

GENERAL ADMINISTRATION DIVISION

Report No. 4

OGDENSBURG CITY SCHOOL DISTRICT
OGDENSBURG, NEW YORK

SUBJECT: Resolution to Approve Professional Service Agreement Between the Ogdensburg City School District and Mr. Christian Ashley (Braille Translation Agreement)

DATE: February 28, 2022

REASON FOR BOARD CONSIDERATION:

The Commissioners must review and approve all contracts for the Ogdensburg City School District.

FACTS AND ANALYSIS:

Mr. Kevin K. Kendall, Superintendent of Schools, will review the Professional Service Agreement between the Ogdensburg City School District and Mr. Christian Ashley. Mr. Ashley will provide professional braille translation consultant services for students in the Ogdensburg City School District as needed per the attached Professional Service Agreement.

RECOMMENDED ACTION:

Moved by _____ and supported by _____ that, having the approval of the Superintendent of Schools, the Board of Education of the Ogdensburg City School District hereby approve and authorize the Superintendent of Schools to execute the attached Professional Service Agreement between the Ogdensburg City School District and Mr. Christian Ashley this 28th day of February 2022.

APPROVED FOR PRESENTATION TO THE BOARD:



Superintendent

KK/alf
Attachment

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE OGDENSBURG CITY SCHOOL DISTRICT
AND
CHRISTIAN ASHLEY**

This is the record of an agreement (the "Agreement") between **OGDENSBURG CITY SCHOOL DISTRICT** (the "DISTRICT"), whose administrative offices are located at 1100 State Street, Ogdensburg, New York 13669, and **CHRISTIAN ASHLEY** ("CONSULTANT"), whose business address is 532 Henry Street, Prescott Ontario KOE ITO. The DISTRICT and CONSULTANT are also each referred to herein individually as a "Party" and collectively as the "Parties."

1. Purpose and General Provisions

- (a) The DISTRICT is a public school district, organized under the laws of the State of New York, that desires to retain CONSULTANT to perform one or more of the services (hereinafter collectively referred to as "Services") listed in **Addendum "A"**.
- (b) CONSULTANT affirmatively states that it is in the business of providing Services, is duly qualified and competent to provide Services to public school districts in the State of New York, including the DISTRICT, and desires to provide Services to the DISTRICT under the terms and conditions of this Agreement.
- (c) CONSULTANT affirmatively states that it has no conflict of interest and no other relationship with the DISTRICT that would directly or indirectly impair or otherwise restrict its ability to provide Services under this Agreement.

2. Additional Obligations of CONSULTANT

- (a) CONSULTANT agrees that Services provided under this Agreement will be in compliance with all applicable federal, state, and local laws, rules, regulations and ordinances, and in accordance with currently approved methods and practices of the applicable profession insofar as such methods and practices are not inconsistent with applicable laws and/or the requirements of the New York State Education Department ("NYSED").
- (b) CONSULTANT specifically warrants and represents that it shall provide Services under this Agreement to all eligible persons, regardless of age, race, color, creed, national origin, sex, disability, or any other classification and/or characteristic protected by applicable law.

3. Duty to Retain and Safeguard Confidential Records & Information

- (a) CONSULTANT acknowledges that to the extent that CONSULTANT receives, creates, keeps, holds, files, produces or reproduces student records in the course of performing Services pursuant to this Agreement, CONSULTANT does so on behalf of and for the benefit of the DISTRICT, and accordingly, that such records constitute records of the DISTRICT. CONSULTANT shall maintain such records on the

DISTRICT's behalf for no less than the minimum period of time set forth in the LGS-1 Records Retention & Disposition Schedule (<http://www.archives.nysed.gov/records/local-government-record-schedule/lgs-1-title-page>) and shall promptly provide copies of any such records to the DISTRICT's Board of Education and to the Superintendent of Schools or their respective designees, upon request. This subdivision shall survive the expiration or termination of this Agreement.

- (b) CONSULTANT shall not disclose the identity of any student or student's parent/guardian whose personally identifiable information (PII) CONSULTANT acquires while performing Services under this Agreement, without the written permission of the parent(s)/guardian(s) of the student.

4. Fees

- (a) The fee for Services shall be as set forth in **Addendum "A"** to this Agreement.
- (b) CONSULTANT shall submit to the DISTRICT monthly invoices reflecting the Services completed during the prior month. The DISTRICT shall pay CONSULTANT, based upon the invoice submitted, within 30 days of the receipt of such invoice, unless the DISTRICT disputes the invoice, in whole or in part, in which case the DISTRICT shall promptly notify CONSULTANT of the dispute.
- (c) CONSULTANT agrees that the fees set forth in this Agreement are the exclusive fees for all Services. CONSULTANT further agrees that it shall not solicit or accept from any student, any student's family member, or any other entity, additional compensation or gratuity of any kind for Services rendered under this Agreement.

5. Independent Contractor Status

- (a) The relationship of CONSULTANT to the DISTRICT is that of independent contractor. Any and all Services performed by the CONSULTANT and its officers, employees, agents representative and/or subcontractors under this Agreement shall be performed in such capacity. The DISTRICT will issue an IRS Form 1099 to CONSULTANT for amounts paid, and CONSULTANT will be responsible for paying taxes owed. Neither CONSULTANT nor its officers, employees, agents, representatives and/or subcontractors shall hold itself/themselves out as, or claim to be, officers or employees of the DISTRICT, or make any claim, demand, or application to, or for, any right or privilege applicable to an officer or employee of the DISTRICT, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, social security coverage, disability benefits, or retirement membership or credit. CONSULTANT shall not have, or hold itself out as having, the authority or power to bind or create liability for the DISTRICT by its acts or omissions.
- (b) It is agreed by CONSULTANT and the DISTRICT that neither federal, state or local income taxes nor payroll taxes of any kind, including, but not limited to F.I.C.A. or F.U.T.A., will be withheld or paid by the DISTRICT on behalf of any of the CONSULTANT's officers, employees, agents, representatives and/or subcontractors.

