

RECEIVED

JAN 15 2013

SUPERINTENDENT'S OFFICE

OK AS TO FORM  
Rm 1-24-13

# THE GHEENS FOUNDATION INC.

705 ONE RIVERFRONT PLAZA  
401 WEST MAIN STREET  
LOUISVILLE, KENTUCKY 40202  
(502) 584-4650 FAX (502) 584-4652  
WWW.GHEENSFOUNDATION.ORG

January 14, 2013

Ms. Donna M. Hargens, Ed. D.  
Jefferson County Public Schools  
P. O. Box 34020  
Louisville, KY 40232-4020

Dear Dr. Hargens,

We are pleased to inform you that a grant in the amount of \$10,000.00 has been approved by our Trustees for the purpose of providing funds for the Making Music Concerts. It may be used only for the purposes set forth in the grant proposal; in order that you may receive these funds, please complete and SIGN the enclosed Condition of Grant form and return it to our office as soon as possible. We will then sign the Condition form and transmit a copy back to you for your file; payment will be forwarded to you as set out in the Condition of Grant form.

If you have any questions concerning this Condition of Grant agreement or the reports we are requiring from you, please feel free to contact our office.

Yours very truly,



Carl M. Thomas  
President



January 14, 2013

Ms. Donna M. Hargens, Ed. D.  
Jefferson County Public Schools  
P. O. Box 34020  
Louisville, KY 40232-4020

RE: Conditions of the Gheens Foundation, Inc. for Making Grants and  
Recipient's Agreement to Said Conditions.

Grant of: \$10,000.00

Payable: When Form is Returned

1. The funds awarded by the Foundation must be used for the specific purposes stated in the application. Use for any other purpose is unauthorized and will subject the recipient to a refund claim by the Foundation. According to the application for grant, the grant awarded herein must be used for:

the Making Music Concerts.

2. This statement of condition sets forth the terms and conditions upon which the grant is made. Under the laws of the United States applicable to foundations, all grants, including this one, must be expended solely for religious, charitable, scientific, literary, or educational purposes. Thus, the grant is made only for such purpose and is further limited to the above referenced purpose. The grant funds may not be expended any other purpose without the Foundation's prior approval in writing. The laws of the United States applicable to foundations also require that certain restrictions be placed upon the use of grant funds. Thus, the grant is subject to the restrictions enumerated below, and is made upon the condition that the Grantee complies with the reporting conditions enumerated below.

### **General Conditions**

Grantee agrees to the following conditions:

1. Repayment-Grantee shall repay any portion of the amount including interest earned which was not used for the purpose of the grant.
2. Financial and Program Reports which relate to the goals and objectives as presented in the grant proposal will be submitted on the following schedule and will take the form described below.

**FINANCIAL:** By May 31, 2013, please send a financial report showing all income by source and amount and all expense by line item for the Making Music Concerts in the 2012-13 school year.\*

**PROGRAM:** With the financial report, please send a list of the performance dates, the schools attending, the number of students in each audience, the number of ensemble visits to the schools, and examples of ways in which the program fulfills academic expectations in assisting the students to achieve the desired learning goals.\*

**PLEASE NOTE:** Reports can be mailed to us OR sent by e-mail to [grantsad@gheensfoundation.org](mailto:grantsad@gheensfoundation.org).

\* These reports are usually prepared by the Louisville Orchestra.

If the foregoing correctly sets forth your understanding of the terms and conditions under which this grant is being made, please so indicate below on this letter and return it to the Foundation; it will constitute our agreement with respect to the subject matter thereof. Upon receipt of the properly executed document, the Foundation will forward funds pursuant to the terms of the grant, as shown on Page 1.

The foregoing conditions are accepted  
and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NAME OF ORGANIZATION:

---

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

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

Federal I.D. # \_\_\_\_\_

Very truly yours,

The Gheens Foundation, Inc.

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

Carl M. Thomas

President

Please return to:

**THE GHEENS FOUNDATION, INC.**

One Riverfront Plaza, Suite 705

401 West Main Street

Louisville, KY 40202

**JEFFERSON COUNTY PUBLIC SCHOOLS**  
**CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Louisville Orchestra (hereinafter "Contractor"), with its principal place of business at 323 West Broadway Street, Suite 700, Louisville, KY 40202.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

## ARTICLE I

## Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

## ARTICLE II

## Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

The Louisville Orchestra will provide the MakingMUSIC program for all 4th and 5th grade JCPS students. (Approximately 13,000 students.) The Louisville Orchestra will provide one MakingMUSIC curriculum guide for each JCPS elementary school, an ensemble visit/performance at each school, and tickets for each 4th and 5th grade student to a Louisville Orchestra concert with transportation for students and chaperones from each school to the concert through a provider approved by the Board. Dates for the ensemble performances and Louisville Orchestra concert will be mutually agreed upon.

There will be two payments, one from JCPS funds for \$65,000 and one for \$25,000 from funds received from the Gheens Foundation. The payment from the Gheens Foundation funds is contingent upon the Board receiving funding from the Foundation and will be in the amount of the funds actually received. The payments will be made after services are rendered upon receipt of an approved invoice from Louisville Orchestra.

### ARTICLE III

#### Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>Shall not exceed \$90,000.00</u>
Progress Payments (if not applicable, insert N/A):	<u>N/A</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>JCPS General Fund (\$65,000), Gheens Foundation (\$25,000).</u>

### ARTICLE IV

#### Term of Contract

Contractor shall begin performance of the Services on December 11, 2012 and shall complete the Services no later than June 30, 2013, unless this Contract is modified as provided in Article VIII.

### ARTICLE V

#### Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

#### ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, religion, or political opinion or affiliation. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

#### ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

#### ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX  
Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X  
Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI  
Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII  
Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII  
Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the



appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

#### ARTICLE XIV

##### Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

#### ARTICLE XV

##### Miscellaneous

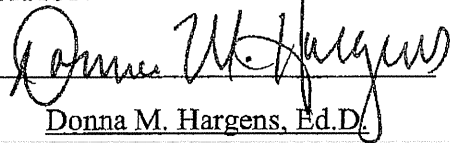
- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of December 11, 2012.

Contractor's Social Security Number or Federal Tax ID Number: 61-6000384

JEFFERSON COUNTY BOARD OF  
EDUCATION

By:



Title:

Donna M. Hargens, Ed.D.  
Superintendent

Louisville Orchestra  
CONTRACTOR

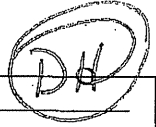
By:



Title:

Robert A. Birman  
CEO

Cabinet Member: Dewey Hensley

  
(Initials)

Jefferson County Public Schools  
**NONCOMPETITIVE NEGOTIATION  
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: \_\_\_\_\_

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: I determine that the Louisville Orchestra is the only major orchestra located in Louisville and that the MakingMusic program has been a joint initiative between the Board and the Contractor for many years.

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: \_\_\_\_\_

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): \_\_\_\_\_

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): \_\_\_\_\_

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): \_\_\_\_\_

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: \_\_\_\_\_

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: \_\_\_\_\_

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: \_\_\_\_\_

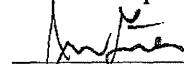
**I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.**

John Freeman

Print name of person making Determination

JCPS Gheens Academy

School or Department



Signature of person making Determination

12/11/12

Date

\_\_\_\_\_  
Name of Contractor (Contractor Signature Not Required)

\_\_\_\_\_  
Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

