

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 KAPLAN K-12 Learning Services, LLC. (hereinafter "Contractor"), with its principal place of business at 395 Hudson Street, 4th Floor, New York, NY 10014.

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:

Customized ACT Classroom for Fairdale High School in preparation for college and career readiness measures to be delivered by KAPLAN instructors on-site at Fairdale High School. The course will accommodate up to 100 Fairdale students (4 classes at up to 25 students each). The course will be a total of 12 program hours to occur over the dates of December 2, 2013 to December 12, 2013. "Scope of Work" and "Partnership Pricing" are attached and incorporated herein by reference.

In regards to Article XII (Contractor's Work Product), the Board acknowledges that Contractor owns the copyrights to all tangible or electronic presentation materials, handouts, and/or program

books ("materials") used in conjunction with the services performed under this Contract and that no materials will be developed specifically for the Board under this Contract. Contractor shall retain all copyrights owned prior to entering into this Contract, and the Board may not reproduce any materials not designated reproducible without the express written permission of the Contractor.

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>\$17,720.00</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>ACT NOW Grant (0577522 0610 717X8)</u>

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on November 26, 2013 and shall complete the Services no later than June 30, 2014, 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.

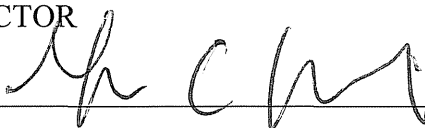
IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of November 26, 2013.

Contractor's Social Security Number or Federal Tax ID Number: 22-2573250

JEFFERSON COUNTY BOARD OF
EDUCATION

KAPLAN K12 Learning Services, LLC.
CONTRACTOR


By: _____

By: 

Title: Donna M. Hargens, Ed.D.
Superintendent

Title: Seppy Basili
Vice President & General Manager

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: N/A

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

Explain why the vendor is a single source: KAPLAN is the sole owner and provider of the KAPLAN Customized ACT Classroom course and course materials.

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

State the type of service: N/A

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

State the item(s): N/A

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): N/A

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

State the item(s): N/A

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

State the location: N/A

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: N/A

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

State the items: N/A

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.

Brad Weston

Print name of person making Determination

Principal, Fairdale High School

School or Department



Signature of person making Determination

10-29-13
Date

KAPLAN K12 Learning Services, LLC.

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

Scope of Work

The scope of work for this Proposal includes the offering(s) listed below. For a successful partnership, the purchase order and/or contract is needed at least **4 weeks** (Kaplan-Taught classes), **2 weeks** (workshops), **2 weeks** (books), and/or **1 week** (online) **prior to the start**, as relevant to the purchase. Additionally, partners should view [Partnership Responsibilities](#) for a successful Kaplan implementation.

Kaplan-Taught Classes (Partners should submit a [Roster](#) and [Class Schedule](#) two weeks prior to the class start.)

Implementation Model			
# Site(s)	1	Grade Level(s)	9 th – 12 th
# Class(es)	Up to 4	# Students	Up to 100
Class Size	Up to 25 per class	Subject Area(s)	ACT
Delivery Model	On Site	Day(s) per Week	3 (Monday, Wednesday, Thursday)
Total Program Hours	Up to 12, plus additional online assets and instruction	Total # of Days	Up to 6
Total Instructional Sessions	ACT Classroom Up to 6 sessions Up to 2 hours per session Up to 12 total hours	Total Testing Sessions	N/A
Program Start	December 2, 2013	Program End	December 12, 2013*

*Educators will have access to online reports for 90 days after the classes end for *Classroom* ACT programs.

Customized *ACT Classroom*

- **Services**
 - Kaplan instructors to deliver classes to students (teaching assistants also support *Classroom Anywhere* implementations, as applicable)
 - Site coordination to manage program logistics and implementation
- **Materials**
 - Print-based materials (*Course Book*)
- **Licenses**
 - Online student licenses for up to three (3) months for video-based lessons; six (6) additional practice tests; digital flashcards for ACT programs; and individualized student reports that show progress and performance
 - Online educator licenses during the partnership and for up to three (3) months after classes end to access reports that document student progress and performance in individual and aggregate formats

Partnership Pricing

The pricing for the Kaplan partnership is as follows.

Product Name*	Quantity	Item Total**
Customized ACT Classroom Class (~12 hours of instruction for up to 25 students with materials; supplemental online assets, digital flashcards, and College Admissions Zone; and educator reports)	1 program accommodating up to 100 students, up to 25 students per class	\$17,720.00
The tax rate is based on the applicable IRS rate currently in effect. If your entity is tax exempt, please provide a tax exemption certificate made out to Kaplan K12 Learning Services, LLC.	Subtotal**:	\$17,720.00
	Shipping**: 0%	\$0.00
	Tax**: 0%	\$0.00
	Total with Tax:	\$17,720.00
	Total with Tax Exemption Certificate:	\$17,720.00

*Test names and other trademarks are the property of the respective trademark holders. Unless stated explicitly, no endorsement of this information, service, or product by any company or person should be made or implied.

**Shipping rates of 8% (ground), 12% (second day), and 16% (overnight) may be charged on materials; if ground shipping is included, then 4% (second day) or 12% (overnight) may be charged on materials. Tax will be added if a Tax Exception Certificate is not included with the order. The above pricing may only be available with the bundles and quantities listed, the scope of work listed, or due to a promotional offer that cannot be combined with other offers. If bundles or quantities, scope of work, or promotional offer changes, the pricing is subject to change. To review the policy on order errors or returns, please visit kaplank12.com/returns. The above pricing is valid for one month. Kaplan reserves the right to change pricing anytime after the price expires.

Send orders via fax to **(877) 712-5487** or email **K12_operations@kaplan.com** and address to:

Kaplan K12 Learning Services, LLC - 395 Hudson Street, 4th Floor, New York, NY 10014

Proposal #: FHS 9/30/2013 12:13 PM Term of service: December 2, 2013 to December 12, 2013

Expiration: one month after quote

If you have questions, please contact **Cindy Kelly** at (610) 283-4234 or **cindy.kelly@kaplan.com**.