

**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 Kentucky Orthopedic Rehabilitation, LLC (hereinafter "Contractor"), with its principal place of business at 13201 Magisterial Drive, Louisville, KY 40223.

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:

The Contractor shall provide one (1) athletic trainer duly certified by the National Athletic Trainers Association (the "Trainer") to each of the following schools: Academy @ Shawnee High, James Graham Brown School, Butler High, Central High, Eastern High, Fairdale High, Fern Creek High, Iroquois High, Male High, Moore High, PRP High, Seneca High, Southern High, Valley High, Waggener High and Western High School. The Contractor shall provide the Board with evidence that the Trainers have successfully completed a criminal records check. Exhibits A, B, C and D are attached and incorporated herein by reference.

The Board agrees to provide the following at the location of each school listed:

a) Provide a dedicated area reasonably acceptable to Contractor (the “Athletic Training Room”) to perform the Services, other than the Services provided at events.

b) Provide all reasonably necessary and required supplies and equipment required in connection with the performance of the Services upon written request from Contractor. Any supplies and equipment furnished by the Board and not used in the performance of the Services shall be returned to the School upon the expiration or earlier termination of this Agreement.

c) Take such action and adopt such policies as are reasonable and desirable to facilitate communication between the Board, its coaches and other representatives of its Athletic Department and Contractor.

d) Designate the School’s Athletic Director to serve as Contractor’s primary contact for communication with the Board.

e) Provide Contractor with athletic event schedules approximately one (1) month prior to the first scheduled event each season and communicate revisions to the schedule to Contractor no less than two (2) weeks prior to any such revision.

f) Provide Contractor with reasonable access to a telephone in, or in close proximity to, the Athletic Training Room.

g) Cooperate with Contractor in all other respects to achieve the objectives of this Agreement.

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>\$360,000</u>
Progress Payments (if not applicable, insert N/A):	<u>\$180,000 due December 1, 2018 & \$180,000 due March 1, 2019</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>Norton Healthcare Grant per Gift Agreement between Norton Hospitals. Inc. and the Board dated 6/13/2018</u>

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on July 10, 2018 and shall complete the Services no later than June 24, 2019, 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 and Trainers, arising from the negligent acts or omissions of Contractor or the Trainers 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.

To the extent permitted by law, the Board agrees to hold harmless, indemnify and defend Contractor from any and all claims or losses accruing or resulting from injury, damage or death of any person, firm or corporation arising from the negligent acts or omissions of the Board or its employees in the performance 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.

The Board shall furnish Contractor with a certificate of insurance evidencing general liability and educator's legal liability insurance coverage with minimum limits of \$1,000,000. This insurance may be provided in whole or in part through a system of self-insurance.

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 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. 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 or Contractor may, by written notice of default to the other party, terminate the whole or any part of this Contract, if either Party 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.
- H. During the initial term and any renewal terms of this Contract, and for a period of eighteen (18) months after the expiration or termination of this Contract, the Board agrees that it will not solicit, contract, engage, hire or employ any Trainer employed or retained by Contractor who provides services to the Board under this Contract.
- I. The Board may communicate to Contractor and Contractor may have access to certain information that is confidential under federal and/or state law including without limitation personally identifiable student information. Contractor agrees to treat all such information as confidential, whether or not so identified, and shall not disclose any part of that information without prior written consent of the Board. Contractor shall limit the use and circulation of such information to only those persons or entities necessary to perform the Services under this Contract. This confidentiality obligation shall not apply to any part of the information that (1) has been disclosed in publicly available sources of information; (2) is not in the possession of Contractor without any specific obligation of confidentiality; (3) has been or is hereafter rightfully disclosed to Contractor by a third party, but only to the extent that the use of disclosure thereof has been or is rightfully authorized by that third party; or (4) is present in a format that does not personally identify a student. This provision shall survive the termination of this Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of June 13, 2018.

Contractor's Social Security Number or Federal Tax ID Number: 23-2980115

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

Kentucky Orthopedic Rehabilitation, LLC
CONTRACTOR

By: _____

Title: Jason Chambers
PT-OCS-MBA President

Cabinet Member: Carmen Coleman

CC
(Initials)

