



AIMS Board of Directors Meeting Item Cover Letter

Item:

Presented By:

Staff Recommendation:

Committee Approval:

Total Associated Cost:

Included in Budget?

Funding Source:

Over/Under Budget?

Amount Over/Under Budget?

Included in LCAP?

Which LCAP?

DAVIS & ASSOCIATES COMMUNICATIONS, INC

PROFESSIONAL SERVICES AGREEMENT

CONTRACT EXTENSION TO JUNE 30, 2022

This Professional Services Contract Extension (the "Agreement") is made and entered into as of October 1, 2021, by and between **AMERICAN INDIAN MODEL SCHOOLS and affiliate organizations ("Client")** and **D&A COMMUNICATIONS, ("Contractor" or "D&A")**.

Whereas the Contractor seeks to provide certain professional services and the Client wishes to retain the Contractor to perform such professional services on the terms set forth.

1. Professional Services.

(a) Capacity. The Client hereby retains the firm as a Contractor of the Client on a non-exclusive basis with respect to the business of the Client (the "Business") during the Term, and the Contractor hereby accepts such position, all effective as of the date of this Agreement and upon the terms and subject to the conditions set forth herein.

(b) Duties. During the Term, the Contractor shall perform such marketing and communications professional services as may be reasonably specified from time to time by the Client, subject to the requirement that the Contractor shall comply at all times with all applicable laws. The Professional Services may include, without limitation, as fully described in the attached Exhibit A. In connection with the rendering of these services, the Contractor shall provide to the Client; (i) upon the Client's written request, all information, documents and other materials relating to the Professional Services; and (ii) such other oral and/or written reports regarding the services as the Client may from time to time request.

(c) Availability; Location. During the Term, the Contractor shall make themselves reasonably available to render the Professional Services on such business days and times to be requested by the Client and approved by the Contractor.

(d) Compensation; Reimbursement of Expenses. The Client shall pay in accordance to the payment terms as outlined in Exhibit A. Such monthly payments to Contractor shall be payable per month, on or about the first day of each month.

2. Confidentiality; Client Property.

(a) Confidential Information.

(i) Except for where such disclosure is necessary and authorized by Client, Contractor shall keep in strict confidence, and shall not, directly or indirectly, at any time during or after the Term, disclose, furnish, disseminate, make available or, except in the course of performing his duties hereunder, use any trade secrets or confidential business and technical information of the Client, including, without limitation, facts as to when or how the Contractor may have acquired such information (collectively, "Confidential Information").

(ii) Upon the termination of the Agreement, or sooner if requested by the Client, the Contractor shall return to the Client, in good condition, all property of the Client, D&A-AIMS

including, without limitation, the originals and all copies of any materials which contain, reflect, summarize, describe, analyze or refer or relate to any items of information listed in this Agreement.

3. Independent Contractor Status. The Contractor's relationship to the Client during the Term is and will at all times be and remain that of an independent contractor and contractor, and not as an employee or agent. Client acknowledges that Contractor is engaged in a distinct business separate and apart from the business of Client. Client further acknowledges that Contractor and its agents possess a unique set of skills, training and experience. The Contractor does not, by virtue of this Agreement, acquire any authority, whether actual, express, implied or apparent, to bind or otherwise obligate the Client in any capacity, and the Contractor shall not make any commitments for or on behalf of the Client, or bind or purport to bind the Client, in any manner unless and only to the extent expressly authorized in writing by the Client or as described in Exhibit A. The Contractor acknowledges and agrees that he shall not be treated as an employee of the Client for purposes of federal, state, local and foreign income tax withholding, and unless otherwise specifically provided by law, for purposes of the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act or any Worker's Compensation law of any state or country and for purposes of benefits provided to employees of the Client under any employee benefit plan. The Contractor also acknowledges and agrees that he is required to pay any applicable taxes on the fees paid to him by the Client pursuant to this Agreement. The Client shall not provide worker's compensation coverage for the Contractor and it is the responsibility of the Contractor to secure any such coverage if desired or required to meet the requirements of applicable law. The Contractor further acknowledges and agrees that he shall not be entitled to participate in any plans, arrangements or distributions by the Client pertaining to any bonus, stock option, profit sharing, 401(k) plan, paid time off, flex spend, insurance or other benefits for the Client's employees.

4. Representations. The Contractor hereby represents and warrants to the Client that (i) she has the capacity and authority to enter into this Agreement, (ii) she will render the Professional Services in a workman-like manner, (iii) at all times while she is rendering any Professional Services, she will conduct herself in a professional manner and in accordance with all applicable laws, and (iv) at all times while she is rendering any Professional Services, she will not negligently or willfully act in a manner that reflects adversely upon (A) the business integrity or goodwill of the Client or (B) the image or reputation of the Client and/or any of the Client's products.

5. Term and Termination. Either party may terminate this Agreement at any time and without cause or reason upon thirty (30) days written notice to the other. Either party may terminate this Agreement immediately for cause by providing written notice to the other party. The period from the effective date of the Agreement until it is terminated, is sometimes referred to herein as the "Term." If the effective date of the Agreement occurs other than on the first day of the applicable calendar month, or if the termination of the Agreement occurs other than on the last day of the applicable calendar month, then the fee payable to Contractor pursuant to Section 1(d), above for such month(s) shall be pro-rated accordingly.

6. Assignment. This Agreement shall inure to the benefit of, and shall be binding upon, the Client and its successors and assigns.

7. Indemnification. The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Contractor's negligent performance of professional services under this Agreement and that of its subContractors or anyone for whom the Contractor is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Contractor, its officers, directors, employees and subContractors (collectively, Contractor) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or Contractors or anyone for whom the Client is legally liable.

8. Intellectual Property.

- A. Pre-Existing. Each Party retains all rights of any nature in intellectual property, including without limitation, any patent, inventions, industrial design, trademark, copyright, proprietary information, design, process, method, technique, procedure, manuals and know-how (collectively, "Intellectual Property") that the Party or its subsidiaries or affiliates owned before the Commencement Date ("Pre-Existing Intellectual Property. Each Party understands and agrees that no title to or ownership of a Party's Pre-Existing Intellectual Property, or any part thereof, is transferred to the other Party as a result of this agreement.
- B. Newly Created. To the fullest extent possible, each Party will retain ownership rights in any Intellectual Property newly created, conceived or developed by that Party in connection with the Project ("Newly Created Intellectual Property"), and grants to the other Party a fully paid up, worldwide, non-exclusive, non-sublicensable license to use that Party's Newly Created Intellectual Property in connection with the Project. In the event that (1) one Party modifies or creates derivative works from the other Party's Intellectual Property such that it is difficult to identify separately the Newly Created Intellectual Property from the other Party's Pre-Existing Intellectual Property, or (2) the Parties jointly create or conceive of the Newly Created Intellectual Property in connection with the Project, the Parties agree that they will establish, in a writing signed by both Parties, the terms and conditions of ownership and use of the Newly Created Intellectual Property before either Party may publish, distribute, make publicly available, license to third parties, or otherwise use the Newly Created Intellectual Property.
- C. New Trademarks and Website Domains. ~~Each Party~~ Contractor agrees that it shall not do any of the following in connection with the Project unless ~~the other Party~~ AIMS gives its prior written consent: (1) use, register or attempt to register any trademark or service mark, (2) register or attempt to register a website domain name, or (3) host, operate or maintain a website (or cause or permit another party to do so).
- D. Third-Party Services. ~~Each Party~~ contractor agrees that prior to entering into an agreement with a third party for the performance of any services in connection with the Project, the ~~Party~~ contractor will consult with ~~the other Party~~ AIMS regarding

ownership and/or license rights in any Intellectual Property to be developed, created or generated by the third party in connection with the Project.

- E. Acknowledgments. Subject to the terms, conditions and limitations on use of Intellectual Property contained herein, each Party agrees that the other Party's contributions to the Project will be appropriately credited in any written publications or public disclosures relating to the Project.

9. Modifications. No change, amendment or modification of this Agreement shall be valid unless it is in writing specifically referencing this Agreement and signed by all the parties hereto. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced. The failure of any party at any time to insist upon strict performance of any condition, promise, agreement or understanding set forth herein shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same or any other condition, promise, agreement or understanding at a future time.

10. Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to affect the intent of the parties hereto. The parties hereto shall use their reasonable best efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

11. Governing Law. This Agreement is governed by and construed and enforced in accordance with the laws of the State of California, without regard to principles of conflicts of law.

