

AGREEMENT**between****Jefferson County Board of Education****and****United Parcel Service, Inc.**

This agreement is entered into as of this 14th day of February 2018 between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "JCPS") a political subdivision of the Commonwealth of Kentucky, with its principal place of business as 3332 Newburg Road, Louisville, Kentucky, 40218 and UNITED PARCEL SERVICE, INC. (hereinafter "UPS"), an Ohio corporation having a mailing address at 1400 North Hurstbourne Parkway, Louisville, KY 40223.

WHEREAS, JCPS and UPS desire to collaborate for the provision of services through the School to Work program at Doss, Iroquois and Western High Schools.

WHEREAS UPS desires that JCPS provide transportation services for the transportation of JCPS high school students to and from their schools and the UPS School to Work program site ("Services"), and JCPS is willing to do so on the terms and conditions set forth in the Agreement.

NOW THEREFORE, this Agreement is entered into by and between JCPS and UPS to provide services below.

1. Duties of UPS:

- a. Shall agree to a route schedule for the services to be provided under this Agreement.
- b. Agrees to reimburse JCPS up to 50% of the actual prorated annual cost (defined below) of providing Services under this Agreement.

2. Duties of JCPS:

- a. Shall ensure that all shuttle buses used during the term of this Agreement meet federal, state, and local regulatory requirements.
- b. Shall ensure that all shuttle bus drivers obtain and maintain throughout the term of this Agreement all necessary licenses required to operate the shuttle buses.
- c. Shall train and certify that its employees are properly trained and are fully capable of providing the Services contemplated by this Agreement.
- d. Shall ensure that all shuttle bus drivers follow all UPS rules and regulations while on UPS property.

3. Failure to Perform

- a. Neither JCPS nor UPS shall be liable for failure to perform under this Agreement if such failure is caused by, but not limited to, an act of God, fire, flood, strike, labor dispute, riot, insurrection, war, or any cause beyond the control of the parties hereto whether or not similar to the causes herein specifically mentioned.

4. Insurance

- a. JCPS currently maintains liability insurance coverage, including automotive liability coverage, on its school bus fleet as part of the JCPS overall insurance program, which includes a self-insurance component. JCPS shall, at its own cost and expense, maintain in full force and effect, during the term of this Agreement, the existing JCPS overall insurance program.
- b. JCPS' existing insurance program shall be deemed primary. If UPS requests, JCPS shall provide certificates evidencing the coverages provided under JCPS' existing insurance program within fifteen (15) days of the requests from UPS.

5. Term

This Agreement shall be effective beginning February 14, 2018 and ending on February 13, 2019, and shall continue in effect thereafter on a year-to-year basis, with either party having the right to cancel this Agreement at any time during the initial term or any renewal thereof, by giving the other party thirty (30) days written notice of cancellation.

6. Financial Provision

- a. As the Services herein provides a benefit to both parties, UPS shall reimburse up to 50 percent (50 %) of JCPS' actual prorated annual cost for providing such Services. The annual amount reimbursed shall not exceed \$12,000.00 (\$1,000.00 monthly) during the term of this Agreement. For the avoidance of doubt, JCPS' cost for providing Services shall include the following: bus driver direct compensation, fuel costs, and tolls.
- b. JCPS will submit a detailed invoice to UPS monthly and UPS will pay in accordance with Section c. below. All submitted invoices shall be subject to the review and approval by UPS prior to tendering payment.
- c. Payment Terms shall be net forty-five (45) days from the invoice receipt date.

Invoices must be sent to:
United Parcel Service, Inc.
911 Grade Lane
Louisville, KY 40213
Attn: Dan Mitchell, Air District Controller
[Email: djmitchell@ups.com](mailto:djmitchell@ups.com)

7. Termination

- a. The Agreement may be terminated by either party with or without cause and without penalty upon no less than sixty (60) days advance written notice. Either party may terminate this Agreement immediately if a material breach occurs and is not cured by the breaching party within ten (10) business days of receipt of written notice from the non-breaching party.
- b. The termination of this Agreement shall not relieve the parties hereto of any liabilities, obligations, expenses, or charges accruing up to the date of such termination and all rights accruing to either party to such date of termination shall likewise remain in full force and effect.

8. Modification

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon by both JCPS and UPS.

9. Advertising and Nondisclosure

- a. JCPS covenants and agrees with UPS for the benefit of UPS and its parent and affiliates that JCPS will not make any use whatsoever of, or cause others to make or assist others in making any use whatsoever, of the corporate or tradename of UPS, United Parcel Service, Inc., or their affiliates, or any portion thereof, or any of their trademarks, or any portion thereof, in connection with any advertising, promotion, publicity, or other printed material without the written consent of an officer of UPS. JCPS covenants and agrees that except as provided by the provisions of any law, order, rule, or regulation under which JCPS is obligated regarding JCPS' ordinary business operations, shall make every reasonable effort not to publicly disclose or describe its business relationship with UPS.
- b. UPS covenants and agrees with JCPS that UPS will not make any use whatsoever of, or cause others to make or assist others in making any use whatsoever, of the corporate or tradename of JCPS, or any portion thereof, or any of JCPS' trademarks, or any portion thereof, in connection with any advertising, promotion, publicity, or other printed material without the written consent of an officer of JCPS. UPS covenants and agrees that except as provided by the provisions of any law, order, rule, or regulation under which UPS is obligated regarding UPS' ordinary business operations, shall make every reasonable effort not to publicly disclose or describe its business relationship with JCPS except with the written consent of an officer of JCPS.
- c. It is expressly understood and agreed that the obligations of the parties under this section 9 shall survive performance of the terms of this Agreement its rescission or other termination and that this section 9 shall remain in full force and effect independently of the other provisions of this Agreement.

10. Equal Opportunity

During the performance of this Agreement, UPS shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Kentucky Equal Employment Act of 1978, KRS 45.550-45.640, and the American Disabilities Act. UPS agrees that no JCPS student shall be denied equal educational opportunities in the School to Work program because of his or her 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.

11. Confidentiality

At all times during the term of this Agreement, UPS shall comply with the Family Educational Rights and Privacy Act of 1974. If UPS has access to student records, UPS shall limit its employee's access to those records to persons for whom access is essential to perform this Agreement.

12. Independent Parties

In the performance of the duties and obligations imposed on each party by this Agreement, it is mutually understood and agreed that UPS is at all times acting as an independent contractor with respect to JCPS, and neither party shall be construed to be an agent or representative of the other party. Except as provided herein, JCPS shall not have any control or direction over the manner, methods or means by which UPS performs its work and functions.

13. Captions

Section titles or captions contained in the Agreement are inserted only as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

14. Entire Agreement

This Agreement contains the entire agreement between JCPS and UPS and supersedes any and all prior agreements executed contemporaneously with the execution of the Agreement and incorporated herein by reference shall remain in full force and effect.

15. Severability

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provisions of the Agreement.

16. Counterparts

This Agreement may be executed in counterparts, in which case each executed counterpart shall be determined an original and all executed counterparts shall constitute one and the same instrument.

17. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

18. Indemnification

To the extent permitted by law, JCPS shall indemnify and hold UPS harmless from any and all claims, demands, liabilities, damages, and expenses connected therewith for injury to persons (including death) or damages to property caused by the acts, omissions, willful misconduct or negligence of JCPS, its agents, servants, or employees. UPS shall indemnify and hold JCPS harmless from and against any and all claims, demands, liabilities, damages, and expenses connected therewith for injury to persons (including death) or damages to property caused by the acts, omissions, willful misconduct, or negligence of UPS, its agents, servants, or employees. If the indemnification provisions are determined to be inapplicable under this clause, such inapplicability shall not affect either party's right to pursue common law indemnification or contribution claims. This indemnification shall survive and continue in full force and effect, notwithstanding the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the first date written above.

JEFFERSON COUNTY BOARD OF EDUCATION

By: _____
Dr. Martin Pollio, Acting Superintendent

Date: _____

UNITED PARCEL SERVICE, INC.

By: 
James T. Miller, Assistant Secretary

Date: 1-25-2018

