

## **Independent Auditor's Contract**

To provide for a school district audit in compliance with KRS 156.255, 156.265, 156.275, 156.285, 156.295, and 156.480, this agreement is entered into for audit period ending June 30, 2018, between the Newport Independent Schools Board of Education (BOARD), and Barnes Dennig & Co., Ltd., (ACCOUNTANT), who is a Certified Public Accountant or a Public Accountant registered with the **Kentucky** State Board of Accountancy.

### **I. DUTIES OF ACCOUNTANT**

- A. The ACCOUNTANT shall render an opinion on the financial statements of the BOARD for fiscal year 2017-2018. The scope and nature of the audit shall be in accordance with the Auditor Responsibilities and State Compliance Requirements. These requirements are incorporated as a part of this agreement.
- B. ACCOUNTANT shall address the audit report and written comments to the BOARD and to the State Committee for School District Audits (COMMITTEE).
- C. ACCOUNTANT shall deliver the audit report in accordance with Section VII.A. DELIVERY OF AUDIT REPORT. If the audit report cannot be timely submitted, the ACCOUNTANT shall submit an Audit Extension Request in accordance with Section VI.A. AUDIT EXTENSION REQUEST.

### **II. DUTIES OF BOARD**

- A. The BOARD shall make available to the ACCOUNTANT no later than August 2, 2018, all books, accounts, reports, vouchers, correspondence files, records, money, and property under its control which may be requested by the ACCOUNTANT in the course of performing the audit.

### **III. AUTHORITY OF COMMITTEE**

- A. The COMMITTEE and the Kentucky Department of Education (KDE) may examine work papers of the ACCOUNTANT and may perform quality control reviews of the audit procedures utilized during the course of the audit;
- B. The COMMITTEE and the BOARD may prohibit the use of any subcontractor by the ACCOUNTANT in their sole discretion. During the term of the contract, no subcontractor shall be used without the prior written approval of the COMMITTEE and the BOARD; and
- C. The COMMITTEE will consider Audit Extension Requests submitted by ACCOUNTANT prior to October 1, 2018. Provided the COMMITTEE determines the delay is unavoidable and due to factors beyond the ACCOUNTANT'S control, the COMMITTEE may, in their sole discretion, allow for the audit to be submitted to KDE without penalty after the November 15, 2018 due date.

### **IV. COMPENSATION**

- A. The ACCOUNTANT shall be paid an amount agreed upon between the ACCOUNTANT and the BOARD, consistent with the Audit Acceptance Statement, which is incorporated herein by reference, for the successful completion of the work defined by this agreement.
- B. Final payment is predicated upon completion of the work as described in Section I. DUTIES OF ACCOUNTANT and delivery of documentation as described in Section VII. DELIVERY OF AUDIT REPORT.
- C. Compensation to the ACCOUNTANT in excess of the amount stated on the AUDIT ACCEPTANCE STATEMENT must be approved by the COMMITTEE if said increase exceeds \$1,000 or 10% of the audit fee, whichever is less. The ACCOUNTANT must submit a written explanation to the BOARD and the COMMITTEE for the requested increase in compensation before the COMMITTEE will consider any increase. The requested increase and written explanation must be submitted to the Board and Committee no later than submission of ACCOUNTANT'S invoice for payment.

- D. The ACCOUNTANT shall submit to the BOARD an invoice for payment which shall be signed by the ACCOUNTANT and contain adequate supporting documentation such as: **detail of hours worked by each auditor classification (e.g., partner, manager, supervisor, senior, staff, etc.) in major audit areas or supervisory/administrative functions.**

#### **V. SUPPLEMENTAL AGREEMENTS**

- A. The scope of the audit may be increased or decreased by written supplemental agreement between the BOARD and the ACCOUNTANT, if the reasons for the increase or decrease have first been reported in writing by the ACCOUNTANT to the COMMITTEE and the COMMITTEE approves the increase or decrease. The audit fee may be adjusted for the increase or decrease in the scope of the audit in accordance with Section IV.C. COMPENSATION.

