

MEMORANDUM OF AGREEMENT

between

Jefferson County Board of Education

and

Black Community Development Corporation

This Memorandum of Agreement (hereinafter "Agreement") is entered into as of this 1st day of September, 2018 between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as Jefferson County Public Schools (hereinafter "JCPS"), with its principal place of business at 3332 Newburg Road, Louisville, Kentucky, 40218 and Black Community Development Corporation, a Kentucky nonprofit corporation (hereinafter "BCDC"), with its principal office located at 2600 W. Broadway Suite 210, Louisville, Kentucky 40211.

WHEREAS, JCPS and BCDC desire to collaborate to provide after school programming for students attending the W.E.B. DuBois Academy, a JCPS school.

WHEREAS, CE&S Foundation has provided funding to JCPS for the benefit of W.E.B. DuBois Academy to support after school tutoring and enrichment for W.E.B. DuBois Academy students led by BCDC in partnership with local churches.

NOW THEREFORE, this Agreement is entered into by and between JCPS and BCDC to provide services as set forth below.

1. Duties of BCDC:

- a. Provide qualified volunteers to provide after school tutoring and enrichment to students attending the W.E.B. DuBois Academy on a regular, mutually agreed upon weekly schedule. **Tutoring will occur in multiple locations daily (Monday-Thursday) following the JCPS school calendar schedule.**
- b. All student encounters shall be documented by BCDC. Attendance sheets must be kept, and data shall be recorded in each individual student record (i.e. agenda/data system) on a weekly basis. JCPS staff will provide training to BCDC staff and volunteers on the use of the CASCADE data system.
- c. Require and verify that all employees/contractors performing services under this Agreement are covered by professional liability insurance in amounts no less than \$1,000,000/\$2,000,000 and provide JCPS with a certificate of insurance upon request.
- d. Require all BCDC employees, volunteers, contractors or agents performing services under this Agreement to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees/volunteers/contractors/agents convicted of any of the following, per JCPS Board Policy 03.6, shall not be considered:

- i. Any conviction for sex-related offences;
 - ii. Any conviction for offenses against minors;
 - iii. Any conviction for felony offenses, except as provided below;
 - iv. Any conviction for deadly weapon-related offenses;
 - v. Any conviction for drug-related offenses, including felony drug offenses, within the past seven years;
 - vi. Any conviction for violent, abusive, threatening or harassment related offenses;
 - vii. Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform services under this Agreement.
- e. BCDC acknowledges that data provided to BCDC by JCPS for purposes of this Agreement is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable JCPS, Local, State and Federal confidentiality laws and regulations including but not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, including the regulations in 34 C.F.R. Part 99 ("FERPA"); the Privacy Act of 1974, 5 U.S.C. 552a; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; the Kentucky Open Records Act, KRS 61.820 et seq.; and the California Education Code.
- f. If the performance of this Agreement involves the transfer by JCPS to BCDC of any data regarding any student that is subject to FERPA, BCDC agrees to:
 - i. In all respects comply with the provisions of FERPA.
 - ii. Use any such data for no purpose other than to fulfill the purposes of this Agreement, and not share any such data with any person or entity other than BCDC and its employees, contractors, volunteers and agents, without the approval of JCPS.
 - iii. Require all employees, contractors, volunteers and agents of BCDC to comply with all applicable provisions of FERPA with respect to any such data.
 - iv. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of this Agreement.
 - v. Collect data in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of BCDC having a legitimate interest in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any published results of studies.
 - vi. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date within it is no longer needed by BCDC for the purposes of this Agreement.

- g. BCDC acknowledges that any violation of this MOU and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this MOU.
- h. BCDC will take precautions to ensure that the employees, contractors, volunteers and agents of the local churches that are in partnership with BCDC in the school tutoring and enrichment services provided under this Agreement shall not base the content of the services upon any religious policies or procedures; shall not engage in any religious proselytizing or praying during the provision of the services; and shall not incorporate any religious symbols or references of any type in any resources or materials provided to the students as part of the services.

2. Duties of JCPS:

- a. JCPS will provide training to BCDC staff and volunteers on use of the JCPS CASCADE data system and any other JCPS Academic Intervention/Enrichment Online Programming Tool.
- b. JCPS will obtain any necessary written permissions from parents and/or guardians of JCPS students to approve their receiving services under this Agreement. JCPS will share such authorizations/permissions with BCDC.
- c. JCPS will assign a Lead Teacher to serve as a liaison with the BCDC. The teacher will meet with the BCDC appointed tutors on a regular basis to provide appropriate tutoring resources.
- d. JCPS will assist BCDC employees\volunteers\contractors\agents with the interpretation of applicable JCPS policies and procedures for volunteers and visitors entering JCPS facilities.

3. Payment:

JCPS will provide funding from CE&S Foundation grant funds not to exceed \$12,500 only in accordance with the terms of this Agreement. No more than \$3,000 can be spent on snacks for students with the remaining \$9,500 to be spent only on academic resources, supplies and materials. Payment from JCPS to BCDC will be made on a reimbursement basis only and only after BCDC has incurred allowable costs. BCDC billing to JCPS for reimbursement must include (a) the cost categories as outlined in this Agreement, (b) supporting documentation with copies of actual invoices for the supplies and/or materials purchased, and (c) appropriate signatures of authorized BCDC officials.

Invoices may be sent monthly but no less than quarterly. The final invoice shall be clearly identified as "**FINAL**" and shall be submitted no later than 60 days after this Agreement's end date. Any reimbursement requested that does not comply with this Agreement and any reimbursement process or procedure required by JCPS Financial Services Division shall not be honored.

Invoices shall be submitted to:

Robert Gunn, Principal
W.E.B. DuBois Academy

4409 Preston Highway
Louisville, KY 40213

4. Term:

This Agreement shall be effective for a term commencing on September 1, 2018 and ending on July 31, 2019.

5. Termination:

The Agreement may be terminated by either party with or without cause upon no less than 60 days written notice to the other party. This Agreement may be terminated immediately by JCPS upon ten business days written notice to BCDC for its failure to cure a material breach of this Agreement. This Agreement may be terminated immediately should the funding provided to JCPS by CE&S Foundation be withdrawn, rescinded or otherwise cancelled beyond the control of JCPS.

6. 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 BCDC.

7. Compliance with Law:

BCDC shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the BCDC or subcontractor for the duration of this agreement and shall reveal any final determination of a violation by the BCDC or subcontractor of the preceding KRS Chapters.

8. Equal Opportunity:

During the performance of this Agreement, BCDC 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, and 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.

9. Independent Parties:

In the performance of the duties and obligations imposed on each party by this Agreement, it is mutually understood and agreed that BCDC 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 BCDC performs its work and functions.

10. 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.

11. Entire Agreement:

This Agreement contains the entire agreement between JCPS and BCDC 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.

12. 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.

13. 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.

14. Applicable Law:

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

15. Indemnification

BCDC shall indemnify and hold JCPS harmless from and against any and all claims, demands, liabilities, damages, and expenses connected therewith for injury to persons or damages to property caused by the acts, omissions, or negligence of BCDC, its agents, servants, or employees. If the indemnification provisions are determined to be inapplicable under this clause, such inapplicability shall not affect the right of JCPS 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
Superintendent

Date: _____

BLACK COMMUNITY DEVELOPMENT CORPORATION:

By: _____


Terra Leavell
President and Chief Executive Officer

Date: 7/17/18

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