

**BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form**

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	02/19/2021	Meeting Date:	03/01/2021
Contact Information:			
Requested by:	Rick Littleton – Director of Technology		
On Behalf of Organization or Individual:			
Telephone:	317-736-3602		
Email address:			
Mailing Address:	70 E. Monroe Street		
Describe Request:			
Renewal of Technology Consulting and Joint Purchasing Agreement with FCSC.			
List Supporting Documentation Provided:			
Agreement			
Who will present the request?			
Name:	Rick Littleton	Telephone:	317-736-3602

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

TECHNOLOGY CONSULTING AND JOINT PURCHASING AGREEMENT

This Technology Consulting Agreement (the “Agreement”) is made and entered into as of the first (1st) day of March, 2021 (the “Effective Date”) by and between the **City of Franklin, Indiana** (“CITY”) and the **Franklin Community School Corporation** (“FCSC”) (hereinafter referred to individually as a “Party” or collectively as “the Parties”).

WHEREAS, FCSC is a public education institution and, pursuant to I.C.20-26-3-3, has all powers necessary or desirable in the conduct of FCSC’s affairs, even if the power is not granted by statute or rule;

WHEREAS, CITY, by and through its Board of Public Works and, pursuant to I.C. 36-8-1-1 and 36-9-1-1 is a government organization providing services to the citizens of Franklin, Indiana;

WHEREAS, FCSC utilizes various forms of hardware and software technology in the operation of its programs and administration;

WHEREAS, CITY also utilizes various forms of hardware and software technology in providing services to the citizens of Franklin;

WHEREAS, FCSC has available expertise in the area of technology solutions;

WHEREAS, FCSC has determined that it is desirable to enter into a technology consulting and joint purchasing agreement with CITY. It is in the best interests of FCSC to maintain a positive relationship with the CITY, inasmuch as CITY provides FCSC with a school resource officer, makes and intends to make valuable improvements to FCSC’s facilities, which benefit FCSC, such as ingress and egress improvements at the Needham Elementary School. Further, it is anticipated that by entering into a joint purchasing agreement with CITY, FCSC will be able to acquire IT products in the future at a cost which would be less than the cost that FCSC would pay in the absence of a joint purchasing agreement.

WHEREAS, CITY has also determined it is in the best interests of the City to utilize the available expertise FCSC has developed and desires to engage FCSC to provide certain services in the area of FCSC’s expertise and FCSC is willing to provide such services to CITY.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Engagement and Services

(a) **Engagement.** CITY hereby engages FCSC to provide and perform the services set forth in **Exhibit A** attached hereto (the “Services”), and FCSC hereby accepts the engagement.

(b) **Standard of Services.** All Services to be provided by FCSC shall be performed with promptness and diligence in a workmanlike manner and at a level of proficiency to be expected of a consultant with the background and experience that FCSC has represented it has and that is standard and customary in the industry. CITY shall provide such access to its personnel, hardware and software as may be reasonably required in order to permit FCSC to perform the Services.

(c) **Tools, Instruments and Equipment.** FCSC shall provide FCSC’s own tools, instruments and equipment and place of performing the Services, unless otherwise agreed between the Parties. Preferably, services will be performed on-site.

(d) System Modifications. CITY agrees to notify FCSC of any significant modification, installation or service performed on the network or System by individuals not employed by FCSC in order to assist FCSC in providing an efficient network or System support response.

2. Consultancy Period

(a) Commencement. This Agreement shall commence on March 1, 2021, and shall remain in effect until March 1, 2024 or the earlier termination of this Agreement as provided in Article 2(b) (the "Consultancy Period").

(b) Termination. This Agreement may be modified by CITY or FCSC, without cause and liability, at any time by providing the modifications in writing and receiving both parties approval. This Agreement may be terminated by CITY or FCSC, without cause and without liability, by giving sixty (60) calendar days' written notice of such termination. This Agreement may be terminated by either Party by giving ten (10) calendar days' written notice of such termination to the other Party in the event of a material breach by the other Party. "Material breach" shall include: (i) any violation of the terms of Articles 1(d), 3, 4, 5, 6, 8 and 10, (ii) any other breach that a Party has failed to cure within ten (10) calendar days after receipt of written notice by the other Party, (iii) an act of gross negligence or willful misconduct of a Party, and (iv) the insolvency, liquidation or bankruptcy of a Party.

