

## **RESOLUTION OF THE BOARD OF EDUCATION OF JEFFERSON COUNTY**

WHEREAS, the Board of Education of Jefferson County (the "Board") is empowered to make contracts under KRS 160.160

WHEREAS, the Board desires to adopt the resolution set forth below to facilitate the approval of contracts after the completion of the competitive negotiation process;

THEREFORE: it is hereby:

RESOLVED, that the Board hereby authorizes and directs the Superintendent or his designee to sign and to enter into contracts necessary to effectuate the results of competitive negotiations which have received approval by this Board. Those contracts shall conform substantially to the form Professional Services Contract or Purchase of Goods Contract attached to this Resolution.

The undersigned Chairperson and Superintendent of the Board of Education of Jefferson County certify that the above Resolutions were adopted by a majority vote of the Board at a meeting held on June 28, 2022 at which a quorum was present.

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Dr. Martin Pollio, Superintendent

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Diane Porter, Chair, Board of Education of Jefferson County



## JEFFERSON COUNTY PUBLIC SCHOOLS SERVICES CONTRACT

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THIS SERVICES CONTRACT ("Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 ("JCPS") and ("Contractor"), with its principal place of business at \_.

WITNESSETH:

WHEREAS, JCPS desires to procure certain services of Contractor, which are more fully described below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services desired by JCPS;

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and conditions contained in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, JCPS and Contractor (individually, a "Party" and collectively, the "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, as defined below, 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 Procurement Regulations of JCPS currently in effect (the "Regulations"), which 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 provision of the Regulations, the provision in the Regulations shall prevail.

### ARTICLE II

#### Services

During the Term, as defined below, Contractor will perform (a) the services set forth below, and (b) such other services that are agreed in writing by JCPS and Contractor during the Term in an addendum to this Contract as provided in Article VII (collectively, the "Services").

### 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: \_\_\_\_\_

Progress Payments (if not applicable, insert N/A):

Costs/Expenses (if not applicable insert N/A):

Fund Source:

#### ARTICLE IV Term of Contract

This Contract shall be effective on the Effective Date. Contractor shall begin performance of the Services on a date after the Effective Date, but no later than \_\_\_, and shall complete the Services no later than \_\_\_, (the "Term"), unless the Term is modified in writing by JCPS and Contractor in an addendum to this Contract as provided in Article VII.

#### ARTICLE V Performance of Services by Contractor

A. The Services shall be of a quality and shall be performed in a manner that is within the highest standards of Contractor's profession or business. 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, as defined below.

B. Contractor shall appoint one person who shall be responsible for reporting to JCPS on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

C. Contractor shall be an independent contractor of JCPS for all purposes of this Contract. Nothing in this Contract is intended to create an employer-employee relationship, joint venture relationship, or partnership between JCPS and Contractor or any personnel assigned to this project by Contractor, and the Parties shall characterize their relationship as an independent contractor relationship for tax purposes and all other purposes. JCPS shall have the right to exercise control and direction as to the results only and not as to the methods by which Contractor performs or otherwise provides the Services, it being recognized that Contractor will be exercising Contractor's independent judgment. Contractor and any personnel assigned to this project by Contractor shall have no claim under this Contract or otherwise against JCPS for workers' compensation, unemployment compensation, vacation pay, sick leave, retirement benefits, Social Security benefits, disability insurance benefits, unemployment insurance benefits, or any other benefits. JCPS shall not withhold



on behalf of Contractor, or in any way be responsible for the payment of, any federal, state, or local income taxes, F.I.C.A. taxes, F.U.T.A. taxes, unemployment compensation or workers' compensation contributions, Social Security, or any other payments or withholdings pursuant to any law or requirement of any governmental body or agency on behalf of Contractor, and all such withholdings, payments, or obligations shall be the sole responsibility of Contractor. JCPS shall issue to Contractor a Form 1099 statement for Contractor's federal and state income tax reporting purposes. Contractor warrants that Contractor will not take a position that is inconsistent with such independent contractor status, including in any court proceeding. This Article V(C) shall survive the termination of this Contract.

- D. Contractor shall at all times during the Term (a) comply with all applicable federal, state and local statutes, regulations, ordinances, and (b) obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.
- E. Contractor shall (a) hold harmless, indemnify, and defend JCPS and its Board 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 Contractor and any personnel assigned to this project by Contractor, in connection with the performance of this Contract, and (b) hold harmless, indemnify, and defend JCPS and its Board 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 Article V(E) shall survive the termination of this Contract.
- F. Unless waived in writing by the Contract Administrator, Contractor shall maintain during the Term 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 JCPS 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.

## ARTICLE VI Equal Opportunity

During the Term, 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 incorporated by reference into and made a part of this Contract.

## ARTICLE VII

### Changes

JCPS and Contractor may at any time, by mutual agreement set forth in a written addendum to this Contract, make changes in (a) the definition of the Services, (b) the scope of the Services, (c) the Contract Amount, (d) the time within which the Services are to be performed, (e) the schedule of progress payments, if progress payments are, and (f) the Term.

## ARTICLE VIII

### Termination for Convenience of JCPS

JCPS 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. Upon termination, the rights and obligations of the Parties shall be as set forth in Article X.

## ARTICLE IX

### Termination for Default

JCPS may, by written notice of default to Contractor, terminate the whole or any part of this Contract, upon (a) the commission by Contractor or any personnel assigned to this project by Contractor of any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or assisting or participating in or knowingly benefitting from any act by any employee of JCPS which is a violation of such provisions, (b) an occurrence of dishonest, fraudulent or illegal conduct or misappropriation of JCPS funds by Contractor or any personnel assigned to this project by Contractor, (c) the indictment or entry of a guilty plea or a plea of no contest to a felony offense by Contractor or any personnel assigned to this project by Contractor, or (d) a material breach of this Contract by Contractor, provided that JCPS has first given written notice to Contractor describing the breach with reasonable specificity and demanding that Contractor take action to cure the breach, but Contractor has failed to cure the breach within the period of 10 days after Contractor's receipt of such notice. Upon termination, JCPS may secure the required services from another contractor. If the cost to JCPS exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of JCPS provided in this Article shall not be exclusive and are in addition to the rights and remedies of JCPS under Article X of this Contract or as provided by law.

## ARTICLE X

### Obligations Upon Termination

Upon the termination of this Contract under either Article VIII or Article IX, (a) each Party shall be required to carry out any provisions which contemplate performance by or impose obligations on such Party after the effective date of termination, including, without limitation, Articles V(C), V(E), XII, XIII, XV, XVI(D) and XVI(F), (b) termination shall not affect any liability or other obligation which has accrued prior to the effective date of termination, including, with limitation, any liability or loss or damage on account of a breach of this Contract, and (c) JCPS shall have no obligation to pay any compensation to Contractor for periods after the effective date of termination, except the obligation to pay any compensation that accrued before the effective date of termination.



## ARTICLE XI

### Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any addendum entered into under Article VII 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, JCPS 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 JCPS. This Article XII shall survive the termination of this Contract.

## ARTICLE XIII

### Proprietary Information

At all times during the Term and thereafter, Contractor and all personnel assigned by Contractor to this project will hold in strictest confidence and will not disclose, use, or publish any Proprietary Information, as defined below, of JCPS except as such disclosure, use or publication may be required in connection with Contractor's performance of the Services, or unless JCPS expressly authorizes such disclosure, use or publication in writing. The term "Proprietary Information" shall mean all information, data and records relating to JCPS's business, business plans, trade secrets, financial statements, services, personnel information, student information, and any other proprietary information of JCPS which JCPS treats as confidential with respect to the general public. For purposes of this Article XIII, the term "Proprietary Information" shall not include information that Contractor can show by competent proof (a) was known to Contractor prior to disclosure by JCPS and not subject to a duty or obligation of confidentiality or nondisclosure on the part of Contractor; (b) was generally known to the public at the time JCPS disclosed the information to Contractor; (c) became generally known to the public after disclosure by JCPS through no act or omission of Contractor; (d) was disclosed to Contractor by a third party having a bona fide right both to possess the information and to disclose it to Contractor; or (e) is otherwise public information under applicable law. Upon the termination of this Contract for whatever reason, Contractor will deliver to JCPS, or if agreed by JCPS in writing will destroy, all data, records, reports, summaries, plans, notes, memoranda and documents, together with all copies thereof (whether in tangible or intangible form), and any other material containing or disclosing any Proprietary Information of JCPS. This Article XIII shall survive the termination of this Contract.