Said payments are to be made by CONSULTANT in compliance with all federal, state, and local laws, rules or regulations. CONSULTANT agrees to pay all applicable taxes, including income taxes, workers' compensation insurance, unemployment insurance payment, disability insurance payment, and/or any other payments that may be required under the laws, rules, or regulations of any government agency having jurisdiction over it or its relationship with the DISTRICT. CONSULTANT further agrees to indemnify and hold the DISTRICT harmless against any claim, cost, penalty, damage, or expense (including reasonable attorneys' fees) related to CONSULTANT's nonpayment and/or underpayment of any such taxes or payments.

- (c) Subsection 5 (a) and (b) shall survive the expiration or termination of this Agreement.
- (d) The DISTRICT acknowledges that it shall have no ability to control the manner, means, details or methods by which CONSULTANT or its officers, employees, agents, representatives and/or subcontractors perform Services under this Agreement, except as provided herein, and as required by federal, state, or local laws, rules, and regulations.
- (e) Nothing in this Agreement shall restrict CONSULTANT from providing Services or otherwise engaging in business with any other person and/or entity. Furthermore, CONSULTANT affirmatively states that it is in the business of providing Services and provides Services to other entities.

6. Defense and Indemnification

CONSULTANT shall defend with competent counsel, indemnify, and hold harmless the DISTRICT, including the DISTRICT's trustees, directors, officers, employees, representatives, and agents, with respect to all claims, liabilities, injuries, losses, expenses (including reasonable attorneys' fees and litigation costs), and/or damages, as a result of, or arising from or in connection with CONSULTANT's performance and/or non-performance under this Agreement. This subdivision shall survive the expiration or termination this Agreement.

7. Term and Termination

- (a) This Agreement shall become effective and be deemed to have been in effect on February 8, 2022 upon being approved by the DISTRICT's Board of Education and being signed by the duly authorized representatives of the DISTRICT and CONSULTANT, and shall remain in effect until June 30, 2022 unless it is terminated as provided below.
- (b) This Agreement may be terminated as follows:
 - (i) By the mutual written agreement of the Parties at any time;
 - (ii) Without cause and for any reason, upon thirty (30) days written notice to the other Party; or

- (iii) For "cause" at any time immediately upon written notice to the other Party. For purposes of this Agreement, "cause" shall be defined as a material breach of a substantive provision of this Agreement. CONSULTANT's failure to comply with any term or condition of this Agreement will be deemed a material breach.
- (c) In the event the CONSULTANT or DISTRICT terminates this Agreement as set forth herein, CONSULTANT shall not be liable to the DISTRICT for further Services, and the DISTRICT shall only be liable to CONSULTANT for those amounts invoiced for Services already performed by CONSULTANT.

8. Notices

All notices and communications under this Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, or certified mail, return receipt requested. Overnight delivery and mailed notices and communications shall be sent to the other Party at its respective address as set forth above, or at such other addresses as the Parties may designate by notice from time to time.

9. Assignment

Due to the specialized Services being provided as set forth herein, this Agreement and the respective duties and obligations hereunder may not be assigned, delegated, subcontracted, or transferred without the prior written consent of the other Party.

10. Entire Agreement; Amendment

This Agreement represents the entire understanding of the Parties with respect to its subject matter, and it supersedes all prior agreements, understandings, or representations, whether oral or written, by either Party. This Agreement may only be amended by a further written document signed by the Parties and ratified by the Board of Education.

11. Severability

Should any provision of this Agreement be finally determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential purpose of this Agreement, in which case the Agreement shall be terminated.

12. Waiver

The failure of any Party to insist on the strict performance of any provision of this Agreement or to exercise any right under this Agreement shall not constitute a waiver of such provision or right. A waiver is effective only if in writing and signed and delivered by the waiving Party.

13. Governing Law/Venue

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York, without regard to its choice of law principles. In the event of any controversy between the Parties relating to this Agreement, the controversy shall be resolved in a court of appropriate subject matter jurisdiction located in Dutchess County, New York, unless the Parties shall otherwise agree in writing. The Parties consent to the personal jurisdiction of such court over them.

14. Construction

The language of all parts of this Agreement shall be construed as a whole, accordingly to its fair meaning, and not strictly for or against either Party, regardless of who drafted it.

15. Counterparts.

This Agreement may be signed in counterparts, which shall together constitute the original Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto execute this Agreement as follows:

Dated: 02/28/2022

**OGDENSBURG CITY SCHOOL
DISTRICT**

By: _____
Mr. Kevin K. Kendall
Superintendent

Dated: _____

CONSULTANT

By: _____
Name: Christian Ashley

Addendum "A"

Braille Translation Services

The services provided pursuant to this Agreement shall be performed in accordance with the standard of skill, ethics and practice required of persons providing such services in the State of New York and the Consultant will, at all times, comply with all laws and regulations governing the provision of such services.

The Consultant shall be compensated for the services described herein at the rate of **\$4.00 per Braille page for pages without graphics and \$4.50 per Braille page for pages that include simple math tactile graphics**. No other costs, including but not limited to postage, administrative overhead costs, or mileage, will be paid by the District.