

FAYETTE COUNTY PUBLIC SCHOOLS

EXECUTIVE SEARCH AGREEMENT

This Agreement is entered into and effective as of the ___st day _____, 201_, and is by and between **FAYETTE COUNTY PUBLIC SCHOOLS** ("CLIENT") and **PROACT SEARCH, LLC** ("PROACT").

CLIENT is seeking to retain the services of an experienced and reputable search organization to assist it in executive search services for a **Superintendent**. PROACT has the requisite qualifications and experience to assist CLIENT and is willing to provide such assistance. Accordingly, the parties desire to reduce their agreement to engage in writing.

Therefore, the parties agree as follows:

1. Term: The term of this Agreement shall begin on *date* and shall continue until the earlier of Client's hiring of a candidate.
2. Duties: PROACT's duties, shall be as set forth in **the proposal submitted by PROACT Search in response to RFP 04-15**. Duties and services have been amended by mutual agreement of the parties. The company K12 Insight will be responsible for the conducting and compiling of feedback for the Community/Stakeholder Engagement portion of the Search. PROACT will work with K12 Insight and the CLIENT to synthesize the information into a formalized report and position profile, as appropriate. Other duties may be amended upon the mutual agreement of the parties from time to time.
3. Written Reports: CLIENT may periodically request and PROACT shall provide upon such request project plans, progress reports and a final results report.
4. Confidentiality: As provided and permitted by law, PROACT shall maintain in strictest confidence any information obtained in the course of the transaction set forth in this Agreement. Any breach of this provision shall enable CLIENT to terminate this Agreement for cause as set forth in Section 18.
5. Independent Consultant: This Agreement shall not render PROACT an employee, partner, agent of, or joint venture with CLIENT for any purpose. PROACT is and shall remain an independent consultant in his/her relationship to CLIENT. CLIENT shall not be responsible for withholding taxes with respect to PROACT's compensation hereunder. PROACT shall have no claim against CLIENT hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, workers' compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
6. Insurance: PROACT shall carry general liability and auto insurance relative to any service that it performs for CLIENT, and shall add the CLIENT as an additional insured. As well, PROACT shall carry workers' compensation insurance covering the activities of its officers, managers and employees during its performance of this Agreement.
7. Successors and Assigns: All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns. PROACT shall not assign any of his/her rights under this Agreement, or delegate the performance of any of his/her duties hereunder, without the prior written consent of CLIENT.
8. Choice of Law; Right to Injunction; Arbitration. The laws of the Commonwealth of **KENTUCKY** and in the county of **LEXINGTON** shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. The parties further acknowledge that the services to be rendered by PROACT under this Agreement and the rights and privileges granted to CLIENT under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by PROACT of any of the provisions of this Agreement shall cause CLIENT irreparable injury and damage. PROACT expressly agrees that CLIENT shall be entitled to injunctive and other equitable relief in the event of,

or to prevent, a breach of any provision of this Agreement by PROACT. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that CLIENT may have for damages or otherwise. The various rights and remedies of CLIENT under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in **Lexington, KY** in accordance with the rules of the American Arbitration Association, and the judgment upon award may be entered in any court having jurisdiction thereof.

9. Waiver: Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.
10. Compliance with Laws: Both parties agree to comply with all Federal and **KENTUCKY** laws governing their relationship or the transaction contemplated under this Agreement.
11. Notices: Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served or if deposited in the United States mail. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand, or other communication is given by mail, such notice shall be conclusively deemed to have been given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand, or other communication is to be given as follows:

If to PROACT:

Thomas Vranas
PROACT SEARCH, LLC
1817-2 Church Street
Evanston, IL 60201

If to CLIENT:

John Price, Chairperson
Fayette County Board of Education
1126 Russell Cave Road
Lexington, KY 40505

Either party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

12. Modification or Amendment: No amendment, change, or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
13. Entire Understanding: This Agreement and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
14. Unenforceability of Provisions: If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.
15. Termination:
 - a. Without Cause. PROACT or CLIENT may terminate this contract at any time for any reason by giving at least **fourteen (14)** days' notice in writing. If the contract is terminated by CLIENT as provided herein, PROACT shall be paid a fair payment as negotiated with CLIENT for the work completed as of the date of termination.

b. For Cause. Either party may terminate this Agreement immediately upon the occurrence of any of the following:

i. Material breach of this Agreement.

ii. Prospective inability of either party to complete its responsibilities as set forth in this Agreement.

If this Agreement is terminated for cause, CLIENT shall not be obligated to compensate PROACT for any fees or expenses payable after such termination.

16. Fee Structure: CLIENT shall pay PROACT a total service fee of \$22,000 for the search (not including advertisements costs to outside publications specifically requested by the District and all travel fees) and an organizational review by the following schedule for services:

a. Upon Execution of Contract – \$7,333

b. Upon Delivery to the CLIENT the Candidate Books which represent PROACT's recommendation of the top candidates to meet the needs of the CLIENT – \$7,333

c. Upon Successful Hire of Candidate or 30 days after candidate delivery – \$7,333

All additional expenses, including consultant travel and candidate travel shall be subject to **prior** approval by CLIENT. Fees and approved expenses shall be paid within 30 days of CLIENT's receipt of an invoice from PROACT.

Within 6 months of the formal presentation of candidates, should CLIENT hire a candidate presented by PROACT for a position other than the position listed in paragraph two above, CLIENT shall pay PROACT 50% of the search fee.

17. PROACT certifies it shall not discriminate in any of the services performed in connection with this contract on the basis of race, color, national origin, religion, age, creed, political affiliation, marital status, sex, sexual orientation or disabling condition.

18. PROACT will provide all applicant resumes to the CLIENT upon delivery of the Candidate Books which represent PROACT's recommendation of the top candidates to meet the needs of the CLIENT.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

PROACT

By: _____
Thomas Vranas, PRESIDENT

CLIENT

By: _____
John Price, Chairperson
Fayette County Board of Education