

JEFFERSON COUNTY PUBLIC SCHOOLS SERVICES CONTRACT

THIS SERVICES CONTRACT ("Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 ("JCPS") and BYERLY FORD-NISSAN, INC., a corporation organized under the laws of Kentucky, with its principal place of business at 4041 Dixie Highway, Louisville, Kentucky 40216 ("Contractor").

WITNESSETH:

WHEREAS, JCPS operates Southern High School ("Southern"), and the programs offered to students at Southern include Automotive Technology and Auto Collision Technology programs that train students for careers in the automotive industry (the "Automotive Programs"); and

WHEREAS, JCPS desires to procure certain services of Contractor, which are more fully described below, to assist JCPS in operating the Automotive Programs; and

WHEREAS, Contractor is competent and capable of performing the services desired by JCPS;

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and conditions contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, JCPS and Contractor (individually, a "Party" and collectively, the "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, as defined below, of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII.

ARTICLE II

Services

During the Term, as defined below, JCPS from time to time will provide Contractor with access to used motor vehicles (the "Motor Vehicles") that have been donated by the public to Southern for use in the Automotive Programs and have been repaired by Southern students under the supervision of Southern instructors. Contractor will (i) inspect each Motor Vehicle, using the same process that Contractor uses to inspect the used motor vehicles that are sold by Contractor to the public at Contractor's motor vehicle dealership, and (ii) will certify to JCPS that the Motor Vehicle satisfies the same standards that Contractor has established for the used motor vehicles that are sold by Contractor to the public. If Contractor determines that it is not able to certify any Motor Vehicle to JCPS because the Motor Vehicle does not satisfy such standards, Contractor will report the deficiencies to JCPS in writing, and JCPS may re-submit such Motor Vehicle to Contractor for another inspection after

additional repair work has been completed by Southern students. The services described in the preceding two sentences are hereafter referred to as the "Services."

ARTICLE III Compensation

In consideration of the agreements of JCPS set forth in this Contract, Contractor agrees that it will provide the Services for no compensation.

ARTICLE IV Term of Contract

This Contract shall be effective on the Effective Date. Contractor shall begin performance of the Services on the Effective Date, and shall complete the Services no later than June 1, 2017 (the "Term"), unless the Term is extended in writing by JCPS and Contractor for one or more additional one-year terms in an addendum to this Contract as provided in Article VIII.

ARTICLE V Agreements of Contractor

A. 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, as defined below.

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

C. Contractor shall be an independent contractor of JCPS for all purposes of this Contract. Nothing in this Contract is intended to create an employer-employee relationship, joint venture relationship, or partnership between JCPS and Contractor or any personnel assigned to this project by Contractor, and the Parties shall characterize their relationship as an independent contractor relationship for tax purposes and all other purposes.

D. Contractor shall at all times during the Term (a) comply with all applicable federal, state and local applicable to the Services, and (b) obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

E. Contractor shall hold harmless, indemnify, and defend JCPS and its Board 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 caused by or arising from any breach by Contractor of the obligations of Contractor set forth in this Contract.

F. Unless waived in writing by the Contract Administrator, Contractor shall maintain during the Term 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 upon request certificates of insurance evidencing this coverage and naming JCPS as an additional insured.

ARTICLE VI Agreements of JCPS

A. JCPS will offer the Automobiles for sale only to students attending Southern. JCPS will be solely responsible for all aspects of the sale of the Automobiles to such students, including compliance with all requirements of any applicable federal, state or local statutes, regulations or ordinances regarding motor vehicle dealer licensing, disclosure to buyers, the provision or disclaimer of warranties, motor vehicle titles and registration, and arrangements for financing.

B. To the extent permitted by Kentucky law, JCPS shall hold harmless, indemnify, and defend Contractor and its officers, directors, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation caused by or arising from any breach by JCPS of the obligations of JCPS set forth in this Contract.

C. JCPS shall maintain during the Term policies of primary insurance (including coverage provided by the JCPS self-insurance program) 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. JCPS shall furnish to Contractor upon request certificates of insurance evidencing this coverage and naming Contractor as an additional insured.

ARTICLE VII Equal Opportunity

During the Term, Contractor shall not discriminate against any JCPS employee or student because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, or disability.

ARTICLE VIII Changes

JCPS and Contractor may at any time, by mutual agreement set forth in a written addendum to this Contract, make changes in (a) the definition of the Services, (b) the scope of the Services, (c) the Contract Amount, (d) the time within which the Services are to be performed, and (e) the Term, including one or more one-year extensions of the Term.