#### **VI. AUDIT EXTENSION REQUEST**

- A. If the audit cannot be completed on or before November 15, 2018, due to factors beyond the control of the ACCOUNTANT, the ACCOUNTANT shall electronically submit an Audit Extension Request form, fully completed by both the ACCOUNTANT and the BOARD, to KDE on or before October 1, 2018. The form is provided in **Appendix I - Audit Extension Request**.

#### **VII. DELIVERY OF AUDIT REPORT**

- A. The ACCOUNTANT agrees to begin the audit of the BOARD on or before August 2, 2018 or 15 days from execution date of this contract, whichever is later, and further agrees to complete and deliver a signed paper copy of the audit report to the BOARD, one signed paper copy to the COMMITTEE in care of KDE, and an electronic copy to KDE in accordance with **Appendix II - Instructions for Submission of the Audit Report** on or before November 15, 2018, or at a later date approved by the COMMITTEE. All electronic and paper copies of the audit report must be received by KDE on or before November 15, 2018 for it to be considered filed timely. If the audit report has not been received by KDE on or before November 15, 2018 or by the later date approved by the COMMITTEE, the audit will be considered late and penalties as outlined in Section VIII. PENALTIES may be imposed at the discretion of the COMMITTEE.

#### **VIII. PENALTIES**

- A. There may be a 10% reduction of the audit fee if one or more of the following conditions occur: (1) the audit report is not submitted in accordance with VII.A. DELIVERY OF AUDIT REPORT; or (2) the audit report does not contain the information shown under Audit Report Requirements.
- B. The ACCOUNTANT may, in the sole discretion of the COMMITTEE, be ineligible to conduct a school district audit for the upcoming fiscal year if one or more of the conditions in section A occur.
- C. The COMMITTEE may, in its sole discretion, waive penalties for delays caused by circumstances beyond the control of the ACCOUNTANT.

#### **IX. EFFECTIVE DATE**

- A. This agreement, between the ACCOUNTANT and the BOARD, shall not become effective until this contract has been approved by the COMMITTEE and signed by the COMMITTEE Chair. This agreement is effective for the 2017-2018 fiscal year.

#### **X. TERMINATION**

- A. The BOARD shall have the right to terminate and cancel this contract at any time without cause upon 30 days written notice served on the ACCOUNTANT by registered or certified mail. The BOARD shall have the right to terminate and cancel this contract for cause upon five days written notice served on the ACCOUNTANT by registered or certified mail.

- B. If cause exists to terminate the contract, and the BOARD does not terminate, the COMMITTEE may terminate and cancel this contract for cause upon five days written notice served on the ACCOUNTANT by registered or certified mail.
- C. "Cause" includes, but is not limited to any of the following:
1. Failure to commence work within 15 days of execution of the contract or on or before August 2, 2018, whichever is later;
  2. Previous history of extension requests by the same ACCOUNTANT for the same district;
  3. Failure to submit the audit on or before November 15, 2018;
  4. Failure to communicate to KDE timely about problems encountered in conducting the audit;
  5. Violation of any of the provisions in Section XI. REPRESENTATIONS AND WARRANTIES; or
  6. Failure to abide by any of the terms and conditions of this agreement.

**Cause shall not include any factor wholly the fault of the BOARD.**

#### **XI. REPRESENTATION AND WARRANTIES**

- A. The ACCOUNTANT is legally able and authorized to enter into contracts with the BOARD, including on behalf of any entity under which the ACCOUNTANT practices.
- A. The performance of this agreement would not violate any conflict of interest law, including but not limited to KRS 156.480.
- B. The ACCOUNTANT has no personal interest in the financial affairs of the BOARD or any of its officers or employees.

#### **XII. MATERIALS INCORPORATED BY REFERENCE**

- A. Any materials referred to herein are incorporated by reference and made a part of this contract, which shall include the materials attached hereto and supplied to the ACCOUNTANT, consisting of 32 pages.

**THIS AGREEMENT ENTERED INTO AS DATED BELOW:**

_____ <b>BOARD OF EDUCATION</b>		<i>Charles Dennis &amp; Co. LLP</i> _____ <b>ACCOUNTANT/FIRM</b>	
_____ <b>BY: SCHOOL BOARD CHAIR</b>	_____ <b>DATE</b>	<i>[Signature]</i> _____ <b>BY: PARTNER</b>	<i>4/15/18</i> _____ <b>DATE</b>
_____ <b>SECRETARY</b>	_____ <b>DATE</b>		

**ACCEPTED BY:**

**STATE COMMITTEE FOR SCHOOL DISTRICT AUDITS**

_____ <b>BY: STATE COMMITTEE CHAIR</b>	_____ <b>DATE</b>
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Each party may disclose any facts to the other party or to the facilitator which it, in good faith, considers necessary to resolve the dispute. However, all such disclosures will be deemed in furtherance of settlement efforts and will not be admissible in any subsequent litigation against the disclosing party. Except as agreed to by both parties, the facilitator shall keep confidential all information disclosed during negotiations. The facilitator shall not act as a witness for either party in any subsequent arbitration between the parties.

Such facilitated negotiations shall conclude within ninety days from either receipt of the written notice unless extended by mutual consent. The parties may also agree at any time to terminate or waive facilitated negotiations. The costs incurred by each party in such negotiations will be borne by both, the fees and expenses of the facilitator, if any, shall be borne equally by the parties.

If any dispute, controversy or claim arises in connection with the performance or breach of this agreement and cannot be resolved by facilitated negotiations (or the parties agree to waive that process) then such dispute, controversy or claim shall be settled by arbitration in accordance with the laws of the State of Ohio and the then current Arbitration Rules for Professional Accounting and Related Disputes of the American Arbitration Association, except that no prehearing discovery shall be permitted unless specifically authorized by the arbitration panel, and shall take place in Ohio, unless the parties agree to a different locale.

Such arbitration shall be conducted before a panel of three persons, one chosen by each party and the third selected by the two parties – selected arbitrators. The arbitration panel shall have no authority to award non-monetary or equitable relief, and any monetary award shall not include punitive damages. The confidentiality provisions applicable to facilitated negotiation shall also apply to arbitration.

The award issued by the arbitration panel may be confirmed in a judgment by any federal or state court of competent jurisdiction. All reasonable costs of both parties, as determined by the arbitrators, including but not limited to (1) the costs, including reasonable attorneys' fees, of the arbitration; (2) the fees and the expenses of the AAA and the arbitrators and (3) the costs, including reasonable attorneys' fees, necessary to confirm the award in court shall be borne entirely by the non-prevailing party (to be designated by the arbitration panel in the award) and may not be allocated between the parties by arbitration panel.

### **TRIAL BY JUDGE**

In the unlikely event that differences concerning our services or fees should arise that are not resolved by mutual agreement, we both recognize that the matter will probably involve complex business or accounting issues that would be decided most equitably to us by a judge hearing the evidence without a jury. Accordingly, you and we agree to waive any right to a trial by jury in any action, proceeding, or counterclaim, arising out of or relating to our services and fees for this engagement.

### **FEES FOR SERVICES AND BILLING TERMS**

Our fees for these services will be \$16,700. [Our fees assume that one/two major program(s) will be required to be tested under Uniform Guidance, as required by Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. If additional major programs are required to be tested, we will discuss the additional charge prior to the commencement of work.] You will also be billed for [travel and other] out-of-pocket costs such as delivery, report production for additional reports, word processing, postage, etc. The fees are based on timely and complete cooperation from your personnel in the form of preparation of audit schedules and providing us with other necessary documents and the assumption that new or unexpected circumstances will not be encountered during the audit such as the following: