

Memorandum of Agreement
between
Jefferson County Board of Education
And
Heart of America

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered by and between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools (hereinafter "JCPS"), with its principal place of business located at 3332 Newburg Road, Louisville, Kentucky 40218 and The Heart of America Foundation® ("HOA"), with its principal place of business located at 2270 Beaver Road, Landover, MD 20785 (JCPS and HOA are hereinafter referred to individually as a "Party" and collectively as the "Parties").

WHEREAS, HOA has offered to donate to JCPS costs for equipment, material, and any non-district labor to construct two Innovation Labs on the W.E.B Dubois Academy and Newburg Middle School.

WHEREAS, JCPS desires to accept the donation of \$500,000 (estimated value of two VIL Labs) from HOA.

NOW THEREFORE, the Parties agree that the terms and conditions herein shall control the donation and the use of HOA Confidential Information (defined in Section 8):

1. JCPS has agreed to serve as the General Contractor for the renovations of the designated space for the Innovation Labs. JCPS will cover any abatement or remediation work that is necessary for the construction each Innovation Lab. No work will begin until the plans and specifications for the construction have been approved by JCPS and the members of the Jefferson County Board of Education (hereinafter the "Board") have authorized the project to begin. HOA will serve as the Project Manager and procure all necessary renovation materials including furniture, fixtures and equipment for the completion of the Innovation Labs. HOA agrees to cover the electrical trade work that is outside the scope of JCPS's Facilities Department's support which will be determined by JCPS.
2. Should any trade work fall outside of the scope of JCPS, HOA and HOA contractors will complete the Innovation Labs in conformance with the plans and specifications under the direction of the JCPS Facilities Department. HOA and HOA contractors shall at all times during the term of this Agreement comply with all applicable federal, state and local statutes, regulations, ordinances, rules and policies, and shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the work.
3. The Innovation Labs at W.E.B. Dubois Academy and Newburg Middle School shall be completed no later than December 31, 2020.

4. Immediately upon completion of the work as contemplated herein, HOA and HOA contractors will release all claims of ownership and title to the Innovation Labs and will vest in the Board. The Board shall thereafter have complete control of the VIL Lab at W.E.B Dubois Academy and Newburg Middle School.

5. To the extent permitted by Kentucky law, JCPS shall indemnify and hold HOA and HOA contractors harmless from any and all liabilities or claims made by JCPS, its personnel, students, agents, representatives, other users or other parties arising in any manner related to the use of the donated renovation costs, technology, equipment, and furnishings, whether brought in tort, contract, law or equity.

6. Each Party may, as part of this donation, share certain information that is proprietary to that Party and/or maintained by that Party as confidential (hereinafter "Confidential Information") with the other Party. Each Party shall protect Confidential Information using the same degree of care, but no less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication thereof as it uses to protect its own proprietary and confidential information. Neither Party shall use the Confidential Information except to further the purposes of this Agreement or as otherwise specifically authorized in writing by the Disclosing Party. Each Party may disclose the Confidential Information of the other Party only to those of its employees and employees of its affiliates who (a) need to know such information to perform its obligations, exercise its rights hereunder, or make necessary disclosures in its financial filings and (b) are bound by the obligations of confidentiality set forth herein (collectively, "Representatives"). An affiliate is an entity that controls, is controlled by, or is under common control with a Party. Under no circumstances, except as expressly set forth below, shall either Party reproduce, distribute or otherwise provide, directly or indirectly, any Confidential Information to any person or entity who is not a Representative, or make necessary disclosures in its financial filings without the consent of the Disclosing Party, provided:

a. JCPS can disclose Confidential Information to the extent that such disclosure is required under the Kentucky Open Records Law; and

b. No obligation is imposed with respect to information of the Disclosing Party which: (i) was rightly in the non-Disclosing Party's unrestricted possession prior to disclosure by the Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of the non-Disclosing Party; (iii) is rightly received by the non-Disclosing Party from a third party that has no duty of confidentiality to the Disclosing Party; or (iv) is independently developed by the non-Disclosing party without relying on the Confidential Information of the Disclosing Party; and

c. Each Party's duty under this Agreement to protect any Confidential Information of the other Party shall survive after the end of the term of this Agreement.

7. HOA will require the following, pursuant to KRS 160.380, for all HOA contractors, employees and volunteers under this agreement

a) A state criminal records check;

b) All volunteers will complete a volunteer liability waiver and photographic release as approved by JCPS

8. JCPS shall not sell transfer and/or assign the donated renovation costs, technology, equipment, and furnishings to any other party or otherwise place the same into the stream of commerce.

9. This Agreement shall be in effect for the period beginning June 24th 2020 and ending December 31, 2020.

10. This Agreement may be terminated by either Party with or without cause upon no less than thirty (30) days written notice to either Party. JCPS will provide written notification of any material breach or intent to sever this agreement with HOA and allow for a reasonable amount of time for reconciliation by HOA of any identified issues or grievances. This Agreement may be terminated immediately by JCPS upon ten (10) business days written notice to HOA for its failure to cure a material breach of this Agreement only after the pursuance of a remedy to any issues as outlined above.

11. 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 HOA.

12. During the performance of this Agreement, HOA 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 age, color, creed, disability, genetic information, marital or parental status, national origin, race, sex, sexual orientation, gender identity, gender expression, veteran status, religion, or political affiliation or beliefs, disability, or limitations related to pregnancy, childbirth, or related medical conditions.

13. In the performance of the duties and obligations imposed on each Party by this Agreement, it is mutually understood and agreed that HOA and HOA contractors are 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 HOA and HOA contractors perform their work and functions.

14. This Agreement contains the entire agreement between JCPS and HOA and supersedes any and all prior agreements, representations and negotiations, either oral or written, between the Parties before the execution of this Agreement, but any other agreement executed contemporaneously with the execution of the Agreement and incorporated herein by reference shall remain in full force and effect.

15. If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding. This Agreement 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 Agreement 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.

THE UNDERSIGNED ARE AUTHORIZED AGENTS OF THE PARTIES WITH AUTHORITY TO BIND THE SAME AND EACH OF THEM HEREBY CERTIFIES TO HAVE READ THIS AGREEMENT AND FULLY UNDERSTANDS AND AGREES TO ITS CONTENTS.

JEFFERSON COUNTY BOARD OF EDUCATION:

Dr. Martin A. Pollio
Superintendent

Date

HEART OF AMERICA:

JOHN FLYNN
Vice Pres., INNOVATION

6.11.20

Date