

**CONSULTING AGREEMENT**  
NJSBA PROCUREMENT NUMBER E-8801-ACES-CPS

**IT IS HEREBY AGREED** this \_\_\_\_ day of February, 2019, by and between E-Rate Consulting, Inc., a New Jersey Corporation, doing business at 130 Valley Road, Suite B, Montclair, New Jersey 07042, hereinafter referred to as ERC, and the Brick Township Public School District, with its principal offices located at 101 Hendrickson Avenue, Brick, NJ 08724, hereinafter referred to as Client, as follows:

1. **SCOPE.** ERC hereby agrees to provide consulting services pursuant to NJSBA Procurement number #E-8801-ACES-CPS, as an independent contractor, to the Client in connection with the E-Rate Program for the funding years covered by the term set forth in Section 3 of this Agreement:

- a. Provide comprehensive compliance expertise on E-Rate Program rules and eligible equipment and services;
- b. Deliver efficient and effective customer service support on E-Rate related issues;
- c. Calculate enrollment data to determine the applicable discount rates and, whenever possible, explore strategic alternatives to achieve a higher discount rate;
- d. Prepare FCC Forms 470 to request Category One and Category Two services and/or equipment;
- e. As requested, aggregate bids submitted by service providers in response to FCC Forms 470 and assist in bid analysis;
- f. Discuss procurement decisions relative to eligible equipment and services to ensure compliance with both E-Rate Program rules and the relevant provisions of the New Jersey Public School Contracts Law (Title 18A-18A-1 et seq.);
- g. Leverage knowledge of telecommunications market to evaluate bids and offer recommendations to ensure members receive optimal service at a fair and reasonable market rate;

- h. Manage preparation and submission of FCC Forms 471 and supporting documentation;
- i. When necessary, manage processes and procedures attendant to reviews by USAC Program Integrity Assurance and, in concert with district staff, formulate timely and accurate responses;
- j. Analyze Funding Commitment Decision Letters (“FCDLs”) to ensure all discounts due under E-Rate Program rules are received;
- k. Prepare and manage the submission of FCC Forms 486 and other post-commitment forms, which, depending on the circumstances, may include FCC Forms 472, 473, and/or 500;
- l. Document retention relative to funding years covered by the Parties’ agreement;
- m. Manage any appeals stemming from funding request denials;

The performance of any services beyond those set forth above shall be compensable at an agreed-upon hourly rate set by the Parties.

2. **DESIGNATION OF REPRESENTATIVE.** The Client agrees to designate to ERC, in writing within 14 days from the date hereof, an appropriate representative invested with the authority to execute all required documents and applications on behalf of the Client and who will be authorized to respond to inquiries raised by ERC and/or the Schools and Libraries Division of the Universal Service Administration. This shall include designating ERC as the Client’s E-Rate consultant in USAC’s E-Rate Productivity Center with full permissions to carry out all tasks specified in Section 1 of this Agreement.

3. **TERM OF AGREEMENT.** The term of the within Agreement shall begin on the date of execution of this Agreement and shall expire at midnight on June 30, 2020. The Client agrees that ERC’s consulting services shall be utilized exclusively in connection with all E-Rate funding applications filed during that time. All fees earned by ERC, or paid to ERC, in

connection with services provided, up to and including the date said termination becomes effective, shall remain due and owing. The parties acknowledge that any fees to be paid pursuant to Section 5 of this Agreement shall remain due and payable in the event funding is disbursed by USAC subsequent to expiration of this Agreement.

Upon the expiration of the original term, this Agreement may be extended at the Client's option for one additional term of two funding years by notifying ERC in writing of its intent to do so.

4. **ASSIGNMENT.** ERC may assign this Agreement to a successor corporation or other successor entity, or to an entity with whom it may merge or become affiliated, after written notice to the Client. All rights and obligations of ERC pursuant to this Agreement shall remain in full force and effect in the event of said assignment.

5. **FEES.** In consideration of the services to be provided by ERC pursuant to the terms of the within Agreement, the Client agrees to pay the following fees to ERC for the term specified in Section 3 of this Agreement:

**A. Category One Filing Fee.** For Category One funding applications, ERC's fee is typically based on the number of eligible school buildings within the District as follows: \$1,000 for the first eligible school building in the district; \$500 for each additional eligible school building up to eight total; and then \$250 for each additional eligible school building.

However, in light of the District's recent Category One funding applications, ERC will modify its typical Category One fee structure. Accordingly, the Client shall pay ERC an annual one-time flat fee of **Four Thousand Dollars (\$4,000.00)** to manage the process relative to eligible Category One services and equipment.

**B. Category Two Funding Applications & WAN Modulating Electronics.** For funding applications consisting of Category Two equipment/services or modulating electronics for wide area networks, the Client shall pay ERC a fee of three percent (3%) of the Category Two funding commitments received by the District from USAC, regardless of whether the discounts are disbursed by the Billed Entity Applicant Reimbursement (BEAR) Method or the Service Provider Invoicing (SPI) Method.

There shall be a minimum service fee of \$1,000 for the first eligible school building in the district and \$250 for each additional eligible school building within the District. In the event the Client adds or eliminates eligible school buildings at any point during the term of this Agreement, this minimum fee will be adjusted accordingly and confirmed in writing. *Note that ERC shall deduct the minimum service fee from the 3% figure only in circumstances where the percentage-based fee exceeds the filing fee. The Client shall then be responsible to pay ERC only the difference between the percentage-based fee and the initial Category Two filing fee.*

A comprehensive list of eligible school buildings is annexed to this Agreement as Exhibit A. In accordance with the above fee structure, and pursuant to the total number of eligible buildings in the District, the Client shall pay ERC a minimum annual Category Two Fee of **Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00)**, which is calculated as follows:

- \$1000 for the first entity
- \$2750 for the next 11 entities = (\$250 x 11)

Based on these figures, the Client shall pay no additional fees on the first \$125,000.00 in Category Two commitments. In the event the Client's Category Two funding commitments exceed \$125,000.00, then ERC shall apply the 3% fee to the additional committed amount.

**Note:** There are no additional fees for travel, calls or meetings with service providers, or appeals stemming from work performed by ERC. ERC's fees as set forth herein shall not be added into any cost item which may be part of a funding application, as said fees are separate and apart from any cost item connected with the E-Rate program.

**C. Services for Prior Funding Years.** For any work performed by ERC in connection with prior Funding Years, the Client shall compensate ERC in the amount of **One Hundred and Fifty Dollars (\$150.00) per hour.** For purposes of this Agreement, a "Prior Funding Year" is defined as an E-rate funding application cycle during which ERC did not file the District's FCC Form 470 and FCC Form 471. Fees incurred by the Client under this Section shall not be subject to the annual cap on compensation set forth in Section 5(C).

**D. Self-Provisioned or Dark Fiber Network.** ERC shall charge a minimum fee of **Five Thousand Dollars (\$5,000.00)** to administer a funding request for a self-provisioned or dark fiber network. This fee may increase based on the scope and complexity of the project. Any such fee increase will require the member's written approval.

**E. Consulting & Process Management Fees Not Eligible for E-Rate Discounts.** ERC's fees as set forth herein shall not be added into any cost item which may be part of a funding application, as said fees are separate and distinct from any cost item connected with the E-Rate program and are not eligible services.

6. **REPRESENTATIONS.** The Client acknowledges for itself and its servants, agents and employees, that all information provided by it to ERC shall be fully relied upon by ERC in providing its consulting services. Therefore, all information provided by the Client shall be true and accurate to the best of the Client's belief. The Client understands that any misstatements of fact or law, or a lack of candor by the Client or its servants, agents, representatives and/or employees shall constitute a breach of this Agreement and may be grounds for immediate termination by ERC. Furthermore, the Client hereby acknowledges that any factual or legal misstatements or a lack of candor by the Client or its servants, agents, representatives and/or employees shall not be imputed to ERC in performance of its obligations as set forth under this Agreement.

7. **UNCERTAINTY OF FUNDING.** The parties acknowledge that funding determination and decisions are made by entities over which the parties hereto have no control. Thus, the Client acknowledges that despite the retention of ERC to provide E-Rate consulting services, applications for E-Rate funding may be denied in whole or in part. The Client acknowledges that ERC has not made any representations, which may be construed to be a guarantee of any funding. Therefore, the Client hereby waives any and all claims against ERC for payment of anticipated funding, which has been denied in whole or in part and acknowledges that any minimum payments due to ERC pursuant to paragraph 5 herein shall be due and owing without regard to whether funding is received by the Client.

8. **CONDUCT, INDEPENDENT STATUS, AND BENEFITS.** ERC shall provide competent, professional services in the required disciplines, using its own appropriate independent skill and judgment, and the manner and means that appear best suitable to it to

perform the work, and the Client shall have no right or responsibility hereunder to set ERC's hours or location of work. ERC is a valid corporation existing under the laws of the State of New Jersey, doing business with the corporate name E-Rate Consulting, Inc., and certifies its federal employer identification number (EIN) is 22-3745829.

The parties to this Agreement agree that the relationship created by this Agreement is that of client-independent contractor. ERC agrees that its personnel are not employees of the Client and are not entitled to (and also hereby waive) any benefits provided or rights guaranteed by the Client, or by operation of the law, to their respective employees, including but not limited to group insurance, liability insurance, disability insurance, paid vacations, sick leave or other leave, retirement plans, health plans, premium "overtime" pay, and the like. It is understood and agreed the since ERC is an independent contractor, the Client will make no deductions from fees paid to ERC for any federal or state taxes or FICA, and the Client has no obligation to provide Worker's Compensation coverage for ERC. In the event of any claims brought or threatened by any party against ERC or the Client relating to the status, acts or omissions of either party or its personnel, the parties hereto agree to cooperate in all reasonable respects, including supporting the assertions of employment status made in the Agreement.

9. **SERVICES TO OR BY OTHERS.** It is understood and agreed that this is not an exclusive agreement as to ERC and that ERC may provide similar services for others. However, it is understood and agreed that the Client shall consult with ERC and utilize its services exclusively as to all applications for E-Rate funding filed by or on behalf of the Client during the term of this Agreement.

If, without good cause, the Client retains an alternative E-Rate consultant during the term of this Agreement to perform any of the services due by ERC, it shall owe liquidated damages equivalent to the Category One flat fee and Category Two minimum service fee set forth in Section 5.

10. **CONFIDENTIALITY.** The Client agrees that, neither it nor its servants, agents or employees will disclose to any third party, without the prior written consent of ERC, any information relating to the business of ERC if such information could reasonably be construed as confidential or proprietary and was obtained in the course of ERC's provision of services to the Client.

11. **INDEMNIFICATION.** The Client shall indemnify and hold harmless ERC, its officers, directors, agents, owners and employees, for any claims brought or liabilities imposed against ERC by any other party (including private parties, governmental entities and courts) arising out of this contract, based upon any intentional or negligent action or inaction by the Client, its agents, employees or authorized representatives, as well as such claims based upon the condition of Client's property; ERC shall likewise indemnify and hold harmless the Client, its officers, directors, agents and employees, for any claims brought or liabilities imposed against the Client by any other party (including private parties, governmental entities and courts) arising out of this contract, based upon any intentional or negligent action or inaction by ERC, its agents, employees or authorized representatives.

12. **MISCELLANEOUS.** Each provision of the Agreement shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, it shall not affect any other provision



of the Agreement which can be given effect without the conflicting provision or clause. To the extent there may be any conflict between the terms of this Agreement and of any purchase order issued by the Client, this Agreement shall take precedence. The Client represents that it was afforded the opportunity to ask questions and to seek the assistance of legal counsel regarding these terms, and is not relying upon and advise from ERC in this regard.

13. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New Jersey, except for its choice of law principles, regardless of where ERC's work is performed, and any litigation shall be brought in the state or federal courts of the State of New Jersey. Client agrees to the exercise of personal jurisdiction over it by such courts to the full extent permitted by law.

**E-RATE CONSULTING, INC.**

**BRICK TOWNSHIP SCHOOL DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Vincent LaForgia

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix A

1. Drum Point Road Elementary
2. Emma Havens Young Elementary
3. Osbornville Elementary
4. Veterans Memorial Elementary
5. Hebertsville Elementary
6. Midstreams Elementary
7. Wolf Elementary
8. Lanes Mill Road Elementary
9. Lake Riviera Middle School
10. Veterans Memorial Middle School
11. Brick Township High School
12. Brick Memorial High School