ARTICLE IX Termination for Convenience of JCPS

JCPS 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. Upon termination, the rights and obligations of the Parties shall be as set forth in Article X.

ARTICLE X Termination for Default

JCPS may, by written notice of default to Contractor, terminate the whole or any part of this Contract, upon (a) the commission by Contractor or any personnel assigned to this project by Contractor of any act which is a violation of the provisions of Article XI of the JCPS Procurement

Regulations entitled "Ethics and Standards of Conduct," or assisting or participating in or knowingly benefitting from any act by any employee of JCPS which is a violation of such provisions, (b) an occurrence of dishonest, fraudulent or illegal conduct or misappropriation of JCPS funds by Contractor or any personnel assigned to this project by Contractor, (c) the indictment or entry of a guilty plea or a plea of no contest to a felony offense by Contractor or any personnel assigned to this project by Contractor, or (d) a material breach of this Contract by Contractor, provided that JCPS has first given written notice to Contractor describing the breach with reasonable specificity and demanding that Contractor take action to cure the breach, but Contractor has failed to cure the breach within the period of 10 days after Contractor's receipt of such notice. The rights and remedies of JCPS provided in this Article shall not be exclusive and are in addition to the rights and remedies of JCPS under Article XI of this Contract or as provided by law.

ARTICLE XI Obligations Upon Termination

Upon the termination of this Contract under either Article IX or Article X, (a) each Party shall be required to carry out any provisions which contemplate performance by or impose obligations on such Party after the effective date of termination, including, without limitation, Articles V(C), V(E), VI(A), VI(B), XII and XIV(D), and (b) termination shall not affect any liability or other obligation which has accrued prior to the effective date of termination, including, with limitation, any liability or loss or damage on account of a breach of this Contract.

ARTICLE XII Proprietary Information

A. At all times during the Term and thereafter, Contractor and all personnel assigned by Contractor to this project will hold in strictest confidence and will not disclose, use, or publish any Proprietary Information, as defined below, of JCPS except as such disclosure, use or publication may be required in connection with Contractor's performance of the Services, or unless JCPS expressly authorizes such disclosure, use or publication in writing. The term "Proprietary Information" shall mean all information, data and records relating to JCPS's business, business plans, trade secrets, financial statements, services, personnel information, student information, and any other proprietary information of JCPS which JCPS treats as confidential with respect to the general public. For purposes of this Article XII(A), the term "Proprietary Information" shall not include information that Contractor can show by competent proof (a) was known to Contractor prior to disclosure by JCPS and not subject to a duty or obligation of confidentiality or nondisclosure on the part of Contractor; (b) was generally known to the public at the time JCPS disclosed the information to Contractor; (c) became generally known to the public after disclosure by JCPS through no act or omission of Contractor; (d) was disclosed to Contractor by a third party having a bona fide right both to possess the information and to disclose it to Contractor; or (e) is otherwise public information under applicable law. This Article XII(A) shall survive the termination of this Contract.

B. At all times during the Term and thereafter, JCPS and its employees will hold in strictest confidence and will not disclose, use, or publish any Proprietary Information of Contractor, unless Contractor expressly authorizes such disclosure, use or publication in writing. The term "Proprietary Information" shall mean all information, data and records relating to Contractor's business, business plans, trade secrets, financial statements, services, personnel information, and any other proprietary information of Contractor which Contractor treats as confidential with respect to the general public. For purposes of this Article XII(B), the term "Proprietary Information" shall not include information that JCPS can show by competent proof (a) was known to JCPS prior to disclosure by Contractor and

not subject to a duty or obligation of confidentiality or nondisclosure on the part of JCPS; (b) was generally known to the public at the time Contractor disclosed the information to JCPS; (c) became generally known to the public after disclosure by Contractor through no act or omission of JCPS; (d) was disclosed to JCPS by a third party having a bona fide right both to possess the information and to disclose it to JCPS; or (e) is otherwise public information under applicable law. This Article XII(B) shall survive the termination of this Contract.

ARTICLE XIII Contract Administrator

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

ARTICLE XIV 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. Any action or claim arising from, under or pursuant to this Contract shall be brought in the Jefferson County, Kentucky, Circuit Court, and the Parties expressly waive the right to bring any legal action or claims in any other courts.

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.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of May 11, 2016 (the "Effective Date").

Contractor's Social Security Number or Federal Tax ID Number: 61-0404248

JEFFERSON COUNTY BOARD OF BYERLY FORD-NISSAN, INC.
EDUCATION

By: _____

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

By: _____

Title: Anthony Downing
Service Director

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