12. Descriptive Headings. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

13. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered in person or when dispatched by electronic facsimile transfer (if confirmed in writing by mail simultaneously dispatched), one business day after having been dispatched by a nationally recognized overnight courier service or three business days after having been deposited, postage prepaid, certified or registered mail, return receipt requested, in the United States Mail to the appropriate party at the address or facsimile number specified below:

(i) If to the Client: **American Indian Model Schools**
171 12th Street
Oakland, CA 94607

(ii) If to the Contractor: **D&A Communications**

**3719 Brunell Drive
Oakland, CA 94602**

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14. Construction. Where the context so indicates, the masculine shall include feminine and neuter, the singular shall include the plural and the plural shall include the singular. When a reference is made in this Agreement to a Section, such reference is to a Section of this Agreement unless otherwise indicated. The parties hereto have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, hereby waive, with respect to this Agreement, the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

15. Further Assurances. Each party hereto shall cooperate and take such action as may be reasonably requested by another party hereto in order to carry out the provisions and purposes of this Agreement and the transactions contemplated by this Agreement.

16. Entire Agreement. This Agreement contains all of the promises, agreements, conditions, understandings, warranties and representations between the parties hereto with respect to the subject matter hereof. This Agreement is intended by the parties hereto to be an integration of any and all prior agreements or understandings (other than those identified above), oral or written, with respect to the subject matter hereof.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement as of the date and year first above written.

CLIENT: CONTRACTOR: **AMERICAN INDIAN MODEL SCHOOLS D&A**

Communications, Inc.

By: _____ By: _____ Maya Woods-Cadiz,

Superintendent Darolyn Davis, President & CEO

PROFESSIONAL SERVICES CONTRACT EXTENSION

Term: October 1, 2021 – June 30, 2022 (9 months)

Contract will be revisited towards the goal of potential renewal or extension for the 2022-2023 school year in April of 2021.

Fee Schedule: \$10,000/month

The total not-to-exceed contract amount is \$90,0000.

Services: Strategic marketing and communications services to support the goals of the Client, specifically:

A. Reputation Management and Crisis Communication

Contractor will broaden access to media that highlights the positive news of AIMS, and send out a correct and positive narrative about the work being done at AIMS. Contractor will assist AIMS in managing communication during crisis situations. Contractor will meet with the board to design and implement their communication tool. Contract will meet with the CEO/Superintendent to design and implement her communication tool. Contractor act as agent for AIMS leaders, particularly the CEO/Superintendent and Board President to access speaking opportunities that highlight the work they are doing at AIMS.

B. Community Relations

Contractor will develop civic engagement strategies that maximize AIMS' presence in the Oakland/Alameda County/California community. They will develop a public engagement strategy that includes participation in chambers of commerce and business groups to maximize the civic and community presence of AIMS' Board President, CEO/Superintendent, board members, site leadership and students.

C. Corporate Relationships

Contractor will assist AIMS to engage in activities that support a funding/contributions goal and engage with non-profit corporate entities that support education with donations, grants and other resources.

D. Government Affairs

Contractor will development of a strategy to build cooperative relationships with government and education regarding AIMS' success with all students, including our success with Black and Brown children.

E. Media Relations

- Contractor will develop a strategy that maximizes the usage of all media including social media, AIMS website, print and television to publicize AIMS educational accomplishments and student successes. This will include branded collateral that chronicles the story of AIMS for the media, funders, and other members of the community. build Mailing List of Important External Partners

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F. Other Services

- Contractor will update AIMS about Items of local, state, and national importance. Contractor will report out progress monthly to board of directors. Contractor will create an AIMS quarterly report and annual report. Contractor will meet weekly with Marketing and Communication Coordinator and CEO/Superintendent. Contractor will create data-based marketing toolkits. Contractor will hold executive communication trainings. Contractor will hold board communication trainings. Contractor will assist with the expansion of the We Are Oakland Too! and #RENEWAIMSTRONG campaigns. Contractor will assist with the creation of the AIMS political strategy and engagements. Contractor will assist with internal marketing and communication during Marketing and Communication Coordinators leave.

Client Initials: _____

Contractor Initials: _____

