small>SIGNATURE OF WILLIAM G. GRAHAM SCHOOL BOARD CHAIRMAN</small>
_____ <small>SIGNATURE OF WILLIAM G. GRAHAM SCHOOL BOARD CHAIRMAN</small>	DATE	_____ <small>DATE</small>

RIDER TO AGREEMENT FOR CONSULTING SERVICES

This Rider is entered into by and between the School Board of Palm Beach County (the "Board") and Metaformers, Inc. (the "Consultant").

The Board and the Consultant agree that the Agreement for Consulting Services (the "Agreement") between the Board and the Consultant dated April 25, 2007, is modified as follows:

1. The Board and the Consultant agree that the following new provision designated as Section 6.C is added to the Agreement:

If the Board determines that all services have not been fully and satisfactorily performed by the Consultant, the Board shall notify the Consultant in writing describing in detail those services which the Board has determined were not fully and satisfactorily performed, and the Consultant shall have two weeks time from receipt of such notice to re-perform such services to the Board's satisfaction. If after such re-performance of services the Board determines that such services still have not been fully and satisfactorily performed, the Board shall pay the Consultant for those services that it determines have been fully and satisfactorily performed and not pay Consultant for those services that it determines have not been fully and satisfactorily performed. The foregoing shall not release the Board from liability for any payments not made to the Consultant, and the Consultant may, if it so desires, pursue through legal process the recovery of any payments not made to the Consultant.

2. The Board and the Consultant agree that the following new provision designated as Section 6.D is added to the Agreement:

Notwithstanding anything to the contrary in the Agreement or any document incorporated by reference into the Agreement, the Board, subject to the provisions of Sections 6.B and 6.C above, agrees to pay the Consultant within thirty (30) days after receipt of the Consultant's invoice for services that it determines have been fully and satisfactorily performed and not pay Consultant for those services that it determines have not been fully and satisfactorily performed.

3. The Board and the Consultant agree that Section 11, INDEMNIFICATION/HOLD HARMLESS, as drafted is deleted from the Agreement and in its stead that the following provision designated as Section 11, INDEMNIFICATION/HOLD HARMLESS, is added to the Agreement:

The Consultant shall, in addition to any other obligation to indemnify the Board and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the Board, its agents, officers, elected officials and employees from and against all third-party claims and actions, and all liabilities, losses, and costs relating to of such third-party claims and actions, (a) arising out of any actual or alleged bodily injury, sickness, disease

or death, or injury to or destruction of tangible property, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from, any actual or alleged negligent act or negligent omission of the Consultant, or anyone directly or indirectly employed by them, or of anyone for whose acts any of them may be liable in the performance of the work, or (b) arising from violation of law, statute, ordinance, governmental administration order, rule or regulation in the performance of the work. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, other employee benefit acts or any statutory bar. Any costs or expenses, including attorney's fees, incurred by the Board to enforce this agreement shall be borne by the Consultant. The Consultant recognizes the broad nature of this indemnification and hold harmless article, and voluntarily makes this covenant for good and valuable consideration provided by the Board in support of this indemnification in accordance with the laws of the State of Florida. This article will survive the termination of this Agreement.

4. The Board and the Consultant agree that this Rider shall be incorporated into the Agreement and shall take effect on the same date and time as the Agreement. The Board and the Consultant agree that this Rider shall supersede and take precedence over any conflicting terms, provisions or conditions set forth in the Agreement. The Board and the Consultant agree that, except as modified by this Rider, all terms in the Agreement remain in full force and effect. Except as specifically set forth in this Rider, nothing in this Rider shall increase, decrease or change the rights and obligations of either the Board or the Consultant. No modification of this Rider shall be effective unless in a writing signed by the authorized representatives of both parties. The Agreement and the Rider reflect the entire agreement of the parties and supersedes and incorporates all prior and contemporaneous oral and written communications between the parties concerning its subject matter.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____