

CUSTODIAL SERVICES AGREEMENT

THIS CUSTODIAL SERVICES AGREEMENT (“Agreement”), made and entered into as of the ____ day of _____, 2014, by and between the **SHELBY COUNTY BOARD OF EDUCATION**, with principal offices at 160 South Hollywood Street, Memphis, Tennessee 38112, hereinafter called "DISTRICT," and _____, with administrative offices at _____, hereinafter called "CONTRACTOR."

WITNESSETH:

WHEREAS, DISTRICT issued a Request for Proposal (“RFP”) for Custodial Cleaning Services dated February 14, 2014, and CONTRACTOR submitted a response to the RFP (the “RFP Response”);

WHEREAS, CONTRACTOR was a successful bidder under the RFP;

WHEREAS, DISTRICT and CONTRACTOR now desire to enter into an agreement for Custodial Cleaning Services within the DISTRICT;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the parties agree as follows:

ARTICLE 1 TERM

Section 1.01. The term of this Agreement shall be one year, commencing June 2, 2014 and shall continue through June 1, 2015. DISTRICT shall have the unilateral option of extending the term of this Agreement for four (4) additional terms of one (1) year each, provided that the maximum duration of the Agreement shall not exceed five (5) years.

Section 1.02. CONTRACTOR agrees to extend the terms, conditions, and pricing under this Agreement to other state and local governmental institutions or public agencies (the “Piggybacking Institutions”). Each of the Piggybacking Institutions will issue its own procurement documentation to purchase the goods and services. The DISTRICT shall bear no responsibility or liability for any agreements between CONTRACTOR and the Piggybacking Institutions that desire to exercise this option.

ARTICLE 2 SCOPE OF THE SERVICES

Section 2.01. CONTRACTOR will provide all labor and supervision, and cleaning equipment and supplies to perform the cleaning services in accordance with the specifications set forth in this Agreement, including all Exhibits and Appendices A, B,

C and D attached hereto, the RFP and the RFP Response, (hereinafter referred to as “Services”).

Section 2.02. CONTRACTOR will provide the Services every day of the year except when the DISTRICT is closed to all DISTRICT staff. The DISTRICT’S academic school year is governed by the school calendar adopted by the Board of Education and consists of a minimum of 180 days in which school is required to be in session. For purposes of this Agreement, the school hours for elementary schools are 7:00 am to 8:00 pm, and the school hours for middle and high schools are 6:30 am to 11:00 pm, subject to reasonable adjustment by the DISTRICT upon notice (the “School Hours”). CONTRACTOR shall provide the Services during the School Hours with a minimum of disruption. The majority of the Services shall be provided after the end of the academic school day. Additionally, the DISTRICT schedules summer school sessions and other summer operations in June and July of each year in designated schools. CONTRACTOR is required to perform daily cleaning Services in those schools and buildings in which summer school sessions or summer programs operate. DISTRICT may provide CONTRACTOR a calendar and schedule of School Hours for both the regular school year and summer. When schools are closed for any reason, including holidays, breaks, and “Acts of God,” the monthly fee shall be appropriately adjusted.

Section 2.03. Summer deep cleaning Services will commence immediately after the last day of school and be completed within one (1) week before the opening of school.

Section 2.04. CONTRACTOR shall provide additional services outside the scope of Services (the “Additional Services”), upon request of the DISTRICT or a DISTRICT school administrator, at the rates set forth in the Pricing Schedule attached hereto as Exhibit A. Additional Services shall include after school events outside the School Hours specified in Section 2.02.

ARTICLE 3 COSTS

Section 3.01. CONTRACTOR shall have the sole responsibility for payment of the following:

- (i) All wages and salaries, including regular and overtime pay, and to the extent applicable, vacation pay, bereavement pay and legal holiday pay for CONTRACTOR personnel providing Services pursuant to this Agreement.
- (ii) The costs of social security taxes, State and Federal unemployment insurance premiums, general liability, umbrella insurance, workers’ compensation, comprehensive auto liability insurance, fidelity/employee dishonesty insurance, and employment practices liability insurance premiums, and, to the extent applicable, medical, life, and dental insurance premiums (if any), other applicable fringe benefits, related administrative costs and payroll-based Federal, State and local taxes payable on behalf of CONTRACTOR personnel

providing Services pursuant to this Agreement. CONTRACTOR shall indemnify and hold harmless DISTRICT from any claim for payment of such items relating to wages and/or salaries and mandated healthcare paid by CONTRACTOR under this Agreement.

- (iii) The cost of all cleaning supplies (glass cleaner, disinfectant, polish, etc.); operational equipment (buffer, brooms, vacuum cleaners, mops, buckets, large cleaning trash cans and liners, etc.); and all labor and supervision. The CONTRACTOR will be responsible for all expendable supplies such as toilet tissue and paper towels and the installation and replacement of all dispensers.
- (iv) The cost of supervision of employees and for performing service requirements and specifications at the frequency specified herein.
- (v) The cost of a personal computer, copier and printer for CONTRACTOR offices at CONTRACTOR'S facility. (The DISTRICT will not provide office space, office furnishings and equipment storage space at DISTRICT facility.)
- (vi) The cost of any DISTRICT security badges and required uniforms for CONTRACTOR personnel.
- (vii) The cost of manual, forms, training aids, office supplies, e-mail, telephone services, and long-distance telephone calls needed in performing the Services.
- (viii) The cost of CONTRACTOR supporting operations management, human resources, accounting, legal, training and development and general administrative functions.
- (ix) The cost of purchasing and/or leasing required janitorial equipment. (In the event of termination of the Agreement by either party for any reason, DISTRICT is not responsible for payment of cost for all janitorial equipment and computer equipment owned or leased by CONTRACTOR used to provide Services. DISTRICT will not reimburse CONTRACTOR for costs of any prepaid vendor contracts or incurred obligations of payment.)
- (x) The cost of any pre-employment testing for CONTRACTOR personnel as required by DISTRICT policies and procedures and applicable law.
- (xi) The startup cost of commencing the Services as outlined in the Agreement and Request for Proposal.

Section 3.02. DISTRICT shall be solely responsible for the following costs:

- (i) The costs of utilities and electric power utilized by CONTRACTOR in the provision of these Services.

- (ii) The cost of all waste removal and disposal from DISTRICT facilities.

ARTICLE 4 PAYMENT TERMS

Section 4.01. In consideration of CONTRACTOR's performance of its obligations under this Agreement, DISTRICT shall make payments to CONTRACTOR as described in the Contract Prices set forth in Exhibit A.

Section 4.02. Payments for Services rendered under the provisions of this Agreement shall be made upon receipt of a proper itemized invoice. Such payments shall be made monthly on the basis of Services rendered. The style and detail of said invoice shall be in written and/or electronic format acceptable to the DISTRICT. Invoices shall be submitted within 5 business days following the end of each month, and upon verification shall be scheduled for payment within 25 days of receipt.

Section 4.03. In consideration of the Services provided by the CONTRACTOR, DISTRICT shall pay to CONTRACTOR all sums due and owing no later than the thirtieth (30th) day after the end of each month. CONTRACTOR will submit to DISTRICT a statement of its Services rendered during the preceding month. Such statement will reflect any and all credits to which DISTRICT may be entitled under any of the terms of this Agreement. After verification of the statement, DISTRICT shall pay CONTRACTOR (or its agent for receipt of payment) the verified amount. Payment for invoices submitted late may be delayed until the following month.

Section 4.04. All payments are subject to Price Adjustments as delineated below:

- (i) Increase in the Consumer Price Index ("CPI"), as set forth in Section 4.05.
- (ii) Change in Services, in accordance with procedures set forth in Article 9.
- (iii) Damages for Non-Performance, as set forth in Article 11.
- (iv) Discrepancies discovered in an Audit, as set forth in Article 13.

Except as delineated in this Section, no other price increases are permitted during the term, and any renewal term of this Agreement, not to exceed five (5) years.

Section 4.05. CPI means the Consumer Price Index for all Urban Consumers in the Memphis Metropolitan area, average all items, not seasonally adjusted, as published by the Bureau of Labor Statistics. Commencing on the annual anniversary of the contract, the rate for the next contract year may be adjusted as follows. Using the CPI published as of May 31, 2014 as the Basic Index, the contract charge per square foot may be adjusted to the quotient obtained by dividing (C) into the product of (A) multiplied by B, where (A) is the CPI as of May 31 in the immediately preceding contract year for which the adjustment is being computed; where (B) is the rate for the initial contract

year (prior to any adjustment) and where (C) is the Basic Index; provided that, in no event shall the adjustment to the rate exceed three (3) percent in any contract year. The lesser of (i) the result of that calculation, or (ii) three percent, will be multiplied by the current contract year rate to determine the new rate set forth in the contract for the applicable contract year. Notwithstanding, if CONTRACTOR does not increase the hourly wage for its employees performing the Services to the extent of the CPI, then the CPI shall not apply to that portion of the per square rate applicable to employee wages.

Section 4.06. Notwithstanding anything to the contrary in this Agreement, and in addition to the other rights of DISTRICT hereunder with respect to disputing invoices or withholding amounts, DISTRICT, in its sole discretion, may set off against any and all amounts otherwise payable to CONTRACTOR pursuant to any of the provisions of this Agreement: (i) any and all amounts claimed by DISTRICT in good faith to be owed by CONTRACTOR to DISTRICT pursuant to any of the provisions of this Agreement; and (ii) any and all amounts that DISTRICT believes in good faith that it does not owe to CONTRACTOR pursuant to any of the provisions of this Agreement. Within twenty (20) calendar days after any such set-off by DISTRICT, DISTRICT shall provide CONTRACTOR with a written accounting of such set-off, a written statement of the reasons therefor, and a reasonable opportunity to meet and discuss the claimed set-off. In the event CONTRACTOR does not agree with the set-off applied, CONTRACTOR may contact DISTRICT to seek equitable resolution or exercise its rights under applicable law.

ARTICLE 5 PERSONNEL

Section 5.01. CONTRACTOR shall hire and maintain a staff of properly trained and experienced personnel to ensure consistent, efficient and satisfactory performance of the Services under this Agreement, but in no event fewer than the full-time equivalents in the staffing plan set out in Exhibit B (the "Staffing Plan"). In addition, CONTRACTOR is expected to provide sufficient back-up personnel in times of staff shortages due to extended illness, emergencies, and inclement weather, to ensure consistent, efficient and satisfactory performance of the Services under this Agreement.

Section 5.02. CONTRACTOR accepts full responsibility for personal supervision of its employees, and shall provide, at all times, adequate and expert supervisory staff ("Supervisors") assigned exclusively to DISTRICT to manage CONTRACTOR'S employees in providing the Services. Supervisors are required to make a minimum of one (1) nightly visit to each DISTRICT facility. Neither DISTRICT nor DISTRICT'S representatives shall supervise CONTRACTOR'S employees, personnel, or agents performing the Services.

Section 5.03. CONTRACTOR shall assign Day Lead and a Night Lead custodian to each cleaning shift in a DISTRICT facility, who shall be present at all times during the performance of the Services. CONTRACTOR shall provide a substitute lead custodian

for any unavailable lead custodian within one (1) hour of the beginning of the affected shift.

Section 5.04. All CONTRACTOR supervisors shall have a thorough knowledge of cleaning procedures, supplies and equipment in order to properly train and direct employees to ensure that DISTRICT cleaning standards are met at all times. Prior to the commencement of the Agreement, DISTRICT will offer training on DISTRICT cleaning procedures and practices. CONTRACTOR may, at its sole option and discretion, enroll its hourly employees and supervisors in this DISTRICT-supplied training. Notwithstanding, such training shall not excuse CONTRACTOR from its obligation to meet the performance requirements under this Agreement. In addition to training related to cleaning, CONTRACTOR shall train its employees on procedures for properly handling on-site emergencies, such as how to cut off water valves and who to call, etc.

Section 5.05. CONTRACTOR agrees to comply with the obligations of T.C.A §49-5-413(d) to ensure that all of its personnel who have direct contact with students of the DISTRICT or to children in a DISTRICT child care program or who have access to the grounds of any DISTRICT facility when children are present supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation prior to said personnel having any contact with DISTRICT children or entering the grounds of any DISTRICT school or facility. CONTRACTOR will not assign to this Agreement any employee criminal history records check indicates that the employee has been convicted of an offense that, if committed on or after July 1, 2007, is classified as a sexual offense in T.C.A. §40-39-202(17) or a violent sexual offender in T.C.A §40-39-202(25) and that employee may not enter the grounds of any DISTRICT facility or have direct contact with students of the DISTRICT or to children in a DISTRICT child care program. CONTRACTOR will remove any employee who commits a sexual offense as defined in T.C.A. §40-39-202(17) or violent sexual offense as defined in T.C.A. §40-39-202(25) after the initial criminal history check on such employee, and CONTRACTOR will inform employees of their duty to so notify the CONTRACTOR of any such offense. CONTRACTOR agrees and understands that failure to satisfy all of the requirements of T.C.A. §40-39-202(17) will be deemed to be a material breach of this Agreement, which will subject CONTRACTOR to breach of contract damages.

Section 5.06. The responsibility for hiring and discharging personnel with respect to all obligations arising from the Agreement shall rest entirely upon the CONTRACTOR, and the CONTRACTOR agrees not to enter into any agreement or arrangement with any employee, person, group or organization which will in any way interfere with the ability to comply with this requirement, except as otherwise required or permitted by law. Notwithstanding, the CONTRACTOR further agrees that the DISTRICT shall have the right to request removal of any person who in its opinion will detract from the safe and efficient provision of Services under the Agreement.

The DISTRICT reserves the right, in the exercise of its sound discretion, to reject personnel or to direct that they be replaced. DISTRICT shall make such request in

writing, state the reasons therefor, provided that such request does not violate applicable local, state and federal laws and regulations.

Section 5.07. CONTRACTOR'S personnel shall have DISTRICT identification badges prominently displayed at all times while performing Services on DISTRICT facilities. Any CONTRACTOR personnel who fail to display the required badge will be removed from the facility, and all Services must be completed without the removed employee. CONTRACTOR will collect ID badges from CONTRACTOR personnel prior to separation and turn the badges in to DISTRICT.

Section 5.08. CONTRACTOR'S personnel will maintain a professional appearance and demeanor at all times with students, staff, administrators and visitors. Radios and cell phones shall not be used during the performance of the Services. Inappropriate behavior of any kind, verbal or otherwise, will be grounds for immediate removal or replacement of CONTRACTOR'S personnel.

Section 5.09. CONTRACTOR'S personnel must speak and understand English sufficient to communicate with DISTRICT personnel, including the facility's plant manager.

ARTICLE 6 SAFETY AND SECURITY

Section 6.01. CONTRACTOR shall provide an aggressive program of accident prevention and safety education, and shall use its best efforts to protect the safety of CONTRACTOR'S employees and DISTRICT'S employees, students, teachers, administrators, and visitors. CONTRACTOR shall provide ongoing instruction for the use of equipment (powered and non-powered) in the promotion of a safe and accident free environment.

Section 6.02. CONTRACTOR will ensure that all CONTRACTOR personnel are familiar with and trained in industry-standard and government-required procedures and health/safety requirements, including AHERA training on asbestos and all required OSHA training. CONTRACTOR must furnish records of safety training of its employees to DISTRICT no later than August 1 of each year of this Agreement.

Section 6.03. CONTRACTOR will provide DISTRICT a listing of all chemicals, accompanied with Material Safety Data Sheets (MSDS), used by CONTRACTOR personnel in all DISTRICT facilities prior to bringing chemicals on site.

ARTICLE 7 QUALITY ASSURANCE

Section 7.01. CONTRACTOR shall develop and maintain a quality assurance program to ensure custodial Services are performed in accordance with the specifications of this Agreement. CONTRACTOR shall develop and implement procedures to identify, prevent, and ensure non-recurrence of defective Services. CONTRACTOR is expected to conduct several forms of quality assurance monitoring, e.g., random sampling inspections, customer feedback, trend analysis and third-party audits. A formal review of the Quality Assurance program will be conducted at least quarterly. Key metrics will include at a minimum the following: (a) customer satisfaction trend analysis, (b) quality control inspections log trend analysis, and (c) custodian training and productivity data.

ARTICLE 8 OPERATIONAL MATTERS

Section 8.01. (a) Communications: The CONTRACTOR must provide a private telephone number to allow the DISTRICT immediate, direct access to CONTRACTOR management personnel, and after-hours telephone names and telephone numbers to be used in the case of afterhours emergencies. The CONTRACTOR is required to provide one designated emergency phone number that will be manned by CONTRACTOR management personnel or a contracted answering service, and answered at all times 24/7, and shall provide said numbers to the DISTRICT. Additionally, the CONTRACTOR is required to have access to internet communications and periodically throughout school days check an email address that the CONTRACTOR will supply to the DISTRICT.

(b) DISTRICT Operating Policies: CONTRACTOR shall conform to and abide by the policies, rules, and regulations of the DISTRICT as set out in the present written policies and rules of the DISTRICT, relevant to outside contractors, as modified by current practice, and such other future regulations as may reasonably be required by the DISTRICT.

(c) CONTRACTOR'S Monthly Reports: The CONTRACTOR shall deliver to the DISTRICT written reports of operations on a monthly basis, or more frequently as required by the DISTRICT. Said reports shall include matters such as: provision of Services during School Hours and after school hours at each facility and school location, training programs, discipline matters and related documentation, and other items related to the performance of the Agreement.

(d) Right To Inspect: As a condition of this Agreement, the CONTRACTOR agrees to allow DISTRICT administrative personnel to inspect the Services at any time, with or without prior notice. Furthermore, if it is deemed necessary by the DISTRICT due to inadequate service or poor performance, DISTRICT may, at its sole option and discretion, supply DISTRICT personnel to work directly with the CONTRACTOR'S management personnel to assist in improvement of the Services to an acceptable level. The cost of such personnel will be deducted from payments due the CONTRACTOR.

ARTICLE 9 DISPUTES

Section 9.01. The DISTRICT must be notified within 3 business days of discovery of any changes in operating requirements that will result in a change in Agreement compensation. Failure by the CONTRACTOR to notify the DISTRICT of such changes will result in the loss of any additional compensation that may be due to the CONTRACTOR pursuant to these specifications.

Section 9.02. The parties shall deal in good faith and attempt to resolve potential disputes informally. All disputes, for which Tennessee law does not otherwise specify a dispute resolution process, shall immediately be brought to the attention of the parties' respective representatives. If the dispute persists, and the representatives are not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute initially became known to each party, then either party may submit the dispute to a leadership group consisting of DISTRICT and CONTRACTOR Senior Management for resolution. This leadership group will convene in person or by telephone within three (3) business days after the dispute is submitted to the leadership group. If the dispute persists, and the leadership group is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the leadership group, then CONTRACTOR shall submit the dispute to an executive committee consisting of DISTRICT'S executive management, and CONTRACTOR'S designated executive management for resolution. This executive committee will convene in person or by telephone within three (3) business days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) calendar days after the dispute was initially submitted to the executive committee, then CONTRACTOR shall submit to the Superintendent of DISTRICT a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless DISTRICT, on its own initiative, has already rendered such a final decision. CONTRACTOR'S written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Agreement, CONTRACTOR shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Agreement adjustment for which CONTRACTOR believes DISTRICT is liable.

Section 9.03. Pending the final resolution of any dispute arising under, related to or involving this Contract, for which Tennessee law does not otherwise specify a dispute resolution process, both parties agree to diligently proceed with the performance of this Agreement, including DISTRICT'S payment for and CONTRACTOR'S provision of Services in accordance with this Agreement. The failure to diligently proceed in accordance with this Agreement shall be considered a material breach of this Agreement.

Section 9.04. Any final decision of DISTRICT shall be expressly identified as such in writing, and shall be signed by the Superintendent of DISTRICT. DISTRICT'S final decision shall be conclusive and binding regarding the dispute unless CONTRACTOR commences an action in a court of competent jurisdiction to contest such decision within

ninety (90) days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

ARTICLE 10 COMPLIANCE WITH LAWS

Section 10.01. In compliance with Title IX, Education Amendments of 1972 (prohibiting sex discrimination in education), the DISTRICT requires any person, organization, group or other entity with which it contracts, sub-contracts, or otherwise arranges to provide services or benefits (including responses) to comply fully with Title IX.

TITLE IX STATES: NO PERSON SHALL, ON THE BASIS OF SEX, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY EDUCATION PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 10.02. COMPLIANCE WITH THE AMERICAN WITH DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT OF 1973. CONTRACTOR agrees that it, and its employees, agents and subcontractors, will comply at all times during the term of this Agreement with the American with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination against any person who is qualified with a disability).

Section 10.03. CONTRACTOR must provide all applicants with equal job opportunities on public contracts and prohibit discrimination against any employee, applicant or subcontractor because of age, color, creed, handicap condition, marital or parental status, national origin, race, sex, veteran status, or political opinion or affiliation. All CONTRACTOR solicitations and advertisements for employees will include the equal opportunity statement listed above.

ARTICLE 11 NON-PERFORMANCE DAMAGES

Section 11.01. DISTRICT's representative(s) will inspect facilities (whether on a random and unannounced basis, or on a previously scheduled basis, either being at the DISTRICT's discretion) to determine CONTRACTOR's compliance with the specifications for the Services. DISTRICT'S representative will record deficiencies (whether unperformed or inadequately performed Services) and communicate the same to the CONTRACTOR using the rubric set out in Appendix C. If the deficiency is failure to perform a reoccurring Service, then CONTRACTOR shall notify the DISTRICT representative in writing that the deficiency was corrected within the following periods after CONTRACTOR'S receipt of the DISTRICT'S initial notice:

- (i) for a daily Service, CONTRACTOR shall cure the deficiency and notify the DISTRICT within twenty-four (24) hours;

- (ii) for a weekly Service, CONTRACTOR shall cure the deficiency and notify the DISTRICT within seventy-two (72) hours;
- (iii) for a monthly Service, CONTRACTOR shall cure the deficiency and notify the DISTRICT within seven (7) calendar days;
- (iv) for a quarterly Service or a Service to be conducted periodically, then CONTRACTOR shall cure the deficiency and notify the DISTRICT within ten (10) calendar days; and
- (v) for a semi-annual Service or an annual Service, then CONTRACTOR shall cure the deficiency and notify the DISTRICT within thirty (30) calendar days.

Section 11.02. In addition to the foregoing, if there are deficiencies of Services in a single facility that occur three or more times (whether daily, weekly, monthly, quarterly, periodically, annually, or any combination of the foregoing) (defined as “Habitual Deficiencies”), the DISTRICT may elect (in its sole discretion) a separate remedy as follows: the DISTRICT shall provide notice to the CONTRACTOR of said Habitual Deficiencies, the CONTRACTOR shall have twenty (20) days for the CONTRACTOR to cure the Habitual Deficiencies and thereafter continuously maintain the facility according to the required level of Services.

Section 11.03. Notwithstanding and in addition to the opportunity to cure, the DISTRICT will withhold the following sums from the DISTRICT’S monthly Contract Price for each type and each occurrence of the documented deficiency until the Service is cured:

- (i) for daily and weekly Services - \$ each;
- (ii) for monthly, periodic, and quarterly Services - \$ each;
- (iii) for semi-annual and annual Services - \$ each; and
- (iv) for Habitual Deficiencies - \$ per week.

Section 11.04. The aggregate of all deductions set forth in Section 11.03 will not exceed twenty-five percent (25%) of the monthly Contract Price for any one facility, and in the aggregate ten percent (10%) of the Contract Price per month for all facilities. When the DISTRICT remits payment of the monthly Contract Price that deducts a portion of the payment for unperformed or deficient Services as set forth herein, the DISTRICT shall also remit a schedule outlining the offset for each particular Service that was not performed.

Section 11.05. Financial Remedy for Insufficient Staffing: By entering into the Contract, the DISTRICT has accepted CONTRACTOR'S Staffing Plan. If the CONTRACTOR fails to continuously maintain at least ninety-eight percent (98%) of the Staffing Plan in any facility, then the DISTRICT may elect (in its sole discretion) to deduct from the Contract Price the amount equal to the full-time equivalent shortage at an hourly rate of \$x.xx for hourly personnel and \$x.xx per hour for Supervisors. This remedy is in addition to any and all other remedies set forth herein, and this amount is not capped according to the provisions of Section 11.04 above. Notwithstanding the foregoing, the DISTRICT may elect in its sole discretion to waive this remedy for the period of June 1, 2014 through August 30, 2014. To establish compliance with this section, CONTRACTOR is required to maintain a written log in which each employee signs in on a daily basis, including the number of hours worked. CONTRACTOR shall provide a copy of the log to the facility's plant manager on a weekly basis.

Section 11.06. Failure by either party to insist upon strict performance of any of the provisions hereof or failure or delay by either party in exercising any rights or remedies provided herein or by law, the DISTRICT'S payment in whole or in part for Services hereunder or any purported oral modification or rescission of the Agreement by an employee or agent of either party shall not release either party of any of its obligations hereunder, shall not be deemed a waiver of the rights of either party to insist upon strict performance hereof or of any of either party's rights or remedies under the Agreement or by law and shall not operate as a waiver of any of the provisions hereof. A waiver by either of the parties of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant in the Agreement. Except as otherwise expressly provided in the Agreement, all remedies provided for in the Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

ARTICLE 12 INSURANCE/INDEMNIFICATION/ACCIDENTS/INCIDENTS

Section 12.01. CONTRACTOR must provide a certificate of insurance signed by an employee of the insurer(s) providing coverage, with the authority to bind the insurer(s) stating that no less than the minimum limits of insurance required in this Agreement will be met. The insurance carrier must be a Tennessee admitted carrier, and must be rated in A.M. Best's Insurance Guide as a "secured" carrier or better.

Section 12.02. Certificate of Insurance must be submitted within five (5) business days from date of request. CONTRACTOR must carry insurance to include:

- (i) Worker's Compensation coverage in accordance with the statutory requirement and limits of the State of Tennessee.
- (ii) Comprehensive General Liability Insurance for bodily injury (including death) and Property Damage Insurance of \$1,000,000.00 per occurrence.

- (iii) Comprehensive Automobile Liability Insurance covering owned, hired and non-owned vehicles with a minimum of Bodily and Property damage of \$1,000,000.00 each accident, combined single limit.
- (iv) Excess or Umbrella Insurance.
- (v) Fidelity/Employee Dishonesty Insurance with a \$100,000.00 limit.
- (vi) Employment Practices Liability Insurance (EPLI) with a \$100,000.00 limit
Additional Documents such as a certificate of liability insurance, 587 compliance letter, and hold harmless documents may be required.
- (vii) DISTRICT shall be supplied satisfactory proof of coverage of above required insurance. In addition, DISTRICT shall be conspicuously named on the certificate of insurance as an additional insured on Auto, GL, Excess, and Fidelity/Employee Dishonesty Policies.

Section 12.03. Said policy or policies shall be primary to any policies of insurance available to the DISTRICT and must contain thirty (30) days' prior notice to the Board of Education of cancellation or content change. Notwithstanding any terms, conditions or provisions in any other writing between the parties, the CONTRACTOR hereby agrees to effectuate the naming of the DISTRICT as an unrestricted additional insured on the CONTRACTOR'S insurance policies, with the exception of Worker's Compensation. The policy naming the DISTRICT as an additional insured shall state that the CONTRACTOR'S coverage shall be primary coverage for the DISTRICT, its Board of Education, employees, agents and volunteers. CONTRACTOR shall self-insure any applicable deductibles, and the CONTRACTOR shall also agree to indemnify the DISTRICT for any applicable deductibles.

Section 12.04. The limits outlined above are strictly minimum amounts. The DISTRICT encourages the use of higher limits and assumes no liability in the event that claims are presented against the CONTRACTOR for amounts in excess of these minimum limits.

Section 12.05. The CONTRACTOR shall deposit with the DISTRICT satisfactory evidence of insurance (including renewals) showing minimum coverage as required above with proof of premiums paid up-to-date. Annual binders evidencing insurance coverage shall be provided to the DISTRICT no later than thirty (30) days prior to the start of each contract year. It is the CONTRACTOR'S responsibility to initiate this submission, and the lack of any specific request from the DISTRICT does not eliminate the mandate.

Section 12.06. All insurance certificates shall state that the policy will not be cancelled nor coverage thereunder reduced or limited without thirty (30) days' written notice to the DISTRICT. It shall further state that a similar thirty (30) days' written notice will be given to the DISTRICT prior to the expiration of the policy if renewal coverage is to

be refused or such coverage is to be reduced on renewal. Such certificates shall show the name and address of the insured CONTRACTOR, the policy number, the type of coverage, the inception and expiration dates, and it shall clearly state what, if any, coverage is excluded by special or manuscript endorsement or otherwise excepting, such as appear in standard ISO policies as they relate to this Agreement. The DISTRICT reserves the right to make direct inquiry to the insurance carrier for an explanation of coverage and the CONTRACTOR agrees to assist in obtaining any such desired information. CONTRACTOR acknowledges that failure to provide the mandated insurance on behalf of the DISTRICT constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the DISTRICT.

Section 12.08. DISTRICT shall be furnished a Certificate of insurance for such liability insurance coverage. The Certificate shall state such coverage shall not be canceled before giving DISTRICT thirty (30) days' notice by certified mail or registered letter. Any injury or accident shall be reported to the DISTRICT by the fastest means and confirmed in writing as soon as possible.

Section 12.09. CONTRACTOR agrees to indemnify, defend and hold harmless DISTRICT, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of CONTRACTOR or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation providing the Services except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of DISTRICT, its agents or employees. The following shall apply with respect to such claims:

- (i) DISTRICT will notify CONTRACTOR of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify CONTRACTOR shall relieve it of its obligations under this Agreement except to the extent that CONTRACTOR has suffered actual prejudice by such delay or failure); and
- (ii) CONTRACTOR will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (A) when substantial principles of government or public law are involved, when litigation might create precedent affecting future DISTRICT operations or liability, or when involvement of DISTRICT is otherwise mandated by law, DISTRICT may participate in such action, at CONTRACTOR'S expense; (B) DISTRICT will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (C) DISTRICT will reasonably cooperate in the defense and in any related settlement negotiations.

Section 12.10. In fulfilling the obligations of this Agreement, care must be exercised by the CONTRACTOR to avoid damage to or disfigurement of the buildings, equipment or other property of the DISTRICT. The CONTRACTOR shall be required to make the necessary repairs at its expense, as soon as possible after the damage occurs, for any property damaged by the CONTRACTOR or its employees.

Section 12.11. Notwithstanding anything to the contrary herein, if property damage results from CONTRACTOR'S negligence, cost to repair or replace the damage property may be deducted from monies due to the CONTRACTOR. This includes but is not limited to facility damage resulting from operator errors and or faulty equipment. Reimbursements for uncompensated losses will be due within thirty (30) business days from notification.

ARTICLE 13 RECORDS AND REPORTS/RIGHT TO AUDIT

Section 13.01. CONTRACTOR shall provide those reports and records which may be reasonably requested by DISTRICT, necessary for proper payment, necessary for evaluation of the Services provided to DISTRICT and/or to meet all Board of Education or state requirements. All such records shall be open to inspection by DISTRICT or its representative during regular business hours in CONTRACTOR'S office.

Section 13.03. Without limiting any examination or audit rights, or other rights of DISTRICT set forth in the Agreement, CONTRACTOR agrees that DISTRICT, or its designated representative, shall have the right to audit, review and copy any records and supporting documentation pertaining to performance of and invoicing under this Agreement and to audit the practices and facilities used by CONTRACTOR to provide the Services and related operational matters. CONTRACTOR agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated or required by law. CONTRACTOR agrees to allow the auditor(s) access to such records and facilities during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include an equivalent right of DISTRICT to audit records and facilities and interview staff in any subcontract related to performance of and invoicing under this Agreement. DISTRICT agrees to take all reasonable steps to ensure that such information is not disclosed to third parties.

Section 13.04. For avoidance of doubt, audits may include those conducted by personnel of DISTRICT, or its designated representative, in the performance of Agreement oversight responsibilities in reviewing invoices, monthly fiscal management and/or other required reports. If an audit reveals that CONTRACTOR has overcharged DISTRICT for Services during the period to which the audit relates, then CONTRACTOR shall promptly refund such overcharges to DISTRICT as appropriate, and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than five percent (5%) of CONTRACTOR'S charges to DISTRICT for such

Services for such period, the reasonable cost of such audit (including any imputed costs of DISTRICT for audits performed by DISTRICT itself) shall be borne by CONTRACTOR.

Section 13.05. If any audit reveals an inadequacy or insufficiency of CONTRACTOR'S performance, including performance in connection with any security obligations of CONTRACTOR as set forth in this Agreement, CONTRACTOR shall promptly develop and provide to DISTRICT, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit, and subsequent related audits or audit activity, shall be borne by CONTRACTOR in the event that: (i) DISTRICT specifically identifies a particular deficiency with respect to CONTRACTOR'S performance of the Services; and (ii) CONTRACTOR either denies or fails to cure such identified deficiency within fifteen (15) calendar days.

Notwithstanding anything to the contrary in this Article 13, DISTRICT or any auditing body or its designated representative, agrees that it will not exercise the audit rights described in Section 13.03 above for purposes of conducting an enterprise-wide audit of CONTRACTOR'S performance under this Agreement more than once per calendar year; however, any follow-up reviews or other investigations related to an audit initiated under this Section may be conducted at any time and from time to time.

Section 13.06. Where CONTRACTOR conducts an internal audit of CONTRACTOR'S performance under this Agreement which shows any significant failures by CONTRACTOR to meet its obligations hereunder, CONTRACTOR shall provide to DISTRICT a written summary describing in reasonable detail such findings of such internal audit. If CONTRACTOR determines at any time that it has overcharged DISTRICT, then CONTRACTOR shall promptly provide to DISTRICT a credit equal to the amount of such overcharge.

Section 13.07. CONTRACTOR agrees that (i) DISTRICT or its delegate will have the right to obtain, copy and review all CONTRACTOR billing records related to the Services provided hereunder, and (ii) DISTRICT may forward audit results showing billing or rate discrepancies to any applicable governmental authority, including, without limitation, the State of Tennessee's Comptroller's office.

ARTICLE 14

TERMINATION FOR NON-APPROPRIATION OF FUNDS

Section 14.01. If the Term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the DISTRICT'S Board of Commissioners. If funds to effect such continued payment are not appropriated, DISTRICT shall notify CONTRACTOR in writing of such non-appropriation and the effective date of termination. CONTRACTOR agrees to remove all unused supplies and materials furnished under this Agreement, terminate any Services supplied to DISTRICT under

this Agreement, and relieve DISTRICT of any further obligation therefor as of the effective date. DISTRICT will use its best efforts to provide notice of termination under this provision on or before May 1 of the then-current fiscal year.

ARTICLE 15 TERMINATION FOR THE CONVENIENCE OF DISTRICT

Section 15.01. DISTRICT may terminate the performance of the Services under this Agreement for its convenience in whole or, from time to time, in part, if DISTRICT determines that a termination is in DISTRICT'S interest. DISTRICT shall terminate this Agreement by delivering to CONTRACTOR a written Notice of Termination at least thirty (30) days in advance of the termination date specifying the extent of termination and the effective date thereof.

Section 15.02. After receipt of a Notice of Termination, and except as directed by DISTRICT, CONTRACTOR shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. CONTRACTOR shall:

- (i) Stop work as specified in the Notice of Termination.
- (ii) Place no further subcontracts for materials, Services, equipment, or facilities, except as necessary to complete the continuing portion of the Agreement.
- (iii) Terminate all subcontracts to the extent they relate to the Services terminated.
- (iv) Settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.

Section 15.03. CONTRACTOR and DISTRICT agree that DISTRICT shall have no obligation to pay any amount to CONTRACTOR upon the termination for convenience, other than, and in accordance with the terms of this Agreement the Contract Price for Services accepted by DISTRICT and not previously paid. CONTRACTOR shall submit final invoices for accepted Services by DISTRICT and not paid for within ninety (90) calendar days from the effective date of termination.

ARTICLE 16 TERMINATION FOR DEFAULT

Section 16.01. Either party may, subject to the provisions of Section 19.01 titled "Force Majeure," by written notice of default to the other party, and in addition to the remedies set forth elsewhere in this Agreement, terminate this Agreement in whole or in part if the other party fails to:

- (i) Perform the Services within the time specified in the Agreement or any amendment thereto;

- (ii) Make progress toward an effective cure, so that the lack of progress endangers performance of this Agreement; or
- (iii) Perform in accordance with any of the other provisions of this Agreement.

In the event of termination, DISTRICT may pursue any and all legal remedies as provided herein and by law.

Section 16.02. The right to terminate this Agreement under Section 16.01 above, may be exercised if (i) the failure constitutes a breach of this Agreement and if the defaulted party does not cure such failure within the time frame stated in the cure notice, which in no event will be less than fifteen (15) calendar days, unless a shorter period is specifically set forth elsewhere under this Agreement; or (ii) there are repeated or numerous failures by a party for which the other has provided notice, which repeated failures collectively constitute a material breach of this Agreement. Notwithstanding the foregoing, the Parties hereby agree that each of the following events shall be deemed a material breach by CONTRACTOR, subject to immediate termination without the benefit of a cure period:

- (i) Aggregate Non-performance Damages during a contract year exceed 5% of the Contract Price, as determined by the provisions of Article 11 herein.
- (ii) Misconduct resulting in the submission of fraudulent or inaccurate reports or invoices that result in a material adverse financial impact on DISTRICT;
- (iii) Failure to report within the timelines established by DISTRICT any incidents or accidents required to be reported by this Agreement.
- (iv) Any modifications or alterations to a Purchase Order by CONTRACTOR that were not authorized or approved by DISTRICT; and
- (v) CONTRACTOR'S refusal to provide the Services requested for reasons other than safety or emergencies.

Section 16.03. If DISTRICT terminates this Agreement in whole or in part pursuant to this Section, it may acquire from an alternative provider, under terms and in the manner DISTRICT considers appropriate, Services similar to those terminated, and CONTRACTOR will be liable to DISTRICT for DISTRICT'S cost to cover. However, CONTRACTOR shall continue to provide all Services not expressly terminated by DISTRICT.

Section 16.04. If the Agreement is terminated for default, upon direction of DISTRICT, CONTRACTOR shall protect and preserve property in its possession in which DISTRICT has an interest.

Section 16.05. DISTRICT shall pay the agreed upon Contract Price for completed and partially completed Services.

Section 16.06. If, after termination, it is determined by a final ruling in accordance with any dispute resolution process agreed to or pursued by the parties, that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of DISTRICT. The rights and remedies of DISTRICT and CONTRACTOR in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

Section 16.07. Except as may be permitted by the terms of this Agreement (specifically, termination for cause above) or required under the United States Bankruptcy Code, CONTRACTOR may not, for any reason whatsoever, terminate this Agreement or otherwise repudiate this Agreement or refuse to perform its obligations hereunder.

ARTICLE 17 CONFIDENTIALITY OF DATA

Section 17.01. “Confidential Information” means any and all tangible and intangible information (whether written or otherwise recorded or oral) (i) of CONTRACTOR, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, (ii) of DISTRICT, that DISTRICT makes available to CONTRACTOR in order to carry out this Agreement, or which becomes available to CONTRACTOR in carrying out this Agreement, including all financial, statistical, personal, student, technical and other data and information relating to DISTRICT’S operation, or (iii) of either disclosing party, designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Neither party shall use for its own account or the account of any third party, nor disclose to any third party, any of the other party’s Confidential Information. This Agreement is intended to cover Confidential Information received by the receiving party both prior and subsequent to the date hereof.

Section 17.02. Notwithstanding the above, the term “Confidential Information” does not include any information that is either:

- (i) available from public sources or in the public domain, through no fault of the receiving party; or
- (ii) received at any time from any third party without breach of a non-disclosure obligation to the disclosing party; or
- (iii) readily discernible from publicly available products or literature; or

- (iv) approved for disclosure by prior written permission of a corporate officer of the disclosing party.

Section 17.03. Notwithstanding Section 17.01 above, the receiving party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, including the Tennessee Open Records Act, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and allows the disclosing party to use commercially reasonable efforts to obtain confidential treatment for any Confidential Information requested for disclosure.

Section 17.04. The Tennessee Open Records Act, T.C.A. §10-7-503, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by a state or local agency regardless of the physical form or character. ALL OR MOST OF THE INFORMATION CONTAINED IN THIS CONTRACT WILL BE A PUBLIC RECORD SUBJECT TO DISCLOSURE UNDER THE OPEN RECORDS ACT. PRICES QUOTED IN THIS CONTRACT ARE NOT A TRADE SECRET. If CONTRACTOR considers any provision of this Agreement to be exempt from disclosure as a trade secret or otherwise, the burden is on CONTRACTOR to specifically identify such provision. DISTRICT, to the extent allowed by law and in accordance with these terms and conditions, will honor a designation of nondisclosure. CONTRACTOR will be required to defend any claim of trade secret or other basis for nondisclosure in the event of an administrative or judicial challenge to DISTRICT'S nondisclosure.

ARTICLE 18 SUBCONTRACTORS

Section 18.01. CONTRACTOR shall not subcontract all or any part of the Services without the prior written consent of DISTRICT, which will not be unreasonably withheld. Each subcontractor will perform only the specific Services described with regard to such subcontractor in a written request submitted by CONTRACTOR to DISTRICT when seeking such consent; and no change may be made to the specific Services performed by a particular subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of DISTRICT, which will not be unreasonably withheld. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Agreement. CONTRACTOR covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with DISTRICT. DISTRICT'S consent with respect to CONTRACTOR'S

use of a particular proposed subcontractor, shall be given or withheld in writing within CONTRACTOR'S reasonably requested timeframe, and, if such consent is withheld, DISTRICT'S notice thereof to CONTRACTOR shall set forth the reasons for such withholding of consent.

Section 18.02. If DISTRICT determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, DISTRICT may notify CONTRACTOR of its determination in writing, indicating the reasons therefor, in which event CONTRACTOR shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by CONTRACTOR personnel. CONTRACTOR shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. CONTRACTOR and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor engaged to provide the Services under this Agreement. Notwithstanding the fact that a subcontractor may be the party actually performing particular Services hereunder, CONTRACTOR shall at all times: (i) constitute the primary obligor for all of CONTRACTOR'S duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of CONTRACTOR hereunder that CONTRACTOR may elect to subcontract to any of its subcontractors or to any other third party.

ARTICLE 19 FORCE MAJEURE

Section 19.01. In the event CONTRACTOR is unable to provide Services herein specified because of any act of God, civil disturbance, fire, inclement weather, impassable roads, riot, war, picketing, strike, labor dispute, governmental action or any condition or cause beyond CONTRACTOR'S control, DISTRICT shall excuse CONTRACTOR from such performance. DISTRICT shall have the right to take over the provision of Services CONTRACTOR is prevented from providing for the reasons described above, as DISTRICT may deem appropriate until CONTRACTOR is able to resume its regular operations. The compensation paid CONTRACTOR shall be reduced by the amount which would otherwise be payable with respect to the number of days during which the failure of performance continues.

ARTICLE 20 MISCELLANEOUS

Section 20.01. ASSIGNMENT. The Services contemplated under this AGREEMENT are deemed to be in the nature of personal services and shall not be assigned by CONTRACTOR without prior written consent of the DISTRICT. The CONTRACTOR may assign this Agreement if the assignment is made to a parent, subsidiary, related or affiliated company.

Section 20.02. STATUS OF CONTRACTOR. CONTRACTOR shall be construed as, being an independent contractor employed to provide custodial cleaning services only. Neither CONTRACTOR nor any of its employees shall be held or deemed in any way to be an agent, employee or official of DISTRICT. CONTRACTOR shall be responsible for, and hold DISTRICT harmless from any liability for unemployment taxes or contributions, payroll taxes or other federal or state employment taxes.

Section 20.03. PLACE OF AGREEMENT/GOVERNING LAW. This AGREEMENT shall be deemed to be presented in and shall be construed in accordance with the laws of the State of Tennessee. All references in this request to "this State" shall mean the State of Tennessee.

Section 20.04. SEVERABILITY. In the event any provision specified herein is held or determined by a court of competent jurisdiction to be illegal, void or in contravention of any applicable law, the remainder of this AGREEMENT shall remain in full force and effect.

Section 20.05. NOTICES TO PARTIES. All notices to be given by the parties to this AGREEMENT shall be in writing and served by depositing same in the United States mail, postage prepaid, registered or certified mail.

Notices to DISTRICT shall be addressed to:

Deputy Superintendent, Business Operations
Shelby County Board of Education
160 S. Hollywood Street
Memphis, TN 38112

COPIED TO:

Director, Contracts Management & Compliance
Shelby County Board of Education
160 S. Hollywood Street
Memphis, TN 38112

Notices to CONTRACTOR shall be addressed to:

NAME OF CONTRACTOR
ADDRESS

Section 20.06. DRUG TESTING REQUIREMENTS. CONTRACTOR agrees that

during the term of this Agreement, any drug/alcohol testing program mandated by a Federal or State agency having regulatory authority and any additional testing established by the District will become part of this Agreement as if written herein

Section 20.06. ENTIRE AGREEMENT. This Agreement, together with the Scope of Services and other documents that may be executed pursuant to this Agreement and incorporated herein, constitutes the entire Agreement between the Parties and shall supersede any and all prior agreements, communications and understandings between the Parties with respect to the subject matter hereof. The terms of this Agreement shall apply notwithstanding any proposed variations or additions that may be contained in any purchase order, invoice or other communication submitted by CONTRACTOR. This Agreement may not be modified, amended or changed except by mutual agreement in writing which specifically recites that the Parties intend such writing to amend this Agreement and which is signed by authorized representatives of each party. To the extent of a conflict between the provisions of the documents referenced herein, the order of precedence shall be: (1) first, this Agreement; (2) second, DISTRICTS'S Request for Proposal (RFP); (3) and third, CONTRACTOR'S RFP Response.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first herein above written.

Shelby County Board of Education

By: _____
President

By: _____
, Superintendent

By: _____
Board Chairman

SAMPLE

Exhibit "A"

PRICING SCHEDULE

SAMPLE

Exhibit "B"
STAFFING PLAN

SAMPLE