## ARTICLE XIV

### Contract Administrator

JCPS shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to this Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, JCPS shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If JCPS fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be JCPS's Chief Financial Officer.

## ARTICLE XV

### Right to Audit

Contractor shall retain all records relating to the performance of the Services for five (5) years after the end of the Term. During such period, JCPS 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. This Article XV shall survive the termination of this Contract.

## ARTICLE XVI 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. Any action or claim arising from, under or pursuant to this Contract 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.
- 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. If Contractor has access to student records, Contractor shall at all times (a) comply with the Family Educational Rights and Privacy Act of 1974, and (b) limit the access to those records by Contractor's employees and other personnel assigned to this project to those persons for whom access is essential to perform this Contract.
- G. If this contract requires Contractor and/or any employees of Contractor to perform services on the premises of any JCPS schools during JCPS school hours, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. If this Contract is procured by JCPS under KRS Chapter 45A, Contractor shall at all times during the Term (a) 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, and (b) reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.
- I. This Contract is subject to the following prohibitions on conflicts of interest:

1. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR THE CONTRACTOR OR ANY JCPS EMPLOYEE TO PARTICIPATE DIRECTLY OR INDIRECTLY IN ANY PROCEEDING OR APPLICATION, REQUEST FOR RULING OR OTHER DETERMINATION, CLAIM OR CONTROVERSY, OR OTHER



PARTICULAR MATTER PERTAINING TO ANY CONTRACT OR SUBCONTRACT, AND ANY SOLICITATION OF PROPOSAL THEREFOR, IN WHICH TO HIS KNOWLEDGE:

- (a) HE, OR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS A FINANCIAL INTEREST THEREIN;  
OR
- (b) A BUSINESS OR ORGANIZATION IN WHICH HE OR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS A FINANCIAL INTEREST AS AN OFFICER, DIRECTOR, TRUSTEE, PARTNER OR EMPLOYEE, IS A PARTY; OR
- (c) ANY OTHER PERSON, BUSINESS OR ORGANIZATION WITH WHOM HE OR ANY MEMBER OF HIS IMMEDIATE FAMILY IS NEGOTIATING OR HAS AN ARRANGEMENT CONCERNING PROSPECTIVE EMPLOYMENT, IS A PARTY, DIRECT OR INDIRECT PARTICIPATION SHALL INCLUDE, BUT NOT BE LIMITED TO INVOLVEMENT THROUGH DECISION, APPROVAL, DISAPPROVAL, RECOMMENDATION, PREPARATION OR ANY PART OF A PURCHASE REQUEST, INFLUENCING THE CONTENT OF ANY SPECIFICATION OR PURCHASING STANDARD, RENDERING OF ADVICE, INVESTIGATION, AUDITING OR IN ANY OTHER ADVISORY CAPACITY.

2. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR ANY CONTRACTOR OR ANY OTHER PERSON TO OFFER, GIVE OR AGREE TO GIVE, ANY JCPS EMPLOYEE OR FORMER EMPLOYEE, OR FOR ANY JCPS EMPLOYEE OR FORMER EMPLOYEE TO SOLICIT, DEMAND, ACCEPT OR AGREE TO ACCEPT FROM ANOTHER PERSON, A GRATUITY OR AN OFFER OF EMPLOYMENT IN CONNECTION WITH ANY DECISION, APPROVAL, DISAPPROVAL, RECOMMENDATION, PREPARATION OF ANY PART OF A PURCHASE REQUEST, AUDITING OR IN ANY OTHER ADVISORY CAPACITY IN ANY PROCEEDING OR APPLICATION, REQUEST FOR RULING OR ANY OTHER DETERMINATION, CLAIM OR CONTROVERSY, OR OTHER PARTICULAR MATTER PERTAINING TO ANY CONTRACT OR SUBCONTRACT AND ANY SOLICITATION OR PROPOSAL THEREFOR.

3. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR ANY PAYMENT, GRATUITY OR OFFER OF EMPLOYMENT TO BE MADE BY OR ON BEHALF OF A SUBCONTRACTOR UNDER A CONTRACT TO THE PRIME CONTRACTOR OR HIGHER TIER CONTRACTOR OR ANY PERSON ASSOCIATED THEREWITH, AS AN INDUCEMENT FOR THE AWARD OF A SUBCONTRACTOR OR ORDER.

4. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR ANY PUBLIC EMPLOYEE OR FORMER EMPLOYEE KNOWINGLY TO USE CONFIDENTIAL INFORMATION FOR HIS ACTUAL OR ANTICIPATED PERSONAL GAIN, OR THE ACTUAL OR ANTICIPATED PERSONAL GAIN OF ANY OTHER PERSON.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of \_\_\_\_\_, (the "Effective Date").

Contractor's Social Security Number or Federal Tax ID Number: \_\_\_\_\_

JEFFERSON COUNTY BOARD OF  
EDUCATION

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_

By: \_\_\_\_\_

J. Wyattte Wynn

Title: Director of Purchasing

Title: \_\_\_\_\_

# CONTRACT FOR THE PURCHASE OF GOODS

THIS CONTRACT FOR THE PURCHASE OF GOODS, hereinafter referred to as the "Contract", made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ hereinafter referred to as the "Seller", and the **JEFFERSON COUNTY BOARD OF EDUCATION**, hereinafter referred to as the "Board", a political subdivision of the Commonwealth of Kentucky with its principal place of business at 3332 Newburg Road, Louisville, Kentucky, 40218.

## WITNESSETH:

WHEREAS, the Board wishes to purchase certain goods, defined in Article II of this Contract; and  
WHEREAS, the Seller issued a bid to supply the Board with said goods upon terms set forth in Article II of this Contract; and  
WHEREAS, the Seller deems itself capable of supplying the Board with said goods upon the terms and conditions set forth in this Agreement;  
NOW, THEREFOR, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereby agree as follows:

## ARTICLE I

The effective term of this Contract shall commence on the \_\_\_\_\_ day of \_\_\_\_\_ and shall continue through \_\_\_\_\_ day of \_\_\_\_\_, subject to the terms and conditions set forth hereinafter in Articles VIII and IX.

## ARTICLE II Definition of Goods

The Seller shall sell to the Board, and the Board shall purchase from the Seller the following materials hereinafter referred to as the "Goods" during the term of this Contract

The Board shall purchase a minimum number of units of Goods and shall purchase as many of such units as it shall require during the term of this Agreement

## ARTICLE III Cost

The unit price of the Goods shall be as listed on tabulation, said price being that which was quoted to the Board in the bid issued by the Seller on the \_\_\_\_\_ day of \_\_\_\_\_. Payment for each unit may be in full within thirty (30) days after receipt of the Seller's invoice and subject to verification of delivery in accordance with the specifications.

## ARTICLE IV Modification

The terms and conditions of this Contract shall be modified only by a written addendum signed by both parties hereto and attached to this Contract. Notwithstanding the right of modification herein set forth, the parties shall not modify the terms and conditions of this Contract in any manner whereby the total cost of this Contract shall be increased by more than ten percent (10%). Any such modification shall be null and void.

## ARTICLE V Delivery; Title and Risk of Loss

To effect a delivery of the desired quantity of units of Goods, the Board shall issue a purchase order identifying the time, place and quantity of each individual delivery. (The Board shall accept no delivery for which a purchase order has not been issued, nor shall payment be made by the Board for any such delivery.) Furthermore, the Board shall not accept any substitute goods for those specified on the purchase order.

All goods shall be delivered by common carrier, F.O.B., point of delivery. The Seller shall be responsible for and pay any and all carrying and/or shipping charges. The Board shall accept no deliveries C.O.D. or F.O.B. point of departure. Title and risk of loss to the Goods shall remain with the Seller until the Goods have been delivered to the Board in accordance with this Article.

## ARTICLE VI Inspection and Quality of Goods

The goods identified by the purchase order in the manner stated in Article V above, shall be subject to the inspection of the Board's agent at the point of delivery. All Goods shall be of such quality that they shall pass without objection in the Seller's trade or business.

## ARTICLE VII Board's and Seller's Remedies

Upon the rejection of the Goods by the Board or its agent, or upon wrongful rejection by the Board, or its agent, the Board or Seller shall retain any and all rights accruing to them respectively, under the provisions of Chapter 355 of the Kentucky Revised Statutes, Article 2, Sales. All remedies administrative and legal shall be governed by the Board's Procurement Regulations which are hereby incorporated by reference into this Contract.

## ARTICLE VIII Termination for Default

The Board may terminate in whole or part any portion of this Contract in any of the following circumstances:

A. If the Seller fails to make proper delivery of any of the goods described within the time specified in the purchase order or any agreed extensions thereof, or  
B. If the Seller fails to furnish acceptable goods of a quality which shall pass without objection in the Seller's trade or business.  
Upon the Seller's default as set forth above, the Board's agent shall give written notice of default to the Seller. Subsequent to the issuance of notice of default, the Board shall allow Seller a reasonable length of time, not to exceed the ten (10) working days, within which to cure said default. Should the Seller thereupon fail to cure said default, the Board shall issue a written order of termination, at which time the Seller shall make no further deliveries and shall not honor any of the purchase orders previously issued by the Board, except those purchase orders which are reaffirmed in the order of termination.

Upon issuance of an order of termination, the Seller shall within ten (10) days from the receipt of the order of termination, prepare a final invoice itemizing all the deliveries accepted by the Board since the previously issued invoice. Payment shall be made according to the terms set forth in Article III. Any dispute arising under this clause shall be governed by Article X of this Contract, entitled "Disputes".

C. In the event the Board terminates this contract in whole or in part, as provided in paragraph (A) or (B) above, the Board may procure upon such terms and in such manner as the Director of Purchasing may deem appropriate, similar goods to those so terminated, and the Contractor shall be liable to the Board for any excess costs for such similar goods, provided, however, the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article.

D. The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without fault or negligence of the Contractor. Such causes may include, but shall not be limited to, the public enemy, actions of the Government of the United States or the Commonwealth of Kentucky in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case, the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the inability of the Contractor to obtain materials or goods essential to the performance defined in Article II of this Contract, from the Contractor's usual source, the Contractor shall not be liable for any excess costs for failure to perform, unless such materials or goods were obtainable from other sources in time to permit the Contractor to meet its required schedule.

E. If this Contract is terminated as provided in paragraph (A) or (B) above, the Board, in addition to all other rights provided in this Article, may require the Contractor to transfer title and possession and to deliver to the Board, in the manner and to the extent directed by the Director of Purchasing, any and all materials or goods defined in Article II of this Contract in possession of the Seller prior to the receipt of the notice of termination required by paragraph (A) or (B) above. Furthermore, the Contractor shall, upon the direction of the Director of Purchasing, protect and preserve any goods in the possession of the Contractor in which the Board has an interest. Payment for goods accepted by the Board shall be in an amount agreed upon by the Contractor and the Director of Purchasing, failure to agree to such an amount shall be a dispute within the meaning of Article X entitled "Disputes". The Board may withhold from amounts otherwise due the Contractor for goods accepted by the Board such sum as the Director of Purchasing determines to be necessary to protect the Board against loss because of outstanding liens or claims.

F. If, after notice of termination of this Contract under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, the rights and obligations of the Parties shall be the same as if the notice of termination was issued pursuant to the provisions of Article IX of this Contract.

G. 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.

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#### ARTICLE IX

##### Termination for Convenience

Performance of the work under this Contract may be terminated by the Board in whole, or from time to time, in part, whenever the Board shall determine that such termination is in the best interest of the Board. Any such termination shall be effected by delivery of a written order of termination specifying the extent to which the further purchase or delivery of goods shall be terminated, and upon the date which termination shall become effective.

Upon issuance of the order of termination, the Seller shall stop all further deliveries and shall not honor any purchase orders which it then holds from the Board except for those purchase orders, which are reaffirmed in the order of termination.

Upon receipt of the order of termination, the Seller shall, within ten (10) days from receipt of the order of termination, prepare a final invoice itemizing all of the deliveries accepted by the Purchaser since the previously issued invoice. Payment shall be made according to the terms set forth in Article III. Any dispute arising under this Article shall be governed by Article X of this Contract entitled "Disputes".

#### ARTICLE X

##### Disputes

Any differences or disagreements arising between the parties herein concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article IV of this Contract shall be submitted to the Director of Bids and Specifications or the Executive Director of Facilities/Transportation through procedures set out in the Board's Procurement Regulations, who shall render a decision in writing and furnish a copy of such decision to the Contractor by certified mail, return receipt requested, within thirty (30) days of the date of submission. Upon written appeal, the decision of the Superintendent designee shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or clearly arbitrary and capricious or contrary to law.

#### ARTICLE XI

##### Prohibition of Conflicts of Interest

A. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR THE CONTRACTOR OR ANY EMPLOYEE TO PARTICIPATE DIRECTLY OR INDIRECTLY IN ANY PROCEEDING OR APPLICATION, REQUEST FOR RULING OR OTHER DETERMINATION, CLAIM OR CONTROVERSY, OR OTHER PARTICULAR MATTER PERTAINING TO ANY CONTRACT OR SUBCONTRACT, AND ANY SOLICITATION OF PROPOSAL THEREFOR, IN WHICH TO HIS KNOWLEDGE:

- (i) HE, OR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS A FINANCIAL INTEREST THEREIN; OR
- (ii) A BUSINESS OR ORGANIZATION IN WHICH HE OR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS A FINANCIAL INTEREST AS AN OFFICER, DIRECTOR, TRUSTEE, PARTNER OR EMPLOYEE, IS A PARTY, OR
- (iii) ANY OTHER PERSON, BUSINESS OR ORGANIZATION WITH WHOM HE OR ANY MEMBER OF HIS IMMEDIATE FAMILY IS NEGOTIATING OR HAS AN ARRANGEMENT CONCERNING PROSPECTIVE EMPLOYMENT, IS A PARTY, DIRECT OR INDIRECT PARTICIPATION SHALL INCLUDE, BUT NOT BE LIMITED TO INVOLVEMENT THROUGH DECISION, APPROVAL, DISSAPPROVAL, RECOMMENDATION, PREPARATION OR ANY PART OF A PURCHASE REQUEST, INFLUENCING THE CONTENT OF ANY SPECIFICATION OR PURCHASE STANDARD, RENDERING OF ADVICE, INVESTIGATION, AUDITING OR IN ANY OTHER ADVISORY CAPACITY.

B. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR ANY CONTRACTOR OR ANY OTHER PERSON TO OFFER, GIVE OR AGREE TO GIVE, ANY EMPLOYEE OR FORMER EMPLOYEE, OR FOR ANY EMPLOYEE OR FORMER EMPLOYEE TO SOLICIT, DEMAND, ACCEPT OR AGREE TO ACCEPT FROM ANOTHER PERSON, A GRATUITY OR AN OFFER OF EMPLOYMENT IN CONNECTION WITH ANY DECISION, APPROVAL, DISSAPPROVAL, RECOMMENDATION, PREPARATION OF ANY PART OF A PURCHASE REQUEST, INFLUENCING THE CONTENT OF ANY SPECIFICATION OR PURCHASE STANDARD, RENDERING OF ADVICE, INVESTIGATION, AUDITING OR IN ANY OTHER ADVISORY CAPACITY IN ANY PROCEEDING OR APPLICATION, REQUEST FOR RULING OR ANY OTHER DETERMINATION, CLAIM OR CONTROVERSY, OR OTHER PARTICULAR MATTER PERTAINING TO ANY CONTRACT OR SUBCONTRACT AND ANY SOLICITATION OR PROPOSAL THEREFOR.

C. IT IS A BREACH OF ETHICAL STANDARDS FOR ANY PAYMENT, GRATUITY OR OFFER OF EMPLOYMENT TO BE MADE BY OR ON BEHALF OF A SUBCONTRACTOR UNDER A CONTRACT TO THE PRIME CONTRACTOR OR HIGHER TIER SUBCONTRACTOR OR ANY PERSON ASSOCIATED THEREWITH, AS AN INDUCEMENT FOR THE AWARD OF A SUBCONTRACTOR OR ORDER.

D. IT SHALL BE A BREACH OF ETHICAL STANDARDS FOR ANY PUBLIC EMPLOYEE OR FORMER EMPLOYEE KNOWINGLY TO USE CONFIDENTIAL INFORMATION FOR HIS ACTUAL OR ANTICIPATED PERSONAL GAIN, OR THE ACTUAL OR ANTICIPATED PERSONAL GAIN OF ANY OTHER PERSON.

#### ARTICLE XII

##### Equal Opportunity

During the performance of this Contract, the Seller agrees as follows:

A. The Seller shall not discriminate against any employee, applicant or subcontractor because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. The Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. Such action shall include, although not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training including apprenticeship. The Seller agrees to post in conspicuous places notices setting forth the provisions of this Equal Opportunity clause.

B. The Seller shall in all solicitations and/or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants shall receive consideration for employment without regard to age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation.

C. The Seller shall cause any subcontractor engaged to perform any services required by this Contract to include this Equal Opportunity clause in all solicitations, advertisements and employment practices it shall perform.

#### ARTICLE XIII

##### Indemnification

The Seller hereby agrees to indemnify and hold harmless the Board, its agents, officers and employees from any and all claims, damages, losses or expenses, including but not limited to attorney's fees, in any case arising in whole or in part from the negligent or intentional acts of the Seller, its agents, officers or employees, in the furnishing or delivery of the Goods under this Contract, or from the failure of the Goods to be of such quality that they shall pass without objection in the Seller's trade or business, as required in Article VI.

#### ARTICLE XIV

##### Board Administrator

The Director of Bids and Specifications or the Executive Director of Facilities/Transportation shall be the Contract Administrator for the purposes of daily administrative decision making pertaining to the Contract. Should the Contractor and the 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 Administrator or the Contractor, in the manner prescribed by the Board Regulations currently in effect.

#### ARTICLE XV

##### Article Headings Not Controlling

All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.

#### ARTICLE XVI

##### Address for Notices and Reports

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.

#### ARTICLE XVII

##### Entire Contract

This Contract constitutes the entire Contract between the parties hereto, and supersedes all previous negotiations, commitments, and writings. It may not be changed or modified except in writing pursuant to Article IV of this Contract.

#### ARTICLE XVIII

##### Severability

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.

#### ARTICLE XIX

##### Governing Law

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

IN WITNESS WHEREOF, the Parties hereto have executed this Contract this \_\_\_\_\_ day of \_\_\_\_\_.

JEFFERSON COUNTY BOARD OF EDUCATION

CONTRACTOR

By \_\_\_\_\_

By \_\_\_\_\_

(Title), WYATTE WYNN

(Title) \_\_\_\_\_

(Title), DIRECTOR OF PURCHASING

(Title) \_\_\_\_\_

File Copy