

AGREEMENT TO PROVIDE LEGAL SERVICES

THIS AGREEMENT, made and entered into this 11th of October, 2018, by and between the **Brick Township Board of Education**, whose address is 101 Hendrickson Avenue Brick, New Jersey 08724 (referred to as the "Board") and **WEINER LAW GROUP, LLP**, Attorneys at Law (the "Contractor") 629 Parsippany Road, P.O. Box 438, Parsippany, New Jersey 07054.

WITNESSETH:

WHEREAS, the Board wishes to engage the professional services of the Contractor to perform certain legal services for the Board as to the litigation against the State of New Jersey, Department of Education and the Commissioner of Education challenging the unequal and disparate treatment resulting from the actual distribution of available State Aid and its impact upon its local taxpayers; and

WHEREAS, the Public Schools Contract Law, N.J.S.A. 18A:18A-5(a)(1) does not require professional service contracts to be advertised for bid; and

WHEREAS, the Board and the Contractor do hereby wish to enter into this Agreement for professional services (the "Contract"); and

WHEREAS, the Board wishes to join other districts similarly situated to challenge the Department of Education and/or Commissioner of Education with respect to State Aid;

NOW THEREFORE, the Board and the Contractor mutually agree as follows:

1. **APPOINTMENT**. The Board hereby retains the Contractor for the Contract Period and the Contractor hereby accepts such appointment.

2. **SCOPE OF PROFESSIONAL SERVICES**. The Contractor or a representative of Contractor shall do, perform, and carry out all necessary professional services in a satisfactory and proper manner, as determined by the Board, relative to the following tasks:

a. Represent the Board in all components of the litigation against the State of New Jersey, Department of Education and the Commissioner of Education (and such other parties as may be appropriate) challenging the unequal and disparate treatment resulting from the actual distribution of available State Aid and its impact upon its local taxpayers, and any other assigned matters (the "Petition").

b. The Board will fully cooperate with Contractor in connection with the provision of legal services including the provision of all information relevant to the Petition.

c. Attend any and all meetings when requested and as appropriate;

The Contractor shall act on behalf of the Board in a professional, conscientious, and diligent manner at all times to achieve solutions that are reasonable and just for the Board. However, Contractor does not guarantee or predict the final outcome of any matters.

3. PAYMENT. The Board agrees to pay the Contractor the following:

a. Compensation and Hourly Fee: Contractor shall be paid at the rate of \$200.00 per hour (hourly billing rate will be calculated in six (6) minute increments) for all hours in connection with the litigation, to be divided evenly among all of the participating Districts to the action(s) being brought against the State of New Jersey, Department of Education and the Commissioner of Education (and such other parties as may be appropriate). If billing is made to the Board and more Districts subsequently join the action(s) then billing to those Districts will result in credit(s) to the Board for amounts that are then shared by the newly participating Districts. The foregoing notwithstanding, in the event the Board initiates a communication and/or request with the Contractor, such time and work will be billed to the Board at a rate of \$145.00 per hour (hourly billing rate will be calculated in six (6) minute increments).

b. Monthly Invoices: The Contractor shall submit monthly bills detailing the work performed, by whom performed and the time expended, and the hourly rate applicable. The Board agrees to pay monthly bills submitted by the Contractor for professional services within forty-five (45) days of their receipt of same, subject to the Board's right to withhold payment for any bill in dispute until such disputes are resolved to the mutual satisfaction of the parties. The Board will notify the Contractor within forty-five (45) days of any disputed billing entries.

c. All hourly rates provided are inclusive of reimbursable expenditures and out of pocket costs excluding filing fees that are a direct cost to the Board or are to be shared equally among all of the Districts that are a party to the action(s) with credits to be provided to the Board as outlined in paragraph 3.a. for Districts that join the action(s) subsequent to any filing fee(s) being paid by the Board that are to be shared by all participating Districts.

4. TERMINATION. The Board may terminate this Contract for any reason, or for no reason, at any time by adoption of a Resolution to such effect. Should this Contract be so terminated, the Contractor shall be entitled to compensation for services rendered prior to the date of termination including any balance due for hourly fees incurred prior to termination.

5. BINDING OF PARTIES: The Board and the Contractor agree to be bound and do hereby bind themselves as far as duties required of the Contractor and payment therefore by the Board. The Board represents that its agents, officers, and employees will fully cooperate with Contractor in all matters in order to effectuate the terms and obligations under this Contract.

6. NO EMPLOYER-EMPLOYEE RELATIONSHIP. Notwithstanding anything to the contrary herein, the Board and the Contractor agree that this Contract shall not be

deemed to create an employer-employee relationship between the Board and the Contractor, and that no rights and privileges of a Board's employees shall inure to the Contractor hereby.

7. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE.

During the performance of this Contract, the Contractor agrees to comply with the requirements of N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27, as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex.

c. The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

e. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

f. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis

of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

h. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

i. The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:
Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance).

j. The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27**.

8. GOVERNING LAW. This Contract shall be deemed to be a Contract under the laws of the State of New Jersey and for all purposes, including interpretation hereof and performance hereunder, shall be governed in accordance with the laws of the State of New Jersey. In the event of litigation, the Parties agree that venue shall be Ocean County.

9. INDEPENDENT CONTRACTOR. Contractor is and will perform its Services as an independent contractor for the Board. Nothing in this Agreement shall be construed so as to render Contractor an employee, agent, representative, joint venturer or partner of the Board, and Contractor shall not hold itself out to others in such capacity. Contractor shall not enter into any contracts, agreements or other obligations with any other parties which bind, or are intended to bind, the Board. Contractor shall have no authority to bind the Board to contracts or to incur any other obligations on behalf

of the Board, and any such contracts or obligations entered into or incurred by Contractor shall be void.

Contractor agrees to defend and indemnify and hold harmless the Board, its affiliates, officers, agents, servants and employees from and against any and all claims and liabilities (including reasonable attorney's fees and expenses, including expert fees, incurred in the defense thereof) relating to any claim arising out of the acts or omissions, including negligence or malpractice, of Contractor, or of any of its officers, directors, employees, agents, servants or independent contractors in connections with their responsibilities under this Agreement. Contractor's liability under this agreement shall continue after the termination of this Agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. CONFIDENTIALITY. During the course of the business relationship, each party may be given access to proprietary or confidential information of the other, including, but not limited to, pricing policies, the identity and social security numbers of employees, and business policies and systems ("Confidential Information"). Each party shall hold Confidential Information of the other party in confidence, treating such Confidential Information with no less care than it treats its own, and shall not disclose such Confidential Information to any third party or use such Confidential Information for any purpose other than as contemplated by this Agreement. Upon termination of this Agreement, or sooner if requested by either party, each party shall return all Confidential Information of the other party in its possession, without retaining copies of such Confidential Information. This section shall not apply to information (i) that is in the public domain, or (ii) required to be disclosed by law or legal process. Each party agrees to immediately return to the other party or destroy all Confidential Information of the other party in its possession, custody or control in whatever form held (including all copies of all written documents relating to that) upon termination of the Agreement or at any time, or from time to time, upon the request of the other party.

11. ASSIGNMENT OF RIGHTS. Except as specified in this Agreement, the rights and obligations of each party under this Agreement are exclusive to that party and cannot be assigned or transferred to any other person, firm, organization, corporation or other entity without the prior written consent of the other party.

12. NOTICES. All notices, requests, demands and other communications hereunder shall be written, and shall be deemed to have been duly given if delivered or mailed, by certified mail, return receipts requested, to the parties hereto at the addresses stated on the first page of this contract.

13. COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. BENEFIT. This Agreement shall be binding upon, and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

15. STRICT PERFORMANCE. Failure of either party to insist upon the strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default or breach of the same or similar nature.

16. SURVIVAL. The rights and obligation of each and every paragraph of this Agreement shall survive the expiration or the sooner termination of this Agreement.

17. INSURANCE. Throughout the term of this Agreement, Contractor agrees to provide and maintain General Liability insurance coverage in the amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate, per year, and Licensed Professional Liability insurance coverage in the amount of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate, per year. Contractor shall provide the Board with evidence of such coverage upon request. Said insurance shall name the Board as an additional insured.

18. ENTIRE AGREEMENT. This Contract full and completely expresses the parties' understandings and agreements, supersedes any understandings or agreements previously made between the parties. Moreover, this Contract may not be changed or orally terminated by either party. It may be amended only by a written agreement, executed by both parties hereto.

19. DEFAULT AND CURE. The Contractor will be deemed to be in default of this Contract if the Contractor fails to fully perform all of the services set forth in paragraph 2 above. The Board shall notify the Contractor of its default, and the Contractor shall have fourteen (14) days within which to cure its default. If the Contractor fails to cure its default within fourteen (14) days, the Board shall be entitled to all damages arising out of the Contractor's default, including, but not limited to, compensatory, special, and/or actual damages.

20. SEVERABILITY AND LEGALITY. The parties understand that this Contract is governed by the Laws of the State of new Jersey. If any provision of this Contract is deemed unenforceable, illegal, or inconsistent with the then current Statutes or Rules or Regulations, such Statutes, Rules, or Regulations shall govern. However, to the extent that enforceable provisions of this Contract continue to exist and are not inconsistent with such Statutes, Rules or Regulations, they shall remain binding upon the parties.

21. MODIFICATION OR WAIVER. No modification or waiver of any of the terms of this Agreement, including this provision, shall be held valid unless in writing and signed by the party or parties sought to be charged. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

22. COMPLETE AGREEMENT. This Contract contains the entire understanding of the parties and there are no representations, covenants or promises other than those expressly set forth herein. Two originals of this Contract shall be executed by each party.

23. SECTION HEADINGS. The section headings contained in this Contract are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Contract.

NOW, THEREFORE, the parties do set forth their signatures in confirmation of the above agreements.

ATTEST:

By: _____
Board Secretary
James W. Edwards, Jr., CPA

By: _____
Board President
Stephanie Wohlrab

ATTEST:

WEINER LAW GROUP LLP

By: _____
Margo M. Cook

By: _____
Mark A. Tabakin, Esq.

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