

**MEMORANDUM OF
AGREEMENT
BETWEEN
JEFFERSON COUNTY BOARD OF
EDUCATION AND
BIG SMILES KENTUCKY PSC (DBA
BIG SMILES)
LOUISVILLE, KENTUCKY**

This Memorandum of Agreement ("Agreement") is entered as of January 18, 2023 between the Jefferson County Board of Education ("JCBE"), having its office at 3332 Newburg Road, Louisville, Kentucky 40218, and Big Smiles Kentucky PSC, dba Big Smiles ("Provider") having its office at 2333 Alexandria Drive, Lexington, KY 40504.

WHEREAS, Provider desires to use certain school facilities of the Jefferson County Public Schools ("JCPS") to provide certain dental procedures to students (the "Program"); and

WHEREAS, Provider will be ultimately responsible for the diagnostic and preventive services that will be provided to JCPS students in the Program, and has the capability of staff/volunteers performing at JCPS school facilities all procedures that are normally done in a standard dental office setting.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Agreement, and intending to be legally bound, JCBE and Provider agree as follows:

A. GENERAL TERMS OF AGREEMENT:

1. This Agreement shall run for a period of one year, beginning January 18, 2023 and ending January 17, 2024. This agreement will renew automatically for successive one year terms unless either Party provides notice of its intent not to renew no later than December 1 of the current year. This Agreement may be terminated immediately by mutual consent of the Parties or by either Party upon ninety (90) days written notice to the other Party. If JCBE gives notice of termination of this Agreement, Provider will be permitted to complete any services for students that had been scheduled to be performed on any date or dates prior to the effective date of termination. This Agreement may be terminated by either party for breach if such breach remains uncured five (5) business days after notice of breach is delivered. In the event of a breach by Provider which impacts student safety, including but not limited to failure to meet requirements of item B.7 and 8 below, JCPS may terminate this Agreement immediately.

2. Provider shall defend, indemnify, and hold harmless JCBE and its agents, employees and Board members from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from the performance of this Agreement by Provider, including, but not limited to, Provider's use of JCPS facilities; Provider's completion of the duties under this Agreement; and injury to or death of persons or damage to property or delay or damage to JCBE, its agents, employees and Board members, for any act, omission, negligence, or willful misconduct of Provider or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. The obligation of Provider under this paragraph shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party, person, or entity described in this paragraph.

3. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action or claim arising from or under this Agreement shall be brought only in the courts, state or federal, within Jefferson County, Kentucky, and the parties expressly waive the right to bring any legal action or claims in any other courts.

5. This Agreement contains the entire agreement between JCBE and Provider with regard to the subject matter herein and supersedes any and all prior agreements, either written or oral, and may be modified or amended only by a writing signed by both parties. Either party to this Agreement may in writing [i] extend the time for the performance of any obligations of the other party; [ii] waive any inaccuracies in representations and warranties by the other party; [iii] waive performance of any obligations by the other party; and [iv] waive the fulfillment of any condition that is precedent to the performance by the party of any of its obligations under this Agreement. No such waiver will be deemed to be continuing or to apply to any other instance or to constitute the waiver of any other term or condition of this Agreement in that or any other instance. The failure of a party to insist upon strict compliance with any provision of this Agreement on one or more occasions will not be considered a waiver and will not prevent that party from insisting upon strict compliance with that provision or any other provision of this Agreement.

6. This Agreement will not be construed to constitute either party as an agent, partner or joint venture of the other party; to authorize or empower either party to assume or create any obligation or responsibility, express or implied, on behalf of the other party; or to authorize or empower either party to bind in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other party.

7. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

8. The invalidity, illegality or unenforceability of any provision of this Agreement will not affect the validity, legality or enforceability of the remaining provisions. If any provision of this Agreement is inapplicable to any person or circumstance, it will nevertheless remain applicable to all other persons and circumstances.

9. Provider shall not discriminate on the basis 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, disability, or limitations related to pregnancy, childbirth, or related medical conditions

B. PROVIDER AGREES TO:

1. Work in collaboration with the Manager of District Health and/or his/her designee to create schedules and assignments for dental care which will be shared with the Manager of District Health. Consent forms will be provided to JCBE by the Provider.

2. Meet at appropriate times with the Coordinator of JCPS Health Services and/or his/her designee to evaluate the experience of the dental procedures and to review contractual agreements.

3. Provide data regarding the number of students seen per site, services provided, and follow up regarding abnormalities detected to the Manager of District Health following every dental clinic.

4. Inform Provider staff/volunteers they are not entitled to wages from JCBE for their activities during the period of use of JCPS school facilities and that they are not employees of the JCBE when they are assigned to use the JCPS school facilities. Each individual performing services at JCPS school facilities shall sign a statement acknowledging that they are not employed by JCBE.

5. Require and verify that all Provider staff/volunteers are covered by professional liability insurance in amounts no less than \$1,000,000 per claim/\$3,000,000 aggregate per policy year and provide JCBE with a certificate of insurance upon request.

6. In addition to the insurance required by paragraph B.4, and without limiting Provider's indemnification obligations under paragraph A.3, secure and maintain in force during the term of this Agreement a Commercial General Liability insurance policy (Contractual Liability included) utilizing an occurrence policy form, with limits of not less than one million (\$1,000,000) dollars per occurrence, and Business Automobile Liability Insurance for owned, scheduled, non-owned or hired automobiles with a combined single limit not less than one million (\$1,000,000) dollars per occurrence. JCBE shall be named as an additional insured on the policies by separate endorsement. A Certificate of Insurance and endorsements shall be provided to JCBE as proof of insurance. Each such insurance policy shall provide that it is primary such that insurance maintained by JCBE, if any, shall be excess and not co-primary. Provider shall produce a copy of each such insurance policy for JCBE, upon request. Provider further agrees to provide all necessary worker's compensation insurance for Provider's employees, if any, at Provider's own cost and expense and in accordance with Commonwealth of Kentucky statutory limits.

7. Require all employees/volunteers/contractors performing the Services to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees/contractors convicted of any of the following, per JCPS Board Policy 03.6, shall not be considered:

- Any conviction for sex-related offenses;
- Any conviction for offenses against minors;
- Any conviction for felony offenses, except as provided below;
- Any conviction for deadly weapon-related offenses;
- Any conviction for drug-related offenses, including felony drug offenses, within the past seven years;
- Any conviction for violent, abusive, threatening or harassment related offenses;
- Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform services under this Agreement.

8. Require all employees and contractors performing services on JCPS school premises during JCPS school hours 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 were found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

9. Obtain approval from parents or guardians for each JCPS student to see a dentist at JCPS school facilities prior to providing any dental services, using the consent forms described in paragraph B.1, and make copies of such signed consent forms available to JCBE upon request.

10. Provide to JCBE upon request the names of dentists and other staff who will serve the JCPS students, and copies of relevant diplomas, certifications and/or licenses.
11. Notify the JCPS Health Services Coordinator of variations in the schedule due to illness, inclement weather, etc.
12. At a date to be mutually agreed upon, provide preventive and restorative dental services, including; exam, cleanings, fluoride treatments, as well as x-rays and sealants where applicable, in addition to simple fillings, pulpotomies on baby teeth, baby teeth extractions and pulp caps. Such care shall be offered to the children ages one to 18 years with parental/guardian signed consent as indicated on the consent forms described in paragraph B.1. Protocols for prevention of communicable illnesses will be followed at all times.
13. Require each site to be served by licensed Kentucky dentist(s) and hygienists.
14. Provide the Program as described in this Agreement at no cost or expense to any individual JCPS school or to JCBE.
15. Process any Medicaid claims to cover 100% of treatment. Most insurances are accepted. Insurance co-pays and deductibles that apply may be covered by Provider's grants. When children-in-need without insurance or Public Aid receive grant funding, then dental screenings, cleanings and fluoride treatments are provided at no expense, with parental signature and a written statement of financial need.
16. Provide services for restorative dental care to those children with Medicaid, KCHIP, or applicable private insurance coverage. No child is turned away based on his/her ability to pay.
17. Provide to all JCPS students a "report card" for their parents; make available copies of x-rays to the family and dental offices; and provide a toll free number to contact Provider regarding any questions they have
18. Adhere to all applicable laws, Dental Board regulations, and policies, including but not limited to HIPAA and the federal and state Family Educational Rights and Privacy Acts; make available to JCBE upon request a copy of the Program's HIPAA notification form; and provide the HIPAA notification to all parents along with the consent form.

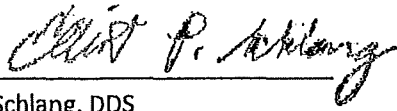
C. JEFFERSON COUNTY BOARD OF EDUCATION AGREES TO:

1. Provide the use of JCPS facilities to the dental professionals of Provider. Such school facilities shall be mutually agreed upon by JCBE administrative personnel and Provider administrative personnel. Such school facilities shall be available during the school year, however, the use of such school facilities shall not interfere with the instructional program of JCPS. In the event that JCPS facilities are closed, JCPS facilities shall also be unavailable to Provider for the duration of the closure.
2. Provide the opportunity for the dental professionals of Provider to perform dental diagnostic and preventive services to JCPS students as described in this Agreement.
3. Attempt to provide a minimum of 25 children per site to be treated. If the minimum number is not reached, the visit may be revised or cancelled.
4. Assist Provider staff with the interpretation of JCBE policies and procedures.

5. Distribute and support collection of Provider consent forms via designated school staff.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

BIG SMILES KENTUCKY PSC



Elliot P. Schlang, DDS

Date: 1/6/23

**JEFFERSON COUNTY BOARD OF
EDUCATION**

Dr. Marty Pollo, Superintendent

Date: _____