(c) Effect of Termination. Once the written termination notice is submitted, a mutual agreement release shall be signed by both parties. This mutual agreement release will outline remaining obligations and expectations as well as any refunds due. Upon the effective date of termination of this Agreement, all legal obligations, rights and duties arising out of this Agreement shall terminate except for such legal obligations, rights and duties as shall have accrued prior to the effective date of termination and except as otherwise expressly provided in this Agreement.

3. Consultancy Fee and Expenses

Consultancy Fee. In consideration of the Services to be rendered hereunder, CITY shall pay FCSC a Consultancy fee of Thirty-Five Thousand Dollars (\$35,000.00) per year, payable in equal monthly installments, with the first payment due on March 10, 2021, and on the tenth (10th) day of each month thereafter so long as this Consultancy Agreement remains in effect.

4. Work Product and License

(a) Defined. In this Agreement the term "Work Product" shall mean all work product generated by FCSC solely or jointly with others in the performance of the Services, including, but not limited to, any and all information, notes, material, records, diagrams, formulae, processes, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks and trade secrets.

(b) Ownership. FCSC agrees to assign and does hereby assign to CITY all right, title and interest in and to the Work Product. All Work Product shall be the sole and exclusive property of CITY and FCSC will not have any rights of any kind whatsoever in such Work Product. FCSC agrees, at the request and cost of CITY, to promptly sign, execute, make and do all such documents, acts and things as CITY may reasonably require or desire to perfect CITY's entire right, title, and interest in and to any Work Product. FCSC will not make any use of any of the Work Product in any manner whatsoever without CITY's prior written consent. All Work Product shall be promptly communicated to CITY.

(c) License. In the event that FCSC integrates any work that was previously created by FCSC, FCSC shall grant to, and CITY is hereby granted, a worldwide, royalty-free, perpetual, irrevocable license to exploit the incorporated items, including, but not limited to, any and all copyrights, patents, designs, trade secrets, trademarks or other intellectual property rights, in connection with the Work Product. FCSC warrants that it shall not knowingly incorporate into any Work Product any material that would infringe any intellectual property rights of any third party.

5. Confidential Information

(a) Defined. In this Agreement the term “Confidential Information” shall mean the Work Product and any and all information relating to CITY’s operations and business, including, but not limited to, personnel records, administrative records, financial records, techniques, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks, trade secrets and other similar information disclosed by CITY either directly or indirectly in writing, orally or visually, to FCSC, or which becomes available to FCSC during the course of providing the Services. Confidential Information does not include information which:

- (i) is in or comes into the public domain without breach of this Agreement by FCSC,
- (ii) was in the possession of FCSC prior to receipt from CITY and was not acquired by FCSC from CITY under an obligation of confidentiality or non-use,
- (iii) is acquired by FCSC from a third party not under an obligation of confidentiality or non-use to CITY, or
- (iv) is independently developed by FCSC without use of any Confidential Information of CITY.

(b) Obligations of Non-Disclosure and Non-Use. Unless otherwise agreed to in advance and in writing by CITY, FCSC will not, except as required by law or court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services or disclose the Confidential Information to any third party. FCSC may disclose the Confidential Information only to those of its employees who need to know such information for purposes of performing FCSC’s duties under the terms of this contract. In addition, prior to any disclosure of such Confidential Information to any such employee, such employee shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. In any event, FCSC shall be responsible for any breach of the terms and conditions of this Agreement by any of its employees. FCSC shall use the same degree of care to avoid disclosure of the Confidential Information as it employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.

(c) Return of Confidential Information. Upon the termination or expiration of this Agreement for any reason, or upon CITY’s earlier request, FCSC will deliver to CITY all of CITY’s property or Confidential Information in tangible form that FCSC may have in its possession or control.

6. Insurance

FCSC shall maintain at its sole expense liability insurance covering the performance of the Services by FCSC. Such insurance coverage shall have limits and terms reasonably satisfactory to CITY, and CITY may require FCSC to provide to CITY a certificate of insurance evidencing such coverage. FCSC shall provide proof of worker’s compensation insurance to CITY upon request.

7. Independent Contractor

FCSC agrees that all Services will be rendered by it as an independent contractor and that this Agreement does not create an employer-employee relationship between FCSC and CITY. FCSC shall have no right to receive any employee benefits provided by CITY to its employees. FCSC agrees to pay all taxes due in respect of the Consultancy Fee and to defend, indemnify and hold harmless CITY in respect of any obligation that may be imposed on CITY to pay any such taxes or resulting from FCSC's being determined not to be an independent contractor. This Agreement does not authorize FCSC to act for CITY as its agent or to make commitments on behalf of CITY.

8. Collective Purchasing

The Parties are both public entities supported by tax dollars and, as such, are subject to certain purchasing requirements as established by law. In a good faith effort to protect the best interests of both entities, the Parties agree to consult with one another, and when appropriate, enter into agreements to cooperatively purchase goods and supplies as permitted by the special purchasing provisions of I.C. 5-22-1 et. seq.

9. Assignment

The Services to be performed by FCSC hereunder are personal in nature, and CITY has engaged FCSC as a result of FCSC's expertise relating to such Services. FCSC, therefore, agrees that it will not assign, sell, transfer, delegate or otherwise dispose of this Agreement or any right, duty or obligation under this Agreement without CITY's prior written consent.

10. Injunctive Relief

FCSC acknowledges that a violation of Article 5 or 6 would cause immediate and irreparable harm to CITY for which money damages would be inadequate. Therefore, CITY will be entitled to injunctive relief for FCSC's breach of any of its obligations under the said Articles without proof of actual damages and without the posting of bond or other security. Such remedy shall not be deemed to be the exclusive remedy for such violation, but shall be in addition to all other remedies available at law or in equity.

11. Governing Law and Dispute Resolution

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to any choice of law or conflict of law provisions. The Parties consent to the exclusive jurisdiction and venue in the Circuit or Superior Courts of Johnson County, Indiana.

12. General

- (a) This Agreement constitutes the entire agreement of the Parties on the subject hereof and supersedes all prior understandings and instruments on such subject. This Agreement may not be modified other than by a written instrument executed by duly authorized representatives of the Parties.
- (b) No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of such provision or any other provision(s) of this Agreement.

- (c) Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision may be modified by such court in compliance with the law giving effect to the intent of the Parties and enforced as modified. All other terms and conditions of this Agreement shall remain in full force and effect and shall be construed in accordance with the modified provision.
- (d) Time is of the Essence. The parties agree that time is of the essence and any dates or deadlines identified herein or in any accompanying Exhibits are material terms of this Agreement.
- (e) The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly construed for or against either party hereto based on the party drafting such. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender.
- (f) This Agreement is intended to conform to the extent necessary with all provisions of applicable state and federal law, rules, regulations and codes. To the extent permitted by applicable law, the Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations, while maintaining the underlying intention of the Parties.
- (g) The exercise by CITY of any right or remedy shall not be deemed an election of remedies. CITY may pursue any legal or equitable remedies available under Indiana law as a result of FCSC's default hereunder.
- (h) The Parties hereto each acknowledge, represent and warrant that they have read and fully understand all of the provisions of this Agreement and have had the opportunity to consult with their respective legal counsel, and that they are signing and entering into this Agreement as their free and voluntary act.
- (i) The individuals executing the Agreement below represent and warrant that they have the authority to execute this Agreement on behalf of the Parties and that all necessary authorizations and approvals have been obtained prior to signing.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the date first written above.

Signed for and on behalf of:

CITY OF FRANKLIN, INDIANA

By: _____
Name: Stephen Barnett
Title: Mayor/Board of Public Works & Safety

Signed for and on behalf of:

FRANKLIN COMMUNITY SCHOOL CORP.

By: _____
Name: Dr. David Clendenen
Title: Superintendent

EXHIBIT A

- Franklin Community Schools is acting as an empowered manager in IT project Management, technology purchases and administration.
 - IT Project Management
 - Aid in determination prioritization and implementation of current and future projects.
 - Provide training through collaboration on technology best practices.
 - Technology Purchases
 - The school will assist in creating and maintaining the images for PCs.
 - The school will approve and facilitate the purchase of hardware and software. In accordance with applicable purchasing statutes.
 - Administration
 - Identify improvements and correct issues with the network.
 - Determine and assist in configuring network components including, but not limited to switches, firewall, backups and servers.
 - Determine, implement and manage security policies.
 - The school will provide level 2 support on an as needed basis.