EXHIBIT A

1. Contractor will supply sixteen (16) Certified Athletic Trainers employed or retained by Kentucky Orthopedic Rehabilitation, LLC or an affiliate or subsidiary thereof to provide the Services to each participating high school at the times and during the events set forth on Exhibit B. The Services will be limited to (i) the evaluation and treatment of minor injuries; (ii) the application of first aid and other medical assistance as is reasonable and possible under the circumstances pending the arrival of ambulance services in the case of major injuries; (iii) preventative taping and strapping of athletes, as needed; (iv) providing nutritional information to student athletes; (v) providing basic educational information to student trainers and managers in the course of performing the Services; and, (vi) providing recommendations for exercise or other physical measures for minor injuries under the directions, supervision and review of a physician, all for the purpose of reducing head trauma and concussions in student-athletes at the participating high schools.
2. All Services will be provided on the premises of each participating high school with the exception of sports events at other schools where the participating high school's athletes are the "visiting" team if Exhibit B requires such coverage, or if services require equipment or therapeutic modalities unavailable at the participating high school.
3. Contractor will provide the JCPS Director of Athletics and the athletic director of the participating high school with accurate records of treatment rendered for all athletic injuries for which Contractor renders treatment and of all rehabilitation procedures provided by Contractor.
4. In cooperation with the Athletic Director, Contractor will develop a list of locations of emergency phones and emergency phone numbers and emergency procedures to be distributed to student athletes and coaches.
5. Contractor will request from each participating high school, the equipment and supplies required to render the Services in sufficient time to permit the participating high school to obtain such equipment and supplies when required by Contractor.
6. Contractor will facilitate communication among an injured athlete, the Athletic Director, parent/guardian and the team or family physician.
7. Contractor will provide consultation on equipment and program design when reasonably requested by a participating high school.
8. Contractor's Certified Athletic Trainer(s) will be responsible for the Athletic Training Room at each participating high school while in attendance there, including

opening and closing. Contractor will also advise each participating high school on inventory status, requisitioning of supplies, and/or facility management.

9. Contractor will inspect and take an inventory of all team medical kits at each participating high school prior to the beginning of each season.

10. Contractor's Certified Athletic Trainer(s) is immediately responsible to the Athletic Director or his/her designee.

11. Contractor's Certified Athletic Trainer(s) will serve as speaker for educational programs in each participating high school, provided that sufficient advance notice is provided to Contractor.

12. Contractor reserves the right to substitute an equally qualified Certified Athletic Trainer(s) if the need should arise. The Athletic Director will be notified in advance if any substitutions are to be made.

13. If for any reason a Certified Athletic Trainer(s) needs to be absent, Contractor will do whatever possible to provide a suitable replacement for that coverage time.

14. All changes in practice times and games must be made available to the Certified Athletic Trainer(s) within twenty-four (24) hours for those events to be covered properly.

EXHIBIT B

I. TOTAL COVERAGE

Sixteen (16) Certified Athletic Trainers will be available for a maximum of forty (40) hours per week per Certified Athletic Trainer, at the discretion of the Athletic Director. It is expected that one (1) Certified Athletic Trainer will be provided to each participating high school, unless otherwise requested by the Athletic Director. During this time, practice and event coverage will be provided.

II. ATHLETIC TRAINING ROOM COVERAGE

A. Coverage Requirements

1. Contractor shall provide coverage for the Athletic Training Room at each participating high school for a maximum of forty (40) hours per week, which includes operating an on-campus training room in the afternoon and coverage of home games.
2. Contractor shall not be required to provide Athletic Training Room coverage when Contractor is required to attend an event under Section III of this Exhibit B.

III. EVENT COVERAGE (to include pre-season and post-season)

A. Fall Sports Coverage

1. All home varsity events and away varsity football games.

B. Winter Sports Coverage

1. All home varsity events and sports played during this season.

C. Spring Sports Coverage

1. All home varsity events and sports played during this season.

EXHIBIT C

COMPENSATION

JCPS shall remit the following payments to Contractor for Services provided to all participating high schools within thirty (30) days of invoice by Contractor:

School Year 2018-2019

December 1, 2018	\$180,000
<u>March 1, 2019</u>	<u>\$180,000</u>
School Year 2018-2019 TOTAL:	\$360,000

EXHIBIT D

PROMOTIONAL ITEMS

Each participating high school and the Board shall provide Contractor with the below promotional items:

- Initiate a press conference with members from each participating high school, Contractor, or other donator party available to talk about the value of the relationship between the parties and how this speaks to the value each party has in athletic safety.
- One Contractor Sign / banner at each sports venue at each of the participating high school's teams (i.e., football, baseball, basketball, soccer, softball, field hockey, etc.). Banners and art work will be provided by Contractor and logo provided from each participating high school in .eps or vector art format.
- Minimum of two (2) PA announcements at each home sporting event of each participating high school when there are announcers present.
- Presence of Contractor's logo on each participating high school's sporting web site with a link to Contractors splash page.
- Allow Contractor the use of each participating high school's logo on their web site with a link to the school's athletic or home page.
- Opportunity for "KORT Nights" at which a home basketball or football game is held at a participating high school allowing Contractor to have a promotional table and "give-a-ways". This will be coordinated between the Athletic Director and Certified Athletic Trainer as to the best game at which to do this event.
- Contractor logo on all participating high school Master Schedules printed for basketball, football and other sports throughout the year.
- Opportunity to speak at yearly participating high schools' coaches meeting on topic to be decided by the area Athletic Director.

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: _____

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

Explain why the vendor is a single source: _____

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

State the type of service: **Athletic Training Services**

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

State the item(s): _____

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): _____

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

State the item(s): _____

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

State the location: _____

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: _____

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

State the items: _____

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.

Jerry Wyman

Print name of person making Determination

Signature of person making Determination

Kentucky Orthopedic Rehab LLC
Name of Contractor (Contractor Signature Not Required)

Activities and Athletics

School or Department

5/17/2018

